Union Calendar No. 610

106th Congress 2d Session – – – – – – – – – – – – – – House Report 106–1048

REPORT ON THE ACTIVITIES

OF THE

Committee on the Judiciary

OF THE

HOUSE OF REPRESENTATIVES

DURING THE

ONE HUNDRED SIXTH CONGRESS

PURSUANT TO

CLAUSE 1(d) RULE XI OF THE RULES OF THE
HOUSE OF REPRESENTATIVES

JANUARY 2, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
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COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

HENRY J. HYDE, Illinois, *Chairman* [1]

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HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
CHARLES T. CANADY, Florida
BOB GOODLATTE, Virginia
STEPHEN E. BUYER, Indiana [3]
ED BRYANT, Tennessee [5]
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
ASA HUTCHINSON, Arkansas
EDWARD A. PEASE, Indiana
CHRIS CANNON, Utah
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MARY BONO, California
SPENCER BACHUS, Alabama [2]
JOE SCARBOROUGH, Florida [4]
DAVID VITTER, Louisiana [6]

JOHN CONYERS, JR., Michigan
BARNEY FRANK, Massachusetts
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
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TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York

THOMAS E. MOONEY, Sr., *Chief of Staff/General Counsel*
JON DUDAS, *Staff Director/Deputy General Counsel*
JULIAN EPSTEIN, *Minority Chief Counsel and Staff Director*
PERRY APELBAUM, *Minority General Counsel*

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[1] Henry J. Hyde, Illinois, elected to the Committee as Chairman pursuant to House Resolution 6, approved by the House January 6, 1999.

Republican Members elected to the Committee pursuant to House Resolution 6, approved by the House January 6, 1999.

Democratic Members elected to the Committee pursuant to House Resolution 7, approved by the House January 6, 1999.

[2] Spencer Bachus, Alabama, elected to the Committee pursuant to House Resolution 30, approved by the House February 2, 1999.

[3] Stephen E. Buyer, Indiana, resigned from the Committee March 4, 1999.

[4] Joe Scarborough, Florida, elected to the Committee pursuant to House Resolution 108, approved by the House March 11, 1999.

[5] Ed Bryant, Tennessee, resigned from the Committee June 25, 1999.

[6] David Vitter, Louisiana, elected to the Committee pursuant to House Resolution 223, approved by the House June 25, 1999.

SUBCOMMITTEES OF THE COMMITTEE ON THE JUDICIARY [1]

CRIME

BILL MCCOLLUM, Florida, *Chairman*

STEPHEN E. BUYER, Indiana [2]
STEVE CHABOT, Ohio
BOB BARR, Georgia
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CHARLES T. CANADY, Florida
ASA HUTCHINSON, Arkansas [3]

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STEVE CHABOT, Ohio
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SPENCER BACHUS, Alabama
MARY BONO, California [5]
JOE SCARBOROUGH, Florida [6]
DAVID VITTER, Louisiana [7]

JERROLD NADLER, New York
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JAMES E. ROGAN, California
MARY BONO, California

HOWARD L. BERMAN, California
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ELTON GALLEGLY, California
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MARY BONO, California[5]
CHARLES T. CANADY, Florida
BOB GOODLATTE, Virginia
JOE SCARBOROUGH, Florida[6]

SHEILA JACKSON LEE, Texas
HOWARD L. BERMAN, California
ZOE LOFGREN, California
BARNEY FRANK, Massachusetts
MARTIN T. MEEHAN, Massachusetts

The Constitution

CHARLES T. CANADY, Florida, *Chairman*

HENRY J. HYDE, Illinois
ASA HUTCHINSON, Arkansas
SPENCER BACHUS, Alabama
BOB GOODLATTE, Virginia
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
LINDSEY O. GRAHAM, South Carolina

MELVIN L. WATT, North Carolina
MAXINE WATERS, California
BARNEY FRANK, Massachusetts
JOHN CONYERS, Jr., Michigan
JERROLD NADLER, New York

[1] Subcommittee chairmanships and assignments approved February 4, 1999.

[2] Stephen E. Buyer, Indiana, resigned from the Committee effective the afternoon of March 4, 1999.

[3] Asa Hutchinson, Arkansas, assigned to the Subcommittee on Crime March 24, 1999.

[4] Ed Bryant, Tennessee, resigned from the Committee June 25, 1999.

[5] Mary Bono, California, reassigned from the Subcommittee on Immigration and Claims to the Subcommittee on Commercial and Administrative Law March 24, 1999.

[6] Joe Scarborough, Florida, assigned to the Subcommittee on Commercial and Administrative Law and the Subcommittee on Immigration and Claims March 24, 1999.

[7] David Vitter, Louisiana, assigned to the Subcommittee on Commercial and Administrative Law July 20, 1999.

LETTER OF TRANSMITTAL

HOUSE of REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
WASHINGTON, DC, JANUARY 2, 2001.

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 106th Congress.

Sincerely,

HENRY HYDE,
Chairman.

Union Calendar No. 610

106TH CONGRESS 2nd Session | HOUSE OF REPRESENTATIVES | REPORT 106–1048

REPORT ON THE ACTIVITIES OF THE COMMITTEE ON THE JUDICIARY

JANUARY 2, 2001.—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 Judiciary, submitted the following

REPORT

Jurisdiction of the Committee on the Judiciary

The jurisdiction of the Committee on the Judiciary is set forth in Rule X, 1.(k) of the rules of the House of Representatives for the 106th 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. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

* * * * * * *

(k) 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	789
House joint resolutions	59
House concurrent resolutions	38
House resolutions	34
	920
Senate bills	30
Senate concurrent resolutions	1
	31
Subtotal	951
Private Legislation:	
House bills (claims)	34
House bills (copyrights)	1
House bills (criminal procedure)	1
House bills (immigration)	82
House resolutions (claims)	3
	121
Senate bills (claims)	1
Senate bills (immigration)	14
	15
Subtotal	136
Total	1,087

ACTION ON LEGISLATION NOT REFERRED TO COMMITTEE

Originated for House action:	
House resolutions	1
Held at desk for House action:	
Senate bills	11
Conference appointments:	
House bills	2
House bills	2
Total	16

FINAL ACTION

House concurrent resolutions approved (public)	2
House resolutions approved (public)	9
Public legislation vetoed by the President	1
Public Laws	73
Private Laws	21

Hearings

Serial No. and Title

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1. Wartime Violation of Italian American Civil Liberties Act. Subcommittee on the Constitution. October 26, 1999. (H.R. 2442).
2. Bankruptcy Reform. Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary jointly with the Subcommittee on Administrative Oversight and the Courts of the Senate Committee on the Judiciary. March 11, 1999.
3. Electronic Signatures in Global and National Commerce (E-Sign) Act. Subcommittee on Courts and Intellectual Property. September 30, 1999. (H.R. 1714).
4. Prison Industries Reform Act of 1999 and Federal Prison Industries Competition in Contracting Act of 1999. Subcommittee on Crime. August 5, 1999. (H.R. 2558 and H.R. 2551).
5. Year 2000 Readiness and Responsibility Act. Committee on the Judiciary. April 13, 1999. (H.R. 775).
6. United States Secret Service. Subcommittee on Crime. June 24, 1999.
7. Small Business Liability Reform Act of 1999. Committee on the Judiciary. September 29, 1999. (H.R. 2366).
8. Illegal Immigration Issues. Subcommittee on Immigration and Claims. June 10, 1999.
9. Trademark Amendments Act of 1999. Subcommittee on Courts and Intellectual Property. May 5, 1999. (H.R. 1565).
10. Bankruptcy Reform Act of 1999. (Parts 1, 2, and 3). Subcommittee on Commercial and Administrative Law. March 16, 17, 18, 1999. (H.R. 833).
11. Civic Participation and Rehabilitation Act of 1999. Subcommittee on the Constitution. October 21, 1999. (H.R. 906).
12. Nonimmigrant Visa Fraud. Subcommittee on Immigration and Claims. May 5, 1999.
13. Child Abuse Prevention and Enforcement Act. Subcommittee on Crime. May 12, 1999. (H.R. 764).
14. Operations of the Chicago District Office of the Immigration and Naturalization Service. Subcommittee on Immigration and Claims. September 13, 1999.
15. Private Property Rights Implementation Act of 1999. Subcommittee on the Constitution. September 15, 1999. (H.R. 2372).
16. Child Custody Protection Act. Subcommittee on the Constitution. May 27, 1999. (H.R. 1218).
17. Law Enforcement Problems at the Border Between the United States and Canada: Drug Smuggling, Illegal Immigration and Terrorism. Subcommittee on Immigration and Claims April 14, 1999.
18. Impact of Immigration on Recent Immigrants and Black and Hispanic Citizens. Subcommittee on Immigration and Claims. March 11, 1999.
19. Antitampering Act of 1999. Subcommittee on the Courts and Intellectual Property. October 21, 1999. (H.R. 2100).
20. Youth Culture and Violence. Committee on the Judiciary. May 13, 1999.
21. Miscellaneous Immigration and Claims Issues: Blackhawk Friendly Fire Incident Payments; Removal of Aliens Associated with Terrorists; Increasing Penalties for Alien Smuggling; and Asylum in Guam. Subcommittee on Immigration and Claims. May 18, 1999. (H.R. 456, H.R. 1745, H.R. 238, and H.R. 945).
22. Justice in Fair Housing Enforcement Act of 1999. Subcommittee on the Constitution. October 28, 1999. (H.R. 2437).
23. Copyright Compulsory License Improvement Act. Subcommittee on Courts and Intellectual Property. February 25, 1999. (H.R. 768).
24. Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 1999 and Federal Courts Improvement Act of 1999. Subcommittee on Courts and Intellectual Property. June 16, 1999. (H.R. 2112 and H.R. 1752).
25. Implementation of the "NET" Act and Enforcement Against Internet Piracy. Subcommittee on Courts and Intellectual Property. May 12, 1999.
26. Quality Health-Care Coalition Act of 1999. Committee on the Judiciary. June 22, 1999. (H.R. 1304).
27. Legal Services Corporation. Subcommittee on Commercial and Administrative Law. September 29, 1999.
28. Prohibit the Physical Desecration of the Flag of the United States. Subcommittee on the Constitution. March 23, 1999. (H.J. Res, 33).

29. Unborn Victims of Violence Act of 1999. Subcommittee on the Constitution. July 21, 1999. (H.R. 2436).

30. Antitrust Aspects of the Ocean Shipping Reform Act of 1998. Committee on the Judiciary. May 5, 1999.

31. H–1B Temporary Professional Worker Visa Program and Information Technology Workforce Issues. Subcommittee on Immigration and Claims. August 5, 1999.

32. Pain Relief Promotion Act of 1999. Subcommittee on the Constitution. June 24, 1999. (H.R. 2260).

33. Immigration and Naturalization Service Decisions Impacting the Agency's Ability to Control Criminal and Illegal Aliens. Subcommittee on Immigration and Claims. February 25, 1999.

34. Security and Freedom Through Encryption (SAFE) Act. Subcommittee on Courts and Intellectual Property. March 4, 1999. (H.R. 850).

35. Benefits to the American Economy of a More Educated Workforce. Subcommittee on Immigration and Claims. March 25, 1999.

36. Shoot-Down of the Brothers to the Rescue Planes. Subcommittee on Crime. July 15, 1999.

37. Community Oriented Policing Services (COPS) Program. Subcommittee on Crime. October 28, 1999.

38. Office of Justice Programs of the United States Department of Justice. Subcommittee on Crime. July 22, 1999.

39. Punishing Depictions of Animal Cruelty and the Federal Prison Health Care Co-payment Act of 1999. Subcommittee on Crime. September 30, 1999. (H.R. 1887 and H.R. 1349).

40. Federal Agency Compliance Act. Subcommittee on Commercial and Administrative Law. October 27, 1999. (H.R. 1924).

41. States' Choice of Voting Systems Act. Subcommittee on the Constitution. September 23, 1999. (H.R. 1173).

42. Internet Domain Names and Intellectual Property Rights. Subcommittee on Courts and Intellectual Property. July 28, 1999.

43. Fairness in Telecommunications License Transfers Act of 1999, Taxpayer's Defense Act and Justice for MAS Applicants Act of 1999. Committee on the Judiciary. November 3, 1999. (H.R. 2533, H.R. 2636, and H.R. 2701).

44. National Police Training Commission Act of 1999. Committee on the Judiciary. May 12, 1999. (H.R. 1659).

45. Illegal Aliens in the United States. Subcommittee on Immigration and Claims. March 18, 1999.

46. Internet Freedom Act and Internet Growth and Development Act of 1999. (Parts 1 and 2). Committee on the Judiciary. June 30, 1999, July 18, 2000. (H.R. 1686 and H.R. 1685).

47. Cost of Living Adjustment in the Pay of Administrative Law Judges. Subcommittee on Commercial and Administrative Law. May 27, 1999. (H.R. 915).

48. Reinvented Taxation and the Taxpayer's Defense Act. Subcommittee on Commercial and Administrative Law. July 29, 1999.

49. First Amendment and Restrictions on Politcal Speech. Subcommittee on the Constitution. May 5, 1999.

50. Consent of Congress to the Missouri-Nebraska Boundary Compact and the Boundary Change Between Georgia and South Carolina. Subcommittee on Commercial and Administrative Law. July 29, 1999. (H.J. Res. 54 and H.J. Res. 62).

51. Patent Reform and the Patent and Trademark Office Reauthorization for Fiscal Year 2000. Subcommittee on Courts and Intellectual Property. March 25, 1999.

52. Visa Waiver Pilot Program. Subcommittee on Immigration and Claims. February 10, 2000.

53. Adopted Orphans Citizenship Act and Anti-Atrocity Alien Deportation Act. Subcommittee on Immigration and Claims. February 17, 2000. (H.R. 2883 and H.R. 3058).

54. Collections of Information Antipiracy Act. Subcommittee on Courts and Intellectual Property. March 18, 1999. (H.R. 354).

55. Electronic Communication Privacy Policy Disclosure. Subcommittee on Courts and Intellectual Property. May 27, 1999.

56. Violence Against Women Act of 1999, Stalking Prevention and Victim Protection Act of 1999. Subcommittee on Crime. September 29, 1999. (H.R. 1248 and H.R. 1869).

57. Interstate Class Action Jurisdiction Act of 1999 and Workplace Goods Job Growth and Competitiveness Act of 1999. Committee on the Judiciary. July 21, 1999. (H.R. 1875 and H.R. 2005).

58. Military Extraterritorial Jurisdiction Act of 1999. Subcommittee on Crime. March 30, 2000. (H.R. 3380).

59. Novel Procedures in FCC License Transfer Proceedings. Subcommittee on Commercial and Administrative Law. May 25, 1999.
60. Counterfeiting and Misuse of the Social Security Card and State and Local Identity Documents. Subcommittee on Immigration and Claims. July 22, 1999.
61. Patent Fairness Act of 1999. Subcommittee on Courts and Intellectual Property. July 1, 1999. (H.R. 1598).
62. "Know Your Customer" Rules: Privacy in the Hands of Federal Regulators. Subcommittee on Commercial and Administrative Law. March 4, 1999.
63. Immigration and Naturalization Service's Interior Enforcement Strategy. Subcommittee on Immigration and Claims. July 1, 1999.
64. Congressional Limitation of Executive Orders. Subcommittee on Commercial and Administrative Law. October 28, 1999. (H.R. 3131, H. Con. Res. 30, and H.R. 2655).
65. Drug Enforcement Administration. Subcommittee on Crime. July 29, 1999.
66. Wireless Telecommunications Sourcing and Privacy Act. Subcommittee on Commercial and Administrative Law. May 4, 2000. (H.R. 3489).
67. Competitive Issues in Agriculture and the Food Marketing Industry. Committee on the Judiciary. October 20, 1999.
68. Final Report of the Commission on Structural Alternatives for the Federal Courts of Appeals. Subcommittee on Courts and Intellectual Property. July 22, 1999.
69. Competitive Issues in Electricity Deregulation. Committee on the Judiciary. July 28, 1999.
70. Private Property Rights and Telecommunications Policy. Subcommittee on the Constitution. March 21, 2000.
71. Designations of Temporary Protected Status and Fraud in Prior Amnesty Programs. Subcommittee on Immigration and Claims. March 4, 1999.
72. Criminal Fines and Restitution: Are Federal Offenders Compensating Victims? Subcommittee on Crime. May 6, 1999.
73. Religious Liberty Protection Act of 1999. Subcommittee on the Constitution. May 12, 1999. (H.R. 1691).
74. Hate Crimes Violence. Committee on the Judiciary. August 4, 1999.
75. Fairness in Asbestos Compensation Act of 1999. Committee on the Judiciary. July 1, 1999. (H.R. 1283).
76. Immigration Reorganization and Improvement Act of 1999. Subcommittee on Immigration and Claims. July 29, 1999. (H.R. 2528).
77. Consent of Congress to the Red River Boundary Compact. Subcommittee on Commercial and Administrative Law. October 26, 1999. (H.J. Res. 72).
78. Threat to Rural Communities from Methamphetamine Production, Trafficking, and Use. Subcommittee on Crime. February 25, 2000 (Springdale, Arkansas).
79. Intellectual Property Security Registration and the Report of the U.S. Copyright Office on Copyright and Digital Distance Education. Subcommittee on Courts and Intellectual Property. June 24, 1999.
80. Civil Rights Division of the U.S. Department of Justice Regarding Charter Schools. Subcommittee on the Constitution. October 14, 1999.
81. Regulatory Fair Warning Act of 1999. Subcommittee on Commercial and Administrative Law. June 29, 1999. (H.R. 881).
82. Special Counsel Act of 1999. Subcommittee on Commercial and Administrative Law. September 15, 1999. (H.R. 2083).
83. Putting Consequences Back into Juvenile Justice at the Federal, State, and Local Levels. Subcommittee on Crime. March 10, 11, 1999.
84. Pending Firearms Legislation and the Administration's Enforcement of Current Gun Laws. Subcommittee on Crime. May 27, 1999.
85. Terrorist Threats to the United States. Subcommittee on Immigration and Claims. January 26, 2000.
86. Reauthorization of the Independent Counsel Statute. (Parts 1 and 2). Subcommittee on Commercial and administrative Law. March 2, 10, June 11 September 23, 1999.
87. Privacy and Electronic Communications. Subcommittee on Courts and Intellectural Property. May 18, 2000.
88. Limits on Regulatory Powers Under the Bankruptcy Code. Subcommittee on Commercial and Administrative Law. April 11, 2000.
89. Volunteer Organization Safety Act of 1999. Subcommittee on Crime. May 18, 2000. (H.R. 3410).
90. Bankruptcy Judgeship Needs. Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary jointly with the Subcommittee on Administrative Oversight and the Courts of the Senate Committee on the Judiciary. November 2, 1999.

91. Item Veto Constitutional Amendment. Subcommittee on the Constitution March 23, 2000. (H.J. Res. 9).

92. Franchising Relationship, Subcommittee on Commercial and Administrative Law. June 24, 1999.

93 Dairy Consumers and Producers Protection Act and Rescinding Consent of Congress to the Northeast Interstate Dairy Compact. Subcommittee on Commercial and Administrative Law. June 17, 1999. (H.R. 1604 and H.R. 744).

94. Fairness and Voluntary Arbitration Act. Subcommitee on Commercial and Administrative Law. June 8, 2000. (H.R. 744).

95. Breaches of Security at Federal Agencies and Airports. Subcommittee on Crime. May 25, 2000.

96. Applicability of the Americans with Disabilities Act (ADA) to Private Internet Sites. Subcommittee on the Constitution. February 9, 2000.

97. Secret Evidence Repeal Act of 1999. (H.R. 2121). Part 1—Subcommittee on Immigration and Claims—February 10, 2000. Part 2—Committee on the Judiciary—May 23, 2000.

98. Religious Worker Visa Program. Subcommittee on Immigration and Claims. June 29, 2000.

99. State Soveign Immunity and Protection of Intellectual Property. Subcommittee on Courts and Intellectual Property. July 27, 2000.

100. Captive Elephant Accident Prevention Act of 1999. Subcommittee on Crime. June 13, 2000. (H.R. 2929).

101. Threat Posed by the Illegal Importation, Trafficking, and Use of Ecstasy and Other "Club" Drugs. Subcommittee on Crime. June 15, 2000.

102. Internet Gambling Prohibition Act of 1999. Subcommittee on Crime. March 9, 2000. (H.R. 3125).

103. Transportation Employee Fair Taxation Act of 1999 and Consent of Congress to the Kansas and Missouri Metropolitan Culture District Compact. Subcommittee on Commercial and Administrative Law. July 18, 2000. (H.R. 1293 and H.R. 4700).

104. Antitrust Enforcement Agencies: The Bureau of Competition of the Federal Trade Commission and the Antitrust Division of the Department of Justice. Committee on the Judiciary. April 12, 2000.

105. United States Marshals Service. Subcommittee on Crime. July 13, 2000.

106. Internet and Federal Courts: Issues and Obstacles. Subcommittee on Courts and Intellectual Property. June 29, 2000.

107. Bounty Hunter Responsibility Act of 1999. Subcommittee on Crime. March 30, 2000. (H.R. 2964).

108. Constitutional Amendment to Allow Foreign-Born Citizens to be President. Subcommittee on the Constitution. July 24, 2000 (H.J.Res. 88).

109. United States Patent and Trademark Office. Subcommittee on Courts and Intellectual Property. March 9, 2000.

110. Money Laundering Crisis. Subcommittee on Crime. February 10, 2000.

111. Federal Property Campaign Fundraising Reform Act of 2000. Committee on the Judiciary. July 20, 2000. (H.R. 4845).

112. Student Athlete Protection Act. Committee on the Judiciary. June 13, 2000. (H.R. 3575).

113. Status of Regulations Implementing the American Competitiveness and Workforce Improvement Act of 1998. Subcommittee on Immigration and Claims. May 25, 2000.

114. Constitutional Rights and the Grand Jury. Subcommittee on the Constitution. July 27, 2000.

115. Civil Rights Division of the U.S. Department of Justice. Subcommittee on the Constitution. July 12, 2000.

116. Battered Immigrant Women Protection Act of 1999. Subcommittee on Immigration and Claims. July 20, 2000. (H.R. 3083).

117. Antitrust Enforcement Improvement Act of 2000. Committee on the Judiciary. September 12, 2000. (H.R. 4321).

118. Probation Officers' Protection Act of 2000 and Child Sex Crimes Wiretapping Act of 1999. Subcommittee on Crime. July 13, 2000. (H.R. 4423 and H.R. 3484).

119. Copyrighted Webcast Programming on the Internet. Subcommittee on Courts and Intellectual Property. June 15, 2000.

120. Born-Alive Infants Protection Act of 2000. Subcommittee on the Constitution. July 20, 2000. (H.R. 4292).

121. Gene Patents and Other Genomic Inventions. Subcommittee on Courts and Intellectual Property. July 13, 2000.

122. Aimee's Law, Matthew's Law, Two Strikes and You're Out Child Protection Act and Stop Material Unsuitable for Teens Act. Subcommittee on Crime. May 11, 2000. (H.R. 894, H.R. 4045, H.R. 1989/H.R. 4047, and H.R. 4147).

123. Jeremy and Julia's Law. Subcommittee on Crime. October 4, 2000. (H.R. 469).

124. Free Market Antitrust Immunity Reform (FAIR) Act of 1999. Committee on the Judiciary. March 22, 2000. (H.R. 3138).

125. Justice Department Inspector General's Investigation of Citizenship USA. Subcommittee on Immigration and Claims. September 7, 2000.

126. State of Competition in the Airline Industry. Committee on the Judiciary. June 14, 23, 2000.

127. Solutions to Competitive Problems in the Oil Industry. Committee on the Judiciary. March 29, April 7, June 28, 2000.

128. Investigation of Misconduct and Mismanagement at ICITAP, OPDAT and Criminal Division's Office of Administration. Committee on the Judiciary. September 21, 2000.

129. Justice for Victims of Terrorism Act. Subcommittee on Immigration and Claims. April 13, 2000. (H.R. 3485).

130. CT–43A Federal Employee Settlement Act and Federal Tort Claims Arising Outside the United States. Subcommittee on Immigration and Claims. June 8, 2000 (H.R. 3295 and H.R. 1371).

131. Agricultural Opportunities Act. Subcommittee on Immigration and Claims. June 15, 2000. (H.R. 4548).

132. Compensation for Illnesses Realized by Department of Energy Workers Due to Exposure to Hazardous Materials. Subcommittee on Immigration and Claims. September 21, 2000. (H.R. 675, H.R. 3418, H.R. 3478, H.R. 3495, H.R. 4263, and H.R. 4398).

133. Serious Human Rights Abusers Accountability Act of 2000. Subcommittee on Immigration and Claims. September 28, 2000. (H.R. 5285).

134. Rights of Crime Victims Constitutional Amendment. Subcommittee on the Constitution. February 10, 2000 (H.J. Res. 64).

135. Fourth Amendment and the Internet. Subcommittee on the Constitution. April 6, 2000.

136. ADA Notification Act. Subcommittee on the Constitution. May 18, 2000. (H.R. 3590).

137. Fourth Amendment Issues Raised by the FBI's "Carnivore" Program. Subcommittee on the Constitution. July 24, 2000.

138. Electronic Communications Privacy Act of 2000, Digital Privacy Act of 2000 and Notice of Electronic Monitoring Act. Subcommittee on the Constitution. September 6, 2000. (H.R. 5018, H.R. 4987, and H.R. 4908).

139. Internet Denial of Service Attacks and the Federal Response. Subcommittee on Crime of the House Committee on the Judiciary jointly with the Subcommittee on Criminal Justice Oversight of the Senate Committee on the Judiciary. February 29, 2000.

140. Violent Offender DNA Identification Act of 1999, DNA Backlog Elimination Act and Convicted Offender DNA Index System Support Act. Subcommittee on Crime. March 23, 2000. (H.R. 2810, H.R. 3087, and H.R. 3375).

141. Project Exile: The Safe Streets and Neighborhoods Act of 2000. Subcommittee on Crime. April 6, 2000. (H.R. 4051).

142. Innocence Protection Act of 2000. Subcommittee on Crime. June 20, 2000. (H.R. 4167).

143. Impact of Mentally Ill Offenders on the Criminal Justice System. Subcommittee on Crime. September 21, 2000.

144. Preventing and Fighting Crime: What Works? Subcommittee on Crime. October 2, 2000.

145. United States Copyright Office and Sound Recordings as Work Made for Hire. Subcommittee on Courts and Intellectual Property. May 25, 2000.

146. Internet Tax Reform and Reduction Act of 2000, Internet Tax Simplification Act of 2000 and Fair and Equitable Interstate Tax Compact Simplification Act of 2000. Subcommittee on Commercial and Administrative Law. May 17, June 29, 2000. (H.R. 4267, H.R. 4460, and H.R. 4462).

147. Fair Justice Act of 2000. Subcommittee on Commercial and Administrative Law. July 27, 2000. (H.R. 4105).

148. Threat Posed by the Convergence of Organized Crime, Drug Trafficking, and Terrorism. Subcommittee on Crime. December 13, 2000.

Committee Prints

Serial No. and Title

1. Federal Rules of Appellate Procedure. December 1, 1999.
2. Federal Rules of Civil Procedure. December 1, 1999.
3. Federal Rules of Criminal Procedure. December 1, 1999.
4. Federal Rules of Evidence. December 1, 1999.
5. Federal Rules of Appellate Procedure. December 1, 2000.
6. Federal Rules of Civil Procedure. December 1, 2000.
7. Federal Rules of Criminal Procedure. December 1, 2000.
8. Federal Rules of Evidence. December 1, 2000.

House Documents

H. Doc. No. and Title

106–53. 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 as adopted by the Court, pursuant to 28 U.S.C. 2075. April 29, 1999. (Executive Communication No. 1786).

106–54. Amendments to the Federal Rules of Civil Procedure. Communications from the Chief Justice, the Supreme Court of the United States, transmitting amendments to the Federal Rules of Civil Procedures adopted by the Court, pursuant to 28 U.S.C. 2072. April 29, 1999. (Executive Communication No. 1787).

106–55. 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 adopted by the Court, pursuant to 28 U.S.C. 2072. April 29, 1999. (Executive Communication No. 1788).

106–114. Central American and Haitian Parity Act of 1999. Message from the President of the United States transmitting the Central American and Haitian Parity Act of 1999. August 6 (legislative day of August 5), 1999. (Presidential Message No. 50).

106–123. Legislative Proposal—the Cyberspace Electronic Security Act of 1999. Message from the President of the United States transmitting a legislative proposal to protect the privacy, security and safety of the people of the United States through support for the widespread use of encryption, protection of the security of cryptographic keys, and facilitation of access to the plain text of data for legitimate law enforcement purposes. September 21, 1999. (Presidential Message No. 53).

106–197. How Our Laws Are Made. January 31, 2000.

106–208. National Money Laundering Strategy for 2000. Message from the President of the United States transmitting the National Money Laundering Strategy for 2000. March 8, 2000. (Presidential Message No. 90).

106–214. The Constitution of the United States of America. January 31, 2000.

106–225. Amendments to 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. 2072. May 2, 2000. (Executive Communication No. 7333).

106–226. Amendments to Federal Rules of Bankruptcy. 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. May 2, 2000. (Executive Communication No. 7334).

106–227. 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 adopted by the Court, pursuant to 28 U.S.C. 2072. May 2, 2000. (Executive Communication No. 7335).

106–228. Amendments to 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. 2072. May 2, 2000. (Executive Communication No. 7336).

106–250. The Report of the National Commission on Terroism. Communication from the Commissioners, the National Commission on Terrorism, transmitting a report entitled, “Countering the Changing Threat of International Terrorism”, pursuant to Public Law 105–277. Referred jointly to the Committee on the Judiciary and the Committee on International Relations. June 6, 2000. (Executive Communication No. 8031).

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 106th 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 106–5.—To extend for 6 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (H.R. 808) (Approved March 30, 1999).

Public Law 106–37.—To establish certain procedures for civil actions brought for damages relating to the failure of any device or system to process or otherwise deal with the transition from the year 1999 to the year 2000, and for other purposes. "Y2K Act". (H.R. 775) (Approved July 20, 1999; not applicable to first-time violations caused by a Y2K failure occurring after December 31, 2000).

Public Law 106–42.—To authorize funds for the payment of salaries and expenses of the Patent and Trademark Office, and for other purposes. "Patent Fee Integrity and Innovation Protection Act of 1999". (S. 1258) (Approved August 5, 1999; effective date October 1, 1999).

Public Law 106–43.—To amend the Trademark Act of 1946 relating to dilution of famous marks, and for other purposes. "Trademark Amendments Act of 1999". (S. 1259) (Approved August 5, 1999).

Public Law 106–44.—To make technical corrections in title 17, United States Code, and other laws. (S. 1260) (Approved August 5, 1999).

Public Law 106–49.—To amend the Miller Act, relating to payment protections for persons providing labor and materials for Federal construction projects. "Construction Industry Payment Protection Act of 1999". (H.R. 1219) (Approved August 17, 1999).

Public Law 106–54.—For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Includes public legislative language relating to explosive devices; and additional private legislative language relating to settlement of claims of the Menominee Indian Tribe of Wisconsin). (S. 606) (Approved August 17, 1999).

Public Law 106–65.—To authorize appropriations for fiscal year 2000 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 2000”. “Troops-to-Teachers Program Act of 1999”. “Military Construction Authorization Act for Fiscal Year 2000”. “Military Lands Withdrawal Act of 1999”. “Department of Energy Facilities Safeguards, Security, and Counterintelligence Enhancement Act of 1999”. “National Nuclear Security Administration Act”. “Panama Canal Commission Authorization Act for Fiscal Year 2000”. “Maritime Administration Authorization Act for Fiscal Year 2000”. (S. 1059) (Approved October 5, 1999; effective dates vary).

Public Law 106–70.—To extend for 9 additional months the period for which chapter 12 of title 11, United States Code, is reenacted. (S. 1606) (Approved October 9, 1999).

Public Law 106–80.—To amend title 4, United States Code, to add the Martin Luther King, Jr., holiday to the list of days on which the flag should especially be displayed. (S. 322) (Approved October 25, 1999).

Public Law 106–90.—To grant the consent of Congress to the boundary change between Georgia and South Carolina. (H.J. Res. 62) (Approved November 8, 1999).

Public Law 106–95.—To amend the Immigration and Nationality Act with respect to the requirements for the admission of nonimmigrant nurses who will practice in health professional shortage areas. “Nursing Relief for Disadvantaged Areas Act of 1999”. (H.R. 441) (Approved November 12, 1999).

Public Law 106–101.—Granting the consent of Congress to the Missouri-Nebraska Boundary Compact. (H.J. Res. 54) (Approved November 12, 1999).

Public Law 106–102.—To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes. “Gramm-Leach-Bliley Act”. “Federal Home Loan Bank System Modernization Act”. “ATM Fee Reform Act of 1999”. “Program for Investment in Microentrepreneurs Act of 1999 (PRIME Act)”. (S. 900) (Approved November 12, 1999; effective dates vary).

Public Law 106–104.—To amend the Immigration and Nationality Act to extend for an additional 2 years the period for admission of an alien as a nonimmigrant under section 101(a)(15)(S) of such Act, and to authorize appropriations for the refugee assistance program under chapter 2 of title IV of the Immigration and Nationality Act. (H.R. 3061) (Approved November 13, 1999).

Public Law 106–110.—To amend part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the Federal Bureau of Investigation National Academy for law enforcement training. (S. 1235) (Approved November 24, 1999).

Public Law 106–130.—To provide for the holding of court at Natchez, Mississippi in the same manner as court is held at Vicksburg, Mississippi, and for other purposes. (S. 1418) (Approved December 6, 1999).

Public Law 106–139.—To amend the Immigration and Nationality Act to provide that an adopted alien who is less than 18 years of age may be considered a child under such Act if adopted with or after a sibling who is a child under such Act. (H.R. 2886) (Approved December 7, 1999).

Public Law 106–152.—To amend title 18, United States Code, to punish the depiction of animal cruelty. (H.R. 1887) (Approved December 9, 1999).

Public Law 106–160.—To amend statutory damages provisions of title 17, United States Code. "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999". (H.R. 3456) (Approved December 9, 1999; effective with respect to any action brought on or after December 9, 1999, regardless of the date on which the alleged activity that is the basis of the action occurred).

Public Law 106–172.—To amend the Controlled Substances Act to direct the emergency scheduling of gamma hydroxybutyric acid, to provide for a national awareness campaign, and for other purposes. "Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000". (H.R. 2130) (Approved February 18, 2000; deadlines vary).

Public Law 106–177.—To reduce the incidence of child abuse and neglect, and for other purposes. "Child Abuse Prevention and Enforcement Act". "Jennifer's Law". (H.R. 764) (Approved March 10, 2000).

Public Law 106–185.—To provide a more just and uniform procedure for Federal civil forfeitures, and for other purposes. "Civil Asset Forfeiture Reform Act of 2000". (H.R. 1658) (Approved April 25, 2000; effective date August 23, 2000).

Public Law 106–197.—To exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, and for other purposes. (S. 1769) (Approved May 2, 2000).

Public Law 106–207.—To facilitate the naturalization of aliens who served with special guerrilla units or irregular forces in Laos. "Hmong Veterans' Naturalization Act of 2000". (H.R. 371) (Approved May 26, 2000).

Public Law 106–215.—To amend section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and for other purposes. (H.R. 4489) (Approved June 15, 2000).

Public Law 106–229.—To facilitate the use of electronic records and signatures in interstate or foreign commerce. "Electronic Signatures in Global and National Commerce Act". (S. 761) (Approved June 30, 2000; effective dates vary).

Public Law 106–245.—To amend the Radiation Exposure Compensation Act, and for other purposes. "Radiation Exposure Compensation Act Amendments of 2000". (S. 1515) (Approved July 10, 2000).

Public Law 106–252.—To amend title 4 of the United States Code to establish sourcing requirements for State and local taxation of mobile telecommunication services. "Mobile Telecommunications Sourcing Act". (H.R. 4391) (Approved July 28, 2000; effective dates vary).

Public Law 106–254.—To amend title 18, United States Code, to provide penalties for harming animals used in Federal law enforcement. "Federal Law Enforcement Animal Protection Act of 2000". (H.R. 1791) (Approved August 2, 2000).

Public Law 106–274.—To protect religious liberty, and for other purposes. "Religious Land Use and Institutionalized Persons Act of 2000". (S. 2869) (Approved September 22, 2000).

Public Law 106–276.—To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. (S. 1638) (Approved October 2, 2000; effective date October 1, 1999).

Public Law 106–279.—To provide for implementation by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes. "Intercountry Adoption Act of 2000". (H.R. 2909) (approved October 6, 2000; effective dates vary).

Public Law 106–287.—To grant the consent of the Congress to the Kansas and Missouri Metropolitan Culture District Compact. (H.R. 4700) (Approved October 10, 2000).

Public Law 106–288.—Granting the consent of the Congress to the Red River Boundary Compact. (H.J. Res. 72) (Approved October 10, 2000; effective date August 31, 2000).

Public Law 106–294.—To amend title 18, United States Code, to combat the overutilization of prison health care services and control rising prisoner health care costs. "Federal Prisoner Health Care Copayment Act of 2000". (S. 704) (Approved October 12, 2000).

Public Law 106–297.—To amend the Violent Crime Control and Law Enforcement Act of 1994 to ensure that certain information regarding prisoners is reported to the Attorney General. "Death in Custody Reporting Act of 2000". (H.R. 1800) (Approved October 13, 2000).

Public Law 106–311.—To increase the amount of fees charged to employers who are petitioners for the employment of H–1B non-immigrant workers, and for other purposes. (H.R. 5362) (Approved October 17, 2000; effective with respect to petitions that are filed on or after December 17, 2000).

Public Law 106–313.—To amend the Immigration and Nationality Act with respect to H–1B nonimmigrant aliens. "Immigration Services and Infrastructure Improvements Act of 2000". (S. 2045) (Approved October 17, 2000).

Public Law 106–314.—To improve the administrative efficiency and effectiveness of the Nation's abuse and neglect courts and for other purposes consistent with the Adoption and Safe Families Act of 1997. "Strengthening Abuse and Neglect Courts Act of 2000". (S. 2272) (Approved October 17, 2000).

Public Law 106–367.—To improve academic and social outcomes for youth and reduce both juvenile crime and the risk that youth will become victims of crime by providing productive activities conducted by law enforcement personnel during non-school hours. "National Police Athletic League Youth Enrichment Act of 2000". (H.R. 3235) (Approved October 27, 2000).

Public Law 106–378.—To provide for the adjustment of status of certain Syrian nationals. (H.R. 4681) (Approved October 27, 2000).

Public Law 106–379.—To make certain corrections in copyright law. "Work Made For Hire and Copyright Corrections Act of 2000". (H.R. 5107) (Approved October 27, 2000).

Public Law 106–386.—To combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes. "Victims of Trafficking and Violence Protection Act of 2000". (H.R. 3244) (Approved October 28, 2000).

Public Law 106–395.—To amend the Immigration and Nationality Act to modify the provisions governing acquisition of citizenship by children born outside the United States, and for other purposes. "Child Citizenship Act of 2000". (H.R. 2883) (Approved October 30, 2000).

Public Law 106–396.—To amend the Immigration and Nationality Act to make improvements to, and permanently authorize, the visa waiver pilot program under section 217 of such Act. "Visa Waiver Permanent Program Act". (H.R. 3767) (Approved October 30, 2000).

Public Law 106–398.—To authorize appropriations for fiscal year 2001 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. "Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001". 'Military Construction Authorization Act for Fiscal Year 2001". Energy Employees Occupational Illness Compensation Program Act of 2000". (H.R. 4205) (Approved October 30, 2000).

Public Law 106–404.—To improve the ability of Federal agencies to license federally owned inventions. "Technology Transfer Commercialization Act of 2000". (H.R. 209) (Approved November 1, 2000).

Public Law 106–406.—To amend the Immigration and Nationality Act to authorize a 3-year pilot program under which the Attorney General may extend the period for voluntary departure in the case of certain nonimmigrant aliens who require medical treatment in the United States and were admitted under the visa waiver pilot program, and for other purposes. "International Patient Act of 2000". (H.R. 2961) (Approved November 1, 2000).

Public Law 106–409.—To amend the Immigration and Nationality Act to extend for an additional 3 years the special immigrant religious worker program. "Religious Workers Act of 2000". (H.R. 4068) (Approved November 1, 2000).

Public Law 106–415.—To amend the Hmong Veterans' Naturalization Act of 2000 to extend the applicability of that Act to certain former spouses of deceased Hmong veterans. (H.R. 5234) (Approved November 1, 2000).

Public Law 106–420.—To enhance protections against fraud in the offering of financial assistance for college education, and for other purposes. "College Scholarship Fraud Prevention Act of 2000". (S. 1455) (Approved November 1, 2000).

Public Law 106–448.—To amend the Immigration and Nationality Act to provide a waiver of the oath of renunciation and allegiance for naturalization of aliens having certain disabilities. (S. 2812) (Approved November 6, 2000).

Public Law 106–451.—To provide for the preparation of a Government report detailing injustices suffered by Italian Americans during World War II, and a formal acknowledgment of such injustices by the President. “Wartime Violation of Italian American Civil Liberties Act”. (H.R. 2442) (Approved November 7, 2000).

Public Law 106–468.—To authorize the Attorney General to provide grants for organizations to find missing adults. “Kristen’s Act”. (H.R. 2780) (Approved November 9, 2000).

Public Law 106–474.—To establish the National Recording Registry in the Library of Congress to maintain and preserve sound recordings that are culturally, historically, or aesthetically significant, and for other purposes. “National Recording Preservation Act of 2000”. (H.R. 4846) (Approved November 9, 2000).

Public Law 106–483.—Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes. (H.J. Res. 102) (Approved November 9, 2000).

Public Law 106–484.—To provide for the granting of refugee status in the United States to nationals of certain foreign countries in which American Vietnam War POW/MIAs or American Korean War POW/MIAs may be present, if those nationals assist in the return to the United States of those POW/MIAs alive. “Bring Them Home Alive Act of 2000”. (S. 484) (Approved November 9, 2000).

Public Law 106–489.—To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels. (S. 893) (Approved November 9, 2000).

Public Law 106–515.—To provide grants to establish demonstration mental health courts. “America’s Law Enforcement and Mental Health Project”. (S. 1865) (Approved November 13, 2000).

Public Law 106–517.—To amend the Omnibus Crime Control and Safe Streets Act of 1968 to clarify the procedures and conditions for the award of matching grants for the purchase of armor vests. “Bulletproof Vest Partnership Grant Act of 2000”. (S. 2413) (Approved November 13, 2000).

Public Law 106–518.—To make improvements in the operation and administration of the Federal courts, and for other purposes. “Federal Courts Improvement Act of 2000”. (S. 2915) (Approved November 13, 2000).

Public Law 106–523.—To establish court-martial jurisdiction over civilians serving with the Armed Forces during contingency operations, and to establish Federal jurisdiction over crimes committed outside the United States by former members of the Armed Forces and civilians accompanying the Armed Forces outside the United States. “Military Extraterritorial Jurisdiction Act of 2000”. (S. 768) (Approved November 22, 2000).

Public Law 106–534.—To protect seniors from fraud. “Protecting Seniors From Fraud Act”. (S. 3164) (Approved November 22, 2000.

Public Law 106–536.—To amend the Immigration and Nationality Act provide special immigrant status to certain United States international broadcasting employees. (S. 3239) (Approved November 22, 2000).

Public Law 106–544.—To amend section 879, United States Code, to provide clearer coverage over threats against former Presidents and members of their families, and for other purposes. “Presidential Threat Protection Act of 2000”. (H.R. 3048) (Approved December 19, 2000).

Public Law 106–546.—To make grants to States for carrying out DNA analyses for use in the Combined DNA Index System of the Federal Bureau of Investigation, to provide for the collection and analysis of DNA samples from certain violent and sexual offenders for use in such system, and for other purposes. “DNA Analysis Backlog Elimination Act of 2000”. (H.R. 4640) (Approved December 19, 2000).

Public Law 106–547.—To amend title 18, United States Code, to prevent the entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport, to prevent the misuse of genuine and counterfeit police badges by those seeking to commit a crime, and for other purposes. “Enhanced Federal Security Act of 2000”. (H.R. 4827) (Approved December 19, 2000).

Public Law 106–559.—To provide technical and legal assistance for tribal justice systems and members of Indian tribes, and for other purposes. “Indian Tribal Justice Technical and Legal Assistance Act of 2000”. (S. 1508) (Approved December 21, 2000).

Public Law 106–560.—To provide protection against the risks to the public that are inherent in the interstate transportation of violent prisoners. “Interstate Transportation of Dangerous Criminals Act of 2000”. “Jeanna’s Act”. (S. 1898) (Approved December 21, 2000).

Public Law 106–561.—To improve the quality, timeliness, and credibility of forensic science services for criminal justice programs. “Paul Coverdell National Forensic Sciences Improvement Act of 2000”. (S. 3045) (Approved December 21, 2000).

Public Law 106–572.—To establish a grant program to assist State and local law enforcement in deterring, investigating, and prosecuting computer crime. “Computer Crime Enforcement Act”. (H.R. 2816) (Approved December 28, 2000).

Public Law 106–578.—To strengthen the enforcement of Federal statues relating to false identification and for other purposes. “Internet False Identification Prevention Act of 2000”. (S. 2924) (Approved December 28, 2000).

PRIVATE LAWS

Private Law 106–3.—For the relief of Suchada Kwong. (H.R. 322) (Approved December 3, 1999).

Private Law 106–4.—For the relief of Belinda McGregor. (S. 452) (Approved May 15, 2000.

Private Law 106–6.—For the relief of Akal Security, Incorporated. (H.R. 3363) (Approved October 10, 2000).

Private Law 106–7.—For the relief of Kerantha Poole-Christian. (S. 302) (Approved October 13, 2000).

Private Law 106–8.—For the relief of certain Persian Gulf evacuees. (H.R. 3646) (Approved November 7, 2000).

Private Law 106–9.—For the relief of Ruth Hairston by waiver of a deadline for appeal from a ruling relating to her application for a survivor annuity. (H.R. 660) (Approved November 9, 2000).

Private Law 106–10.—For the relief of Sepandan Farnia and Farbod Farnia. (H.R. 848) (Approved November 9, 2000).

Private Law 106–11.—For the relief of Zohreh Farhang Ghahfarokhi. (H.R. 3184 (Approved November 9, 2000).

Private Law 106–12.—For the relief of Luis A. Leon-Molina, Ligia Padron, Juan Leon Padron, Rendy Leon Padron, Manual Leon Padron, and Luis Leon Padron. (H.R. 3414) (Approved November 9, 2000).

Private Law 106–13.—For the relief of Saeed Rezai. (H.R. 5266) (Approved November 9, 2000).

Private Law 106–14.—For the relief of Wei Jingsheng. (S. 11) (Approved November 22, 2000).

Private Law 106–15.—For the relief of Marina Khalina and her son, Albert Mifakhov. (S. 150) (Approved November 22, 2000).

Private Law 106–16.—For the relief of Sergio Lozano, Faurico Lozano and Ana Lozano. (S. 276) (Approved November 22, 2000).

Private Law 106–17.—For the relief of Frances Schochenmaier. (S. 785) (Approved November 22, 2000).

Private Law 106–18.—For the relief of Mina Vahedi Notash. (S. 869) (Approved November 22, 2000).

Private Law 106–19.—For the relief of Mrs. Elizabeth Eka Bassey and her children, Emmanuel O. Paul Bassey, Jacob Paul Bassey, and Mary Idongesit Paul Berry. (S. 1078) (Approved November 22, 2000).

Private Law 106–20.—For the relief of Jacqueline Salinas and her children Gabriela Salinas, Alejandro Salinas, and Omar Salinas. (S. 1513) (Approved November 22, 2000).

Private Law 106–21.—For the relief of Guy Taylor. (S. 2000) (Approved November 22, 2000).

Private Law 106–22.—For the relief of Tony Lara. (S. 2002) (Approved November 22, 2000).

Private Law 106–23.—For the relief of Malia Miller. (S. 2019) (Approved November 22, 2000).

Private Law 106–24.—For the relief of Jose Guadalupe Tellez Pinales. (S. 2289) (Approved November 22, 2000).

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. 2415

Members of the Committee served as conferees on H.R. 2415, the "American Embassy Security Act of 1999." The conference committee substituted the language of S. 3186, the "Bankruptcy Reform Act of 2000" as introduced in the House. H.R. 2415 was pocket vetoed by the President on December 19, 2000.

H.R. 4205

Members of the Committee served as conferees on H.R. 4205, the "Floyd D. Spence National Defense Authorization Act for Fiscal

Year 2001." H.R. 4205 became law on October 30, 2000, as Public Law 106–398.

S. 900

Members of the Committee served as conferees on S. 900, the "Financial Services Modernization Act of 1999." S. 900 became law on November 12, 1999, as Public Law 106–102.

S. 1059

Members of the Committee served as conferees on S. 1059, the "National Defense Authorization Act for Fiscal Year 2000." S. 1059 became law on October 5, 1999, as Public Law 106–65.

COMMITTEE ON THE JUDICIARY

HENRY J. HYDE, Illinois, *Chairman*[1]

F. JAMES SENSENBRENNER, JR., Wisconsin
BILL McCOLLUM, Florida
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
CHARLES T. CANADY, Florida
BOB GOODLATTE, Virginia
STEPHEN E. BUYER, Indiana[3]
ED BRYANT, Tennessee[5]
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
ASA HUTCHINSON, Arkansas
EDWARD A. PEASE, Indiana
CHRIS CANNON, Utah
JAMES E. ROGAN, California
LINDSEY O. GRAHAM, South Carolina
MARY BONO, California
SPENCER BACHUS, Alabama[2]
JOE SCARBOROUGH, Florida[4]
DAVID VITTER, Louisiana[6]

JOHN CONYERS, JR, Michigan
BARNEY FRANK, Massachusetts
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
STEVEN R. ROTHMAN, New Jersey
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York

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[1] Henry J. Hyde, Illinois, elected to the Committee as Chairman pursuant to House Resolution 6, approved by the House January 6, 1999.

Republician Members elected to the Committee pursuant to House Resolution 6, approved by the House January 6, 1999.

Democratic Members elected to the Committee pursuant to House Resolution 7, approved by the House January 6, 1999.

[2] Spencer Bachus, Alabama, elected to the Committee pursuant to House Resolution 30, approved by the House February 2, 1999.

[3] Stephen E. Buyer, Indiana, resigned from the Committee March 4, 1999.

[4] Joe Scarborough, Florida, elected to the Committee pursuant to House Resolution 108, approved by the House March 11, 1999.

[5] Ed Bryant, Tennessee, resigned from the Committee June 25, 1999.

[6] David Vitter, Louisiana, elected to the Committee pursuant to House Resolution 223, approved by the House June 25, 1999.

Tabulation of activity on legislation held at the full Committee

Legislation held at the full Committee	104
Legislation reported to the House	12
Legislation discharged from the Committee	12
Legislation pending in the House	5
Legislation failed passage by the House	1
Legislation passed by the House	19
Legislation pending in the Senate	7
Legislation enacted into public law as part of another measure	1
Legislation enacted into public law	3
House resolutions approved	4
Legislation on which hearings were held	17
Days of hearings (legislative and oversight)	26

Full Committee Activities

During the 106th Congress, the full Judiciary Committee retained original jurisdiction with respect to a number of legislative and oversight matters. This included exclusive jurisdiction over antitrust and liability issues. In addition, a number of specific legislative issues were handled exclusively by the full Committee, including civil asset forfeiture reform, a ban on partial birth abortion, and the Student Athlete Protection Act.

Legislative Activities

ANTITRUST

H.R. 1304, the "Quality Health-Care Coalition Act of 1999"

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 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.

H.R. 1304 arises from this last point. Proponents argue that doctors will be able to get a fair deal in these negotiations only if the law allows them 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 argue that the bill would harm consumers because it would allow doctors to fix prices and engage in group boycotts thereby driving up the cost of insurance. To the extent that health insurance premiums do rise, critics argue that this would cause a corresponding drop in federal tax revenue because of the deductibility of such premiums. 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 current guidelines issued by the Federal Trade Commission and the Department of Justice, doctors are free to band together in group practices and negotiate directly with employers if they do not like the deals they get with insurers. Ultimately, they argue that the bill will end the ability of competitive forces to control health care costs and to improve efficiency.

Legislative History.—Representative Campbell introduced H.R. 1304 on March 25, 1999, and it was referred to the Committee. On June 22, 1999, the Committee held a hearing at which the following witnesses appeared: Honorable Tom Campbell, United States Representative, 15th District of California; Honorable John Cooksey, United States Representative, 5th District of Louisiana;

Honorable Robert Pitofsky, Chairman, Federal Trade Commission, Washington, D.C.; Honorable Joel Klein, Assistant Attorney General, Antitrust Division, United States Department of Justice, Washington, D.C.; Edgar Anderson, M.D., Executive Vice President and Chief Executive Officer, American Medical Association, Chicago Illinois Gary Dennis, M.D., President, National Medical Association, Washington, D.C.; Robert Weinmann, M.D., President, Union of American Physicians and Dentists, AFSCME, AFL–CIO, Oakland California; Ms. Holly Henry, Legislative Chairperson, National Community Pharmacists Association, Seattle, Washington; Don Young, M.D, Chief Operating Officer and Medical Director, Health Insurance Association of America, Washington D.C.; Mr. Bill Jones, President, Materials Transportation Company, Temple, Texas on behalf of the Antitrust Coalition and the Texas Association of Business and Chambers of Commerce; Jan Stewart, C.R.N.A., A.R.N.P, President-Elect, Association of Nurse Anesthetists, Seattle, Washington; and Mr. Stuart Bascomb, Executive Vice President, Express Scripts, Inc., Maryland Heights, Missouri. On March 16 and 30, 2000, the Committee conducted markup sessions on H.R. 1304. On March 30, 2000, the Committee ordered H.R. 1304 reported by a vote of 26–2. The Committee filed its report, H. Rept. 106–625, on May 18, 2000. On June 29 and 30, 2000, the House considered H.R. 1304. On June 30, 2000, the House passed H.R. 1304 by a vote of 276–136.

H.R. 1686, the "Internet Freedom Act," and H.R. 1685, the "Internet Growth and Development Act of 1999"

Summary.—Before 1984, America had one dominant telephone company—the American Telephone & Telegraph Company ("AT&T"). AT&T provided almost all local and long distance service throughout the United States, except that in some isolated areas independent phone companies provided local service. During the AT&T era, local service rates were kept artificially low, and the substantial differences in costs of providing local service in urban and rural areas were not reflected in local service rates. AT&T kept long distance rates, which were paid primarily by business, artificially high in order to subsidize low local rates. The policy, known as universal service, was that all Americans should have access to a telephone at an affordable rate regardless of the cost of providing the service. Because AT&T was one company, it was relatively easy to administer this system of subsidies.

In 1974, the Antitrust Division of the Department of Justice sued AT&T for violating the antitrust laws in a number of ways—most importantly, not letting potential long distance competitors hook up to its local networks. In 1982, the parties settled the lawsuit, and Judge Harold Greene of the United States District Court for the District of Columbia entered a consent decree known as the Modification of Final Judgment or MFJ. *United States* v. *American Telephone & Telegraph Company,* 552 F. Supp. 131 (D.D.C. 1982), aff'd, 460 U.S. 1001 (1983). Beginning in 1984, the MFJ broke up AT&T into a new smaller AT&T, which was to provide long distance service in competition with other companies, and seven regional Bell operating companies ("RBOCs")—Ameritech, Bell Atlantic, BellSouth, Nynex, Pacific Telesis, Southwestern Bell (now known as SBC Communications), and US West. There was also one pre-existing independent phone company, GTE Corporation, which was of a comparable size. These seven regional RBOCs were to provide local service where AT&T had previously been doing so.

At the time, the general consensus was that long distance service could be provided competitively, but that local service remained a natural monopoly. Based on that assumption, the MFJ prohibited the RBOCs from entering long distance service and other lines of business without prior court approval. The court's procedures under the MFJ required companies seeking that approval to negotiate with the Department of Justice before filing for the approval. As a practical matter, DOJ approval was required to get court approval.

In addition, policymakers wanted to maintain the universal service system. To do so, they required the long distance companies to pay "access charges" to the local companies for completing long distance calls. The local companies used these access charges to maintain low local rates in all geographical areas.

This system lasted from 1984 through 1996, when Congress passed the Telecommunications Act of 1996 (the "1996 Act"), Pub. L. No. 104–104. The Act set up a new statutory framework governing the industry and ended the MFJ. Under the Act, the RBOCs were to be allowed into long distance service within their region. However, they first had to open up their local networks to allow competitors to provide local service. The Act also required the FCC to set up a new process to deal with universal service issues.

Local competition is progressing, albeit slowly. To date, only two RBOCs have gotten into long distance service—one in New York and one in Texas. RBOCs may provide long distance service outside their region, and some have done so. RBOCs may compete for local service outside their regions, and some have done so on a limited basis. Some RBOCs have also made efforts to get into other businesses like cable television.

Cable television first began to appear in this country in the late 1940s. In the early days, state and local governments made some attempts to regulate cable through a patchwork of laws, but there was no national policy. In 1984, Congress responded to numerous complaints that rates were too high and that local governments were making unreasonable demands on cable companies by passing the Cable Communications Policy Act (the "1984 Act"), Pub. L. No. 98–549. On its face, the 1984 Act allowed local governments to regulate rates if their local operator did not face effective competition. However, the FCC defined effective competition so broadly that the Act essentially deregulated most cable rates. The 1984 Act did little to encourage new entrants to build competing systems. In fact, it codified FCC rules prohibiting broadcasters and telephone companies from operating cable systems.

Eight years of experience with the 1984 Act led to mounting complaints. In 1992, Congress passed the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Act"), Pub. L. No. 102–385. At that time, the types of cable competition we see today were just beginning to emerge. Because of the relative lack of competition existing then, the 1992 Act reregulated cable rates. Local goverments were allowed to regulate rates for the basic tier and for cable equipment. The FCC would regulate rates for the expanded basic tier (what most subscribers choose). Rates for premium channels like HBO and Cinemax were left unregulated. In addition, the FCC would regulate the rates for the basic tier and equipment if a local government chose not to do so. Rate regulation was to end if there was effective competition, which under the statute had a new, much narrower definition. The effect of the new definition was that almost all cable systems faced rate regulation.

The story of rate regulation by the FCC and the local governments under the 1992 Act is far too long and complicated to go into here. Suffice it to say that none of the parties to this experience has found it entirely satisfactory. The 1996 Act made some changes to the process of rate regulation under the 1992 Act, but it was not a major overhaul. The far more important substantive change was that it ended rate regulation of the expanded basic tier as of March 31, 1999. Since most cable subscribers have the expanded basic tier, as a practical matter, this means that cable rates are now largely unregulated. This action reflects that underlying philosophy of the 1996 Act that the market was moving towards real competition. Another important part of the 1996 Act was to remove the prohibition on telephone companies getting into cable although few have done so.

President Clinton signed the 1996 Act on February 8, 1996. At the time, the Internet was in its infancy, and it was barely mentioned in the 1996 Act. Most observers thought that the RBOCs would remain separate companies, that they would begin competing in long distance quickly, and that they might enter the cable business. By the same token, most observers thought that the long distance companies would remain separate companies, that they would begin competing in local service quickly, and that they probably would not enter the cable business. As for the cable companies, most observers thought that they would remain separate companies, that they might enter the telephone business, and that they would face substantial competition in the cable business from satellite companies and telephone companies. Hardly anyone thought of the Internet or other data traffic as an important part of the picture.

In the nearly five years since the 1996 Act was signed, the Internet has changed everything. At that time, it was a technological marvel that was just becoming available to ordinary people and was hardly used for commerce. Since then, it has become almost a necessity for ordinary people and a means for conducting a substantial and ever growing amount of commerce.

In 1996, data traffic was not a substantial portion of the long distance business. Estimates vary as to what the percentage was, but it was probably less than 10%. Today, it is probably more than 50%. The demand keeps exploding. As a result, being a carrier of voice (i.e. traditional telephone calls) has become relatively less important and being a carrier of data has become relatively more important.

As anyone who has used the Internet knows, it can be frustratingly slow depending on what technology one is using. The details of that technology are too complicated to get into in much detail here. The most important thing to know is that cable technology (known as broadband) is much faster than telephone technology and it has more capacity. Telephone companies are upgrading their networks in many areas, but even this upgraded technology (known as Digital Subscriber Line or DSL) has limitations and is not as fast as cable technology. At the same time that both of these technologies are getting better and faster, they are also becoming capable of carrying voice (i.e. telephone calls), video (i.e. programming), and data (i.e. Internet content) through the same pipe.

Most telecommunications companies, irrespective of whether they started as RBOCs, long distance companies, cable companies, or something else, now think that their future lies in being capable of providing a package of all of these services on a global basis. Because getting into a new part of this business from scratch requires massive investment, many companies have decided to buy another company rather than build from scratch. That has led to a wave of mergers.

First, the RBOCs began to merge with each other. Bell Atlantic bought Nynex and GTE. SBC Communications bought Pacific Telesis and Ameritech. Then, new competitors began to buy existing companies. WorldCom, a relatively new local competitor, bought MCI, one of the major long distance companies. Qwest, a relatively new long distance competitor, bought USWest, and RBOC.

Finally, AT&T, the biggest of the old line long distance companies, has bought TCI and MediaOne. TCI and MediaOne are two of the largest cable companies in the nation. These mergers will give AT&T ownership of many cable lines going into American homes. At the same time, Microsoft has purchased a stake in AT&T as part of an effort to accelerate the deployment of broadband services across the country.

The debate on this issue revolves around two separate, but closely related issues: (1) whether those who do not own cable broadband lines will be able to access them on the same terms as those who do; and (2) whether the RBOCs will be able to transport data over long distance lines within their regions.

Proponents of H.R. 1686 and H.R. 1685 argue that cable broadband lines are, as a practical matter, an essential facility. (An essential facility is an antitrust term of art meaning a necessary means of doing business that cannot be practically reproduced by competitors.) Internet service providers (e.g. Erol's) and online service providers (e.g. Earthlink) cannot possibly reproduce the existing cable systems. Therefore, they argue that they should be granted access to those lines on the same terms that the owner of the lines grants to its own competing services. They maintain that this is the only way to preserve competition in the ISP and OSP markets. They raise the fear that a company like AT&T may eventually not only control the lines, but the content as well by striking preferential deals with content providers for space on their own OSP service.

Critics of the bills argue that government regulation of the cable broadband lines is not necessary. AT&T argues that its lines are open to all and that users can access any content provider through AT&T's @home service. They contend that those who have invested in the cable broadband lines should reap the benefits of their investments and that the bills would stifle the investment necessary to make these services available. They also argue that there are any number of alternative routes to reach the home including telephone, satellite, and wireless. They argue that simply because cable technology is faster than telephone it is not a separate market, but rather a gradation of the same market in which consumers can pick the speed that they need.

Proponents of the bills argued that allowing the RBOCs into the long distance data market would increase competition in the market and help it meet the ever growing demand for long distance data capacity. They contend that the regulatory scheme set up by the 1996 Act is overly burdensome and that it discourages investment. They argue that it is slowing the deployment of the telephone DSL technology throughout the rural areas of the country. They believe that the Internet would grow faster without the regulation.

Critics of the bills say that the 1996 Act is working exactly as it was intended and that Congress should leave it alone. They argue that the long distance prohibitions is the only thing motivating the RBOCs to open their local markets to competitions as the 1996 Act envisioned. They believe that giving the RBOCs date relief would greatly undermine their incentives to open their networks and thereby slow the growth of local competition in telephone service. They believe that such a charge would be disastrous for the new competitor local telephone companies.

Because cable broadband technology has made cable such an important part of the convergence issue, some local governments have hit upon the idea of using their power over cable franchises to impose regulations on cable companies providing cable broadband services. In one recent case, a federal district judge ruled that such regulations were legal and not preempted by federal law. *AT&T Corp* v. *City of Portland,* 43 F.Supp.2d 1146 (D. Ore. 1999). In other cities, local governments have rejected such regulations. See, e.g., Victory for Los Angeles Cable Providers, The New York Times, June 19, 1999, at C–2.

As the Committee delved into this issue, a number of new developments affected the debate. On December 6, 1999, AT&T announced a voluntary statement of principles under which it would allow Mindspring to provide content over its cable lines. (Mindspring has subsequently merged with Earthlink.) However, that agreement would not take effect until 2002 when an exclusive contract with Excite@Home expires.

AT&T believes that this agreement is the first step towards opening its cable lines to other content providers. It argues that it is continuing to work out similar agreements with other providers. Critics say that this agreement is an unenforceable “agreement to agree.” They further argue that there is no need to delay because AT&T owns a majority stake in Excite@Home and could abandon the exclusive contract at any time.

Originally, one of the principal proponents of open access was America Online (“AOL”). At the time, AOL was a major content provider, but is had no access to the means of distributing that content. On January 10, 2000, AOL announced that it would merge with Time Warner, a major cable company and the owner of a great deal of content. This proposed merger is currently under review by the Federal Trade Commission and the Federal Communications Commission. To date, neither agency has reached any conclusion.

If the merger is consummated, it will place the newly merged company in much the same position as AT&T—i.e., a company that owns cable lines that is also a content provider. On February 29, 2000, the two companies announced that they had signed a memorandum of understanding setting forth principles under which Time Warner's cable companies would allow open access to their lines.

Like AT&T, these two companies believe that this memorandum of understanding is a first step towards providing open access. Critics argue that it is nonenforceable. They further argue that the merger should not be allowed because the temptations for the new company to discriminate in favor of its own content will simply be too strong.

In addition, a number of local governments were trying to address the open access issue by requiring open access as a condition the local cable franchise agreement. The leading case had been taking place in Portland, Oregon. On June 22, 2000, the Ninth Circuit Court of Appeals reversed the trial court's decision holding that the Communications Act prohibited local governments from placing these conditions on cable franchise agreements. *AT&T Corp.* v. *City of Portland,* 216 F.3d 871 (9th Cir. 2000). Originally, Chairman Kennard of the Federal Communications Commission had been publicly saying that he did not see the need for the FCC to regulate in this area. However, in response to the Ninth Circuit's decision, he announced that the FCC would begin a formal proceeding on the issue.

As noted above, the consent decree that broke up the old AT&T and created the regional Bell operating companies prevented the Bells from entering long distance in their regions without court approval. That court approval was never obtained. The telecommunications Act of 1996 provided that the Bells could get into long distance in their regions if they met a series of stringent requirements about opening up their local networks to competing local service providers. This process was to occur state by state.

At the time, many thought that the Bells would meet these requirements fairly easily and soon be into long distance. The actual experience proved more difficult. Nonetheless, after many fits and starts, two Bell companies have finally cleared this hurdle. On December 22, 1999, the FCC approval Verizon's (then known as Bell Atlantic) application to provide long distance service in New York. On June 30, 2000, SBC Communications won approval for its application to provide long distance service in Texas. More applications are currently pending.

On October 5, 1999, WorldCom and Sprint announced their intent to merge. These two companies are the second and third largest long distance phone companies, respectively. In addition, the two companies combined control approximately 53% of the Internet backbone traffic. (If you think of the Internet as similar to the our national system of roads and highways, the "backbone" of the Internet is analogous to the interstate highways.)

This proposed merger raised significant concerns in several markets, including long distance phone service and the Internet backbone. Both the Justice Department and the European Commission raised these concerns. On January 27, 2000, the Justice Department brought suit to block the merger. On July 13, 2000, the companies announced that they had agreed to terminate their merger agreement.

Legislative History.—Congressman Goodlatte introduced H.R. 1686 on May 5, 1999. Congressman Boucher introduced H.R. 1685 on May 5, 1999. Both bills were referred to the Committee. On June 30, 1999, the Committee held a hearing on H.R. 1686 and H.R. 1685 at which the following witnesses appeared: Honorable William Barr, Executive Vice-President and General Counsel, GTE Corporation, Washington, D.C.; Mr. George Vradenburg, Senior Vice President, America Online, Dulles, Virginia; Mr. Ken Wasch, President, Software and Information Industry Association, Washington, D.C.; Honorable Erik Sten, Commissioner of Public Works, City of Portland, Oregon; Mr. Scott Cleland, Managing Director, Legg Mason Precursor Group, Washington, D.C.; Mr. Mark Rosenblum, Vice President for Law, AT&T Corporation, Basking Ridge, New Jersey; Mr. Mike Salsbury, Executive Vice President and General Counsel, MCI WorldCom, Washington, D.C.; Mr. Tim Boggs, Senior Vice President for Public Policy, Time Warner, Inc., Washington, D.C.; Mr. John Windhausen, President, Association for Local Telecommunications Services, Washington, D.C.; Mr. Tod Jacobs, Senior Telecommunications Analyst, Sanford C. Bernstein & Co., Inc., New York, New York; and Mr. Gene Kimmelman, Co-Director, Washington Office, Consumers Union, Washington, D.C.

On July 18, 2000, the Committee held a second hearing on H.R. 1686 and H.R. 1685 at which the following witnesses appeared: Honorable Billy Tauzin, United States Representative, 3rd District of Louisiana; Honorable Anna Eshoo, United States Representative, 14th District of California; Honorable William Kennard, Chairman, Federal Communications Commission, Washington, D.C.; Honorable Tom Tauke, Senior Vice President for Public Policy and External Affairs, Verizon Communications, Washington, D.C.; Mr. Mike McCurry, Co-Chair, iAdvance, Washington, D.C.; Mr. Randy Lowe, Executive Vice President and Chief Legal Officer, Prism Communications Services, Inc., Washington, D.C.; Honorable Glenn Ivey, Chairman, Maryland Public Service Commission, Baltimore, Maryland, on behalf of the National Association of Regulatory Utility Commissioners; Mr. Scott Cleland, Chief Executive Officer, the Precursor Group, Washington, D.C.; Mr. Preston Padden, Executive Vice President, The Walt Disney Company, Washington, D.C.; Mr. Dave Baker, Vice President for Law and Public Policy, EarthLink, Atlanta, Georgia, on behalf of the openNET Coalition; Mr. Len Cali, Vice President for Federal Government Affairs, AT&T, Washington, D.C.; Mr. Tom Wolzien, Senior Media Analyst, Sanford C. Bernstein & Co., New York; Mr. Robert Sachs, President and Chief Executive Officer, National Cable Television Association, Washington, D.C.

H.R. 1801, the "Antitrust Technical Corrections Act of 1999"

The "Antitrust Technical Corrections Act of 1999" makes four miscellaneous technical corrections to our antitrust laws. Three of these corrections repeal outdated provisions of the law and one clarifies a long existing ambiguity regarding the application of the law to the District of Columbia and the territories. The Committee informally consulted the antitrust enforcement agencies, the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission, and the agencies have indicated that they did not object to any of these changes. In response to written questions following the Committee's November 5, 1997 oversight hearing on the antitrust enforcement agencies, the Department of Justice recommended two of the repeals and the clarification contained in this bill.

The Act of March 3, 1913 (15 U.S.C. § 30) requires that all depositions taken in antitrust cases brought by the government be conducted in public. In the early days, the courts conducted such cases by deposition without any formal trial proceeding. Thus, Congress required that the depositions be open as a trial would be. Under the modern practice of broad discovery, depositions are generally taken in private and then made public if they are used at trial. Under our system, § 30 causes three problems: (1) it sets up a special rule for a narrow class of cases when the justification for that rule has disappeared; (2) it makes it hard for a court to protect proprietary information that may be at issue in an antitrust case; and (3) it can create a circus atmosphere in the deposition of a high profile figure. In an appeal in the Microsoft case, the D.C. Circuit invited Congress to repeal this law. *United States* v. *Microsoft Corp.,* 165 F.3d 952, 958 (D.C. Cir. 1999). H.R. 1801 repeals this provision.

Section 11 of the Panama Canal Act provides that no vessel owned by someone who is violating the antitrust laws may pass through the Panama Canal. The Committee has not been able to determine why this provision was added to the Act or whether it has ever been used. However, with the return of the Canal to Panamanian sovereignty at the end of 1999, it is appropriate to repeal this outdated provision. The Committee consulted informally with the House Committee on Armed Services, which has jurisdiction over the Panama Canal Act, and they indicated that they had no objection to this repeal. H.R. 1801 repeals this provision.

Two of the primary provisions of antitrust law are Section 1 and Section 2 of the Sherman Act. Section 1 prohibits conspiracies in restraint of trade, and Section 2 prohibits monopolization, attempts to monopolize, and conspiracies to monopolize. Section 3 of the Sherman Act was intended to apply these provisions to the District of Columbia and the various territories of the United States. Unfortunately, however, ambiguous drafting in Section 3 leaves it unclear whether Section 2 applies to those areas. The Committee is aware of at least one instance in which the Department of Justice declined to bring an otherwise meritorious Section 2 claim in a Virgin Islands case because of this ambiguity. H.R. 1801 clarifies that both Section 1 and Section 2 apply to the District and the Territories. All of the congressional representatives of the District and the Territories are cosponsors of the bill.

In 1955, Congress modernized the jurisdictional and venue provisions relating to antitrust suits by amending Section 4 of the Clayton Act (15 U.S.C. § 15). 69 Stat. 282. At that time, it repealed the redundant jurisdictional provision in Section 7 of the Sherman Act, but not the one contained in Section 77 of the Wilson Tariff Act. Id. It appears that this was an oversight because Section 77 was never codified and has rarely been used. Repealing Section 77 will not diminish any substantive rights because Section 4 of the Clayton Act provides any potential plaintiff with broader rights of jurisdiction and venue than does Section 77. Rather, the repeal of this provision in H.R. 1801 simply rids the law of a confusing, redundant, and little used provision.

Legislative History.—Chairman Hyde introduced H.R. 1801 on May 13, 1999, and it was referred to the Committee. On October 13, 1999, the Committee ordered H.R. reported by voice vote. The Committee filed its report on October 25, 1999, H. Rept. No. 106–411, Part 1. On November 2, 1999, the House suspended the rules and passed H.R. 1801 by voice vote. The Senate Judiciary Committee reported companion legislation S. 1764 on October 28, 1999, but it was not brought up on the Senate floor.

H.R. 2533, the "Fairness in Telecommunications License Transfers Act of 1999"

Summary.—H.R. 2533 addresses the FCC's review of license transfers. As a starting point, it is helpful to state the obvious. The governing statutes empower the FCC to review the transfer of licenses or lines—not to review mergers as such. The transfer of licenses or lines may be integral to a merger, but they are not coextensive with it.

The FCC reviews the transfer of telephone lines under § 214(a) of the Communications Act. 47 U.S.C. § 214(a). That section provides that: "[n]o carrier shall * * * acquire or operate any line, * * * unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require * * *" the acquisition. The FCC reviews the transfer of radio licenses under § 310(d) of the Communications Act. 47 U.S.C. § 310(d). These radio licenses are not only commercial radio station licenses. They also cover radio licenses that are important in the transmission of telephone traffic. Thus, a telephone company merger is likely to include applications under both sections. Section 310(d) provides that: "[n]o * * * station license * * * shall be transferred * * * to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."

These provisions and the experiences that companies have had under them since 1996 raise two questions. First, what is the proper scope of the inquiry under these provisions? Second, does the FCC use fair procedures in reviewing these applications?

With respect to the substantive question, it seems clear that these provisions authorize only an inquiry into the circumstances surrounding the license transfer itself—not the entire merger. In the recent merger between SBC Communication and Ameritech, the FCC leveraged this authority into a wide scale review of every aspect of these companies' businesses resulting in their agreement to dozens of conditions on their merger. These conditions were largely directed toward forcing the companies to open their markets to local competitors. Such conditions may or may not otherwise be good policy—the question here is whether they are authorized under the license transfer review authority. As our colleague, Representative John Dingell, put it: "If the Commission is concerned that any local exchange company is not acting in a manner consistent with its obligations under [the market opening provisions of the Act], the proper course of action is to commence an enforcement proceeding to compel that company to do so. Any such action taken by the Commission should be wholly independent of the merger approval process which requires a qualitatively different standard of review." Letter from Hon. John Dingell to Hon. William Kennard dated April 15, 1999 at 1.

The FCC's procedural processes in these matters also raise questions. In short, the FCC has no written rules governing these proceedings. In a recent letter to Subcommittee Chairman Gekas, Chairman Kennard referred to the Commission's rules governing these proceedings, but did not provide any citations to these rules. Letter from Hon. William Kennard to Hon. George Gekas dated October 15, 1999 at 1.

At our May 25, 1999 hearing before the Subcommittee, FCC Commissioner Harold Furchtgott-Roth testified at length on this point:

> Nor does the Commission have any established procedures for the handling of applications for license transfers. Any particular application on any particular day could be: adopted at a Commission meeting; voted by the Commission on circulation: processed with or without a formal hearing; processed with or without so-called "public fora"; handled with or without additional private "talks" between the companies, interested parties, Commission staff, and individual, especially interested, members of the Commission; granted with or without conditions; finalized after 90 days or 90 weeks, etc. The list goes on almost indefinitely.
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> Section 1.1 of the Practice and Procedure subpart of the Commission's rules, entitled "Proceedings before the Commission," does nothing to remedy the open-ended nature of Commission processes. It states that "[t]he Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time" and "[p]rocedures to be followed by the Commission shall * * * be such as in the opinion of the Commission will best serve the purposes of such proceedings." 47 C.F.R. § 1.1 This rule, written by the Commission, establishes only that the Commission can do essentially whatever it wants. There is nothing constraining or useful about this section.

May 25, 1999 Testimony of Commissioner Harold Furchtgott-Roth at 4–5.

Again, the experience of SBC and Ameritech illustrates the point. Their applications were filed in July 1998. They were not approved until 15 months later. After the parties went through a complete pleading cycle, Chairman Kennard sent the parties a letter setting forth a whole new procedure for working out his concerns about the merger. Shortly after he sent that letter, Representative Dingell commented on that move saying:

> I am deeply troubled over the course you have chosen to pursue regarding the pending applications * * *. I strongly caution you against proceeding in this fashion. It has no basis in law, and will eviscerate the provisions of administrative law that Congress enacted in order to guarantee all parties fairness of treatment and due process.
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> Additionally, and just as important, by conditioning the approval of the applications in the manner suggested in your letter, the Commission would be circumventing the fundamental principles of due process and fairness guaranteed by the Administrative Procedure Act ("APA"). The APA requires the Commission to address the industry-wide issues, and formulate industry-wide remedies, in the context of a rulemaking proceeding. In this instance you appear to be embarked on the dangerous and antithetical precedent of imposing conditions uniquely on one company in an industry, and to do so utilizing a procedure that you have invented just for this occasion.

Letter from Hon. John Dingell to Hon. William Kennard dated April 15, 1999 at 1, 3. As Representative Dingell rightly points out, the FCC's failure to provide neutral procedural rules implicates the Administrative Procedure Act, a matter within the Committee's jurisdiction.

H.R. 2533 does not attempt to dictate the FCC's rules. It simply requires the FCC to promulgate some rules relating to license transfers and to follow them.

Legislative History.—Chairman Hyde introduced H.R. 2533 on July 15, 1999 and it was referred to the Committee. On November 3, 1999, the Committee held a hearing on H.R. 2533 and two other telecommunications bills. The witnesses who appeared at the hearing who testified about H.R. 2533 were: Honorable David McIntosh, United States Representative, 2nd District of Indiana; Honorable William Kennard, Chairman, Federal Communications Commission, Washington, D.C.; Mr. Roy Neel, President, United States Telecom Association, Washington, D.C.; Mr. Richard Weening, Executive Chairman, Cumulus Media Inc., Milwaukee, Wisconsin; and Mr. Ronald Binz, President, Competition Policy Institute, Washington, D.C.

H.R. 2701, the "Justice for MAS Applicants Act of 1999"

Summary.—Congress has authorized the FCC to award licenses to use electromagnetic spectrum since the FCC's inception in 1934. See generally 47 U.S.C. § 309. For many years, this was done through a competitive application process. The FCC would go through applications and try to determine which of the applicants was best qualified to use the license.

In 1981, Congress first authorized the FCC to award licenses to use spectrum through lotteries. Budget Reconciliation Act for FY 1982, Pub. L. No. 97–35, § 1242, 95 Stat. 357, 736–37. In 1993, Congress recognized the potential that a system based on the market might allocate spectrum more efficiently, and it gave the FCC discretionary authority to conduct auctions of spectrum. Budget Reconciliation Act for FY 1994, Pub. L. No. 103–66, § 6002(a), 107 Stat. 312, 387. In 1997, Congress went further mandating that the FCC use auctions for spectrum that was to be used for services that would have paying subscribers. Budget Reconciliation Act for FY 1998, Pub. L. No. 105–33, § 3002, 111 Stat. 251.

Electromagnetic spectrum has numerous uses. All kinds of applicants have tried to obtain licenses in various lottery and auction proceedings over the last two decades. Many of them are unhappy with the process for any number of reasons. Chairman Hyde introduced H.R. 2701 to right one particular wrong that occurred in one of these proceedings.

In 1989, the FCC allocated a certain portion of the spectrum for multiple address system, or MAS, applications. 4 FCC Rcd 2012 (1989). MAS generally involves some form of system in which there is one central point and a number of outlying points which communicate back and forth. Common examples of such systems would be credit card verification systems or alarm monitoring systems.

In 1991, the FCC announced that it would open filing windows for these applications during January and February 1992. 6 FCC Rcd 7242 (1991). Pursuant to the authority granted in 1981, the FCC anticipated holding a lottery to distribute these licenses. In response to its announcement, the FCC received more than 50,000 applications from hundreds of applicants. The number of applicants was in the neighborhood of 1500 to 2500. Obviously, many applicants filed numerous applications. Each application required a $155 filing fee. In addition, an applicant had to incur substantial legal and engineering costs to prepare an application.

Apparently, the FCC then took no further action for a year and a half until the passage of the FY 1994 Budget Reconciliation Act in August 1993. As described above, that Act gave the FCC discretionary authority to conduct auctions of certain licenses. Rather than proceed with the lottery proceeding it had initiated more than a year earlier and for which it had collected filing fees, the FCC decided to conduct a rulemaking to decide whether these applications should be auctioned. 8 FCC Rcd 7635 (1993).

That rulemaking ended in 1994, and the FCC concluded that it could proceed with a lottery for the MAS licenses because they were not primarily for subscriber based services. 9 FCC Rcd 2348 (1994). For three years, apparently nothing happened. In 1997, the FCC reanalyzed the applications and realized that, in fact, 95% of them were for subscriber based services. As a result, it should auction the MAS licenses. 12 FCC Rcd 7973 (1997).

In the summer of 1997 while that rulemaking was pending, the FY 1998 Budget Reconciliation Act passed prohibiting the FCC from using lottery procedures for subscriber based services. More than a year after that law passed, the FCC finally concluded the rulemaking deciding that it could not now award these licenses in a lottery. 13 FCC Rcd 17954 (1998). It dismissed the MAS applications and refunded the original filing fee.

This dry recitation of the facts does not adequately address the human cost of this extraordinary delay on the MAS applicants. Mr. Bob Ryan of Glen Ellyn, Illinois, was a MAS applicant. Mr. Ryan saw the opportunity to supplement his retirement income by applying for MAS licenses. Along with some partners, he intended to use this spectrum to set up a business that would perform credit card verifications through wireless means, a cheaper method than the current wireline technology. He would have set up this business in the 100 top markets around the country. To enter the lottery, he paid a filing fee of $155 per license, or $15,500. In addition, he incurred approximately $12,000 in engineering and legal costs to prepare the application.

The net result for Mr. Ryan of the lengthy process described above is that the government held his $15,500 in filing fees from February 1992 until November 1998, more than 80 months. He received no interest for the use of that money. In addition, the additional $12,000 in costs that he incurred is a complete loss through no fault of his. When the government imposes this kind of loss on citizens through bureaucratic delay, they are entitled to some form of redress. H.R. 2701 would allow Mr. Ryan and the other MAS applicants that redress.

Legislative History.—Chairman Hyde introduced H.R. 2701 on August 4, 1999 and it was referred to the Committee. On November 3, 1999, the Committee held a hearing on H.R. 2701 and two other telecommunications bills. The witnesses who appeared at the hearing who testified about H.R. 2701 were: Honorable William Kennard, Chairman, Federal Communications Commission, Washington, D.C.; and Mr. Robert Ryan, Multiple Address System Applicant, Glen Ellyn, Illinois.

H.R. 3138, the "Free Market Antitrust Immunity Reform (FAIR) Act of 1999"

Summary.—To understand the discussion below, one must first understand the terms applied to the various participants in the ocean shipping industry. The businesses who own ships and who sell the service of transporting cargo on those ships are known as carriers. All of the major carriers operating in and out of the United States now are foreign owned. The businesses who want to have their goods transported in the ships are known as shippers. The shippers range in size from large retail operations like J.C. Penney or Wal-Mart to the smallest of businesses.

Carriers generally sell cargo space on their ships in relatively large units, and larger units generally receive lower rates. As a result, smaller shippers use several methods to consolidate their cargo into larger shipments so that they can obtain lower rates. One of the methods that smaller shippers use is to ship through a non-vessel operating common carrier (known as an "NVOCC" or simply an "NVO").

NVOs contract with carriers for large volumes of space, and then they fill that space by consolidating numerous small shipments into one large shipment and thereby obtaining a lower rate. NVOs are generally independent from the shippers who use their services.

They vary in size although they tend to be relatively small businesses. NVOs compete with carriers for business from shippers. However, at the same time, NVOs depend on carriers for cargo space on ships so that the NVO can fulfill its contracts with shippers.

Another method that small shippers use is known as a shippers' association. A shippers' association performs essentially the same function as an NVO, but it is generally operated cooperatively by the shippers who use it rather than as an independent business.

Some shippers use businesses known as freight forwarders or customs brokers. These businesses simply help the shipper with the paperwork involved in import and export shipping. However, they do not help the shipper obtain a lower rate as NVOs and shippers' associations do.

All of these businesses conduct this activity through ports, which are more formally known as marine terminal operators. Most ports that are open to the public are owned by local governments. Some local governments operate the ports themselves, and some have a private contractor operate it. Many businesses also have their own private marine terminal operations, but these operations are generally for the use of that business alone and are not open to the general public.

Another interest group in this debate are independent truckers. The truckers deliver cargo between ports and inland points. They believe that they are at a disadvantage when negotiating with the carriers because the carriers use their antitrust immunity to present a united front while each trucker must negotiate independently.

A number of statutes govern the ocean shipping industry. Their details are far too complex and arcane to cover comprehensively here. The discussion below gives a thumbnail sketch of the history of the Shipping Act with a particular focus on the antitrust issues involved.

Chronic overcapacity has plagued the ocean shipping industry since its inception in the mid-1800s. This overcapacity arises for several reasons. Building an ocean liner is an expensive proposition. Liners tend to last a long time, and their owners cannot easily convert them to some other use in times of low demand. Thus, once a ship is built, it tends to remain part of the total available capacity for many years.

In addition, many governments have exacerbated the problem by subsidizing their own liners. This subsidization has occurred in some cases through government ownership of the liners or in other cases through payments or other favorable policies for private owners. Governments subsidize liners because of national pride, the need not to depend on other countries for transportation in a time of war, and the need to convert ships to military use in time of war. This subsidization has further contributed to the overcapacity problem.

At the outset, overcapacity led to rate wars and vigorous competition among carriers. As early as 1875, carriers began to form conferences to set rates jointly and avoid the rate wars. From that time until the time of World War I, the United States did not regulate these conferences.

In the early 1910s, Congress began to investigate these arrangements. Ultimately, Congress concluded that the conference system served the public interest by providing stability to international commerce. Accordingly, it passed the Shipping Act of 1916 ("the 1916 Act"). Shipping Act of 1916, ch. 451, 39 Stat. 728 (1916) (Those parts of the 1916 Act that have not been subsequently repealed are codified at 46 U.S.C. App. § 801 et seq.).

The 1916 Act gave the conference antitrust immunity to set rates jointly. It also gave similar antitrust immunity to the ports. In exchange, however, the 1916 Act established the United States Shipping Board, a predecessor of today's Federal Maritime Commission, to regulate the industry. The Board had to approve the rates set by the conferences before they could take effect. The 1916 Act also placed a common carrier obligation on the carriers requiring them to carry the cargo of shippers on nondiscriminatory terms overseen by the Board.

In cases under the 1916 Act, the Supreme Court gave broad deference to the jurisdiction of the Board and its successors holding that the carriers and their conferences could not be sued under the antitrust laws even when they failed to file their agreements with the agency. *Far East Conference* v. *United States*, 342 U.S. 570 (1952); *United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U.S. 474 (1932).

In 1961, Congress substantially amended the 1916 Act. Among other things, it created the Federal Maritime Commission that we have today. See Reorganization Plan No. 7 of 1961, 75 Stat. 840 (1961). In a separate act, Congress made important substantive changes to the 1916 Act. Act of October 3, 1961, Pub. L. No. 87–346, 75 Stat. 762 ("the 1961 Amendments"). Most importantly, the 1961 Amendments required the FMC to disapprove any conference agreement that it found to be contrary to the public interest. The 1961 Amendments also instituted a mandatory public tariff filing system.

The FMC subsequently decided that the public interest test required it to disapprove agreements that were contrary to the policies of the antitrust laws, and the Supreme Court began to narrow the antitrust protection of the conferences. *Federal Maritime Commission* v. *Aktiebol Svenska Amerika Linien*, 390 U.S. 238 (1968); *Carnation Co.* v. *Pacific Westbound Conference*, 383 U.S. 213 (1966). Carriers believed that this new policy substantially eroded their antitrust immunity and thereby undermined the purposes of the 1916 Act. They also felt that the FMC's consideration of antitrust policies delayed its consideration of the agreements for too long.

In 1984, Congress took another crack at the industry passing a complete overhaul of the 1916 Act known as the Shipping Act of 1984 ("the 1984 Act"). Shipping Act of 1984, Pub. L. No. 98–237, 98 Stat. 67 (codified at 46 U.S.C. App. § 1701 et seq.). The 1984 Act maintained the basic tradeoff of the 1916 Act—i.e. antitrust immunity for joint ratesetting in return for common carrier obligations and heavy regulation.

The major innovation of the 1984 Act was to allow carriers to attempt to weaken the unity of conferences by entering into contracts with individual shippers at rates discounted from the conference rates. It also allowed them to enter into service contracts. Service contracts are contracts in which the shipper gets a discounted rate in return for guaranteeing that it will ship a minimum amount of cargo with a particular carrier. However, if a carrier entered into such service contracts, it had to offer them to all similarly situated shippers and they had to be made public.

Apart from those changes, the 1984 Act made several other major changes. It further strengthened the antitrust immunity by providing that there could not be any antitrust relief under the Clayton Act for conduct that violated the provisions of the Act. For the first time, it recognized the existence of NVOs and shippers' associations, and gave them rights under the regulatory scheme. Finally, the 1984 Act set up an Advisory Commission to begin a study of its provisions after it was effective for five and a half years.

Since the passage of the 1984 Act, the traditional conferences have declined. To some extent, they have been replaced by broader groups of carriers commonly known as "discussion agreements." These broader groups are not officially recognized in either the statute or the FMC regulations, but some believe that they are included within the statutory term "cooperative working agreements." At any rate, they have included traditional conference carriers as well as traditional independents. They are supposed to be voluntary bodies without joint ratemaking authority, but some industry observers believe that, as a practical matter, they do set rates jointly.

This Committee played a substantial role in the passage of the 1984 Act. See generally H. Rept. No. 98–53, Part 2 (1983). Several Members of the Committee served as conferees in the Conference Committee.

The Advisory Commission from the 1984 Act filed its report in April 1992. Although it did not come to a consensus, it did document a number of concerns by the various participants in the industry. These concerns ultimately led to the passage of the Ocean Shipping Reform Act of 1998. Ocean Shipping Reform Act of 1998, Pub. L. No. 105–258, 112 Stat. 1902 ("the 1998 Act").

The major innovation of the 1998 Act is allow carriers to enter into service contracts with individual shippers on a confidential basis. In addition, the carriers are no longer required to provide the same rates to other similarly situated shippers. The 1998 Act does not afford the same rights to NVOs. NVOs may enter into confidential service with carriers when they buy space, but they must still make their contracts with their shippers public through a public tariff filing system. In addition, the 1998 Act allowed the carriers to jointly negotiate rates for inland transportation.

In 1998, this Committee did not have as large a role as it did in 1984. The leadership desired to move the Senate version of the bill to the floor quickly and without amendment. Because of that leadership desire, the Committee did not request a referral of the bill, but it did make known its intention to hold oversight hearings in the 106th Congress. The changes in the law made by the 1998 Act took effect on May 1, 1999, and the Committee held its first oversight hearing on May 5, 1999.

Against this backdrop, another important development was the investigation of the conditions in the transpacific trade in 1998. The peak shipping season in this trade runs from approximately June through November. During the 1998 season, the Asian economic crisis changed the normal conditions of the market. As usual, there was overcapacity in the trade running from the United States to Asia. However, there was a shortage of space in the trade running from Asia to the United States.

By September, the FMC had received numerous complaints about the practices that carriers were using to exploit this shortage situation. The gist of the complaints was that the carriers had abandoned their common carrier obligations. Instead, they were simply auctioning their space to the highest bidder and favoring the biggest shippers. On September 21, 1998, the Commission ordered a fact finding investigation of the charges, and its designated Commissioner Delmond Won to conduct it. "Fact-Finding Investigation No. 23—Ocean Common Carrier Practices in Transpacific Trades," 63 Fed. Reg. 51356 (September 25, 1998).

Commissioner Won made his report to the Commission on January 13, 1999, and the Commission released a summary of it on March 9, 1999. The summary and the report find that the charges that led to it were generally true—i.e., that the carriers did abandon their common carrier obligations and exploit the shortage. It should be noted that this report represents only the findings of Commissioner Won acting as the Investigative Officer and not necessarily the views of the FMC as a whole.

On April 20, 1999, the Commission assigned its Bureau of Enforcement to continue the investigation begun by Commissioner Won. See 64 Fed. Reg. 19359. On October 18, 1999, the Bureau of Enforcement recommended that the investigation be discontinued, and on December 29, 1999, the Commission voted to do so. The Commission did impose some punishments on carriers as a result of the investigation. However, they were relatively minor.

Because of concerns about these practices, Chairman Hyde introduced H.R. 3138. Chairman Hyde believes that OSRA has moved the shipping industry towards a freer market. Things are better than they were.

On the other hand, that is no excuse not to make them even better. Chairman Hyde believes that there simply is no justification for continuing antitrust immunity for the carriers, who are largely foreign-owned, to raise prices that Americans must pay. Notwithstanding the lengthy history of the exemption set forth above, the exemption makes no sense in today's world. An easy way to think about it is to imagine that we were trying to pass this exemption as new law today. It would be difficult to find many Members to vote for it. In addition, there are increasing signs that at least some of our major partners are moving in the same direction.

Legislative History.—Chairman Hyde introduced H.R. 3138 on October 25, 1999, and it was referred to the Committee. On March 22, 2000, the Committee held a hearing on H.R. 3138 at which the following witnesses appeared: Honorable Harold Creel, Chairman, Federal Maritime Commission, Washington, D.C.; Honorable Delmond Won, Commissioner, Federal Maritime Commission, Washington, D.C.; Honorable John Nannes, Deputy Assistant Attorney General, Antitrust Division, United States Department of Justice, Washington, D.C.; Mr. Alan Baer, President and Chief Executive Officer, Ocean World Lines, Inc.; New York, New York, on behalf of the Coalition for Fair Play in Ocean Shipping; Mr. Bob Coleman, President, TLR-Total Logistics Resource, Inc.; Portland, Oregon, on behalf of the Pacific Coast Council of Customs Brokers and Freight Forwarders Associations, the National Customs Brokers and Forwarders Association of America, and the New York/New Jersey Foreign Freight Forwarders and Brokers Association; Mr. Bill MacDonald, President, KMJ International, Inc., Edmonds, Washington, on behalf of the Pacific Northwest Asia Shippers' Association; Mr. George Cashman, Port Division Director, International Brotherhood of Teamsters, Boston, Massachusetts; Ms. Janet McDavid, Partner, Hogan & Hartson, L.P., Washington, D.C., on behalf of the Section of Antitrust Law of the American Bar Association; Mr. John Clancey, Chairman of the Board, Maersk Inc., Charlotte, North Carolina; Mr. Timothy Rhein, Chairman, American President Lines, Ltd., Oakland California; Mr. Hugh Welsh, Deputy General Counsel, The Port Authority of New York and New Jersey, New York, New York, on behalf of the American Association of Port Authorities; Mr. Frank Pecquex, Executive Secretary Treasurer, Maritime Trades Department, AFL–CIO, Washington, D.C.; and Mr. Daniel Smith, Senior Consultant, Mercer Management Consulting, Inc., El Cerrito, California.

H.R. 4194, the "Small Business Merger Fee Reduction Act of 2000"

Summary.—Section 7 of the Clayton Act, first passed in 1914, governs the antitrust review of mergers and acquisitions. It prohibits mergers or acquisitions the effect of which "may be substantially to lessen competition, or to tend to create a monopoly." 15 U.S.C. § 18. The Department of Justice, the Federal Trade Commission, or a private party may bring an action to enjoin a merger which violates § 7.

However, once a merger is consummated, it is difficult to unscramble it. Moreover, as a practical matter, very few private parties can afford to bring a private lawsuit to restrain an anticompetitive merger or acquisition, In 1976, Congress responded to these two problems by passing the Hart-Scott-Rodino Antitrust Improvements Act of 1976. 15 U.S.C. § 18A (§ 7A of the Clayton Act). The H–S–R Act ensures that the antitrust enforcement agencies can review mergers for antitrust problems before they are consummated.

Under current law, a merger or asset acquisition must meet two tests to require an H–S–R filing. First, one of the companies involved must have total annual net sales or total assets of $100 million and the other must have $10 million. This is known as the "size of company" test. Second, the asset or company being acquired must be worth $15 million. This is known as the "size of asset" test.

When a new filing comes in, the agencies decide through a process of comity which agency will review the filing. Filings are not reviewed by both agencies. Generally speaking, this process of comity divides mergers up by industry. For example, the oil industry has traditionally been in the FTC's area of expertise, and the airline industry has been within the DOJ's area of expertise.

When first enacted, the H–S–R Act did not require a filing fee. In 1989, the deficit loomed large, and Congress was searching for additional funds. As a result, Congress enacted a filing fee system for H–S–R filings. See § 605 of Title VI of Public Law 101–162 (15 U.S.C. § 18A note). That system has been amended since that time, and the current filing fee for review of all mergers or acquisitions under H–S–R is $45,000. The Division and the Bureau divide the money taken in through these filing fees equally, and it cannot be spent for any other purpose. However, these agencies may not spend it unless it is appropriated to them. Traditionally, they have not received the full amount and some is held back each year and appropriated the following year. These fees now fund the entire budget of both agencies.

Some critics have suggested that these fees are merely a tax on mergers. Whatever the merits of that argument, these fees do allow the agencies to be self-funding. The Committee is not enthusiastic about funding these vital agencies through these fees. However, as a practical matter, the fee structure is here to stay for the foreseeable future.

Some reforms are in order, and they are likely to be achieved this year. Aside from the broader philosophical point about funding the agencies through fees, there are two basic complaints about H–S–R as it exists today: that the agencies' discovery requests are overly burdensome and that the filing thresholds are too low. The agencies announced reforms to the discovery requests in early 2000. These administrative changes are good faith efforts at reform and should be given a chance to work before any legislative changes are made. Generally speaking the business community views these changes as positive steps, but there is some concern as to whether they will be sufficiently institutionalized.

With respect to filing thresholds and fees, the vast majority of transactions that are filed are cleared within 20 days. Only about 3% receive the searching examination involved in a second request for documents. Moreover, the filing thresholds have not been adjusted since the original enactment in 1976. In real terms, smaller and smaller transactions require filings because of the steady creep of inflation. For that reason, a general consensus has developed that we need to raise the filing and fee thresholds.

President Clinton has recommended that Congress raise the fee threshold, but not the filing threshold, in this budget submission for FY 2001. The President's budget request raises the fee threshold from a $15 million "size of asset" to a $35 million "size of asset." Under his proposal, the fee would remain $45,000 for transactions involving an asset worth $35–$100 million. For transactions involving an asset worth $100–$200 million, the fee would rise to $100,000. For transactions involving an asset worth more than $200 million, the fee would rise to $200,000. His proposal does not raise the filing threshold at all. Thus, for transactions involving an asset worth $15–$35 million, there would be no fee, but they would still have to file. The Committee on Appropriations included this language within the Commerce, Justice, State, and the Judiciary appropriations bill that it reported this spring.

H.R. 4194 as introduced differs slightly from the President's proposal. It would raise the "size of asset" test to $50 million. It would also eliminate the "size of company" test altogether. Thus, the only test for filing would be whether the asset was $50 million or greater. Its fee structure is similar to the President's proposal, and it yields approximately the same amount of money. Under H.R. 4194, for transactions involving an asset worth $50–$100 million, the fee would remain $45,000. For transactions involving an asset worth $100–$200 million, the fee would rise to $100,000. For transactions involving an asset worth more than $200 million, the fee would rise to $225,000.

On July 11, 2000, the Committee passed H.R. 4194 by voice vote with a consensus substitute. As reported, H.R. 4194 would raise the "size of asset" test to $50 million. It would also eliminate the "size of company" test altogether for mergers in which the asset is worth more than $200 million. Its fee structure is similar to the President's proposal, and it yields approximately the same amount of money. Under H.R. 4194, for transactions involving an asset worth $50–$100 million, the fee would remain $45,000. For transactions involving an asset worth $100–$500 million, the fee would rise to $125,000. For transactions involving an asset worth more than $500 million, the fee would rise to $250,000. The Appropriations Committee has agreed to include the reported version of H.R. 4194 in the conference report on this year's Commerce-Justice-State appropriations bill with the fee on the top tier raised to $280,000.

Legislative History.—Representative Rogan introduced H.R. 4194 on April 5, 2000, and it was referred to the Committee. On July 11, 2000, the Committee ordered H.R. 4194 reported by voice vote with a substitute amendment. Subsequent to that markup, the Committee on Appropriations agreed to include the text of H.R. 4194 as reported by the Committee with minor modifications within the Commerce, Justice, State, and the Judiciary appropriations conference report. The Committee on Appropriations included this language as section 630 of H.R. 5548, a bill that was incorporated by reference in the conference report on H.R. 4942, the Commerce-Justice-State appropriations bill for FY 2001, and it became law as part of that package during December, 2000.

H.R. 4321, the "Antitrust Enforcement Act of 2000"

Summary.—Agricultural processing businesses directly affect the livelihoods of agricultural producers and farmers because these businesses buy the producers' and farmers' products in the first instance. These industries are fairly highly concentrated. For example, according to some estimates, the four largest meat packing companies control almost 80% of the market for packing beef. The recent merger of Cargill, Inc. and Continental Grain Company has also focused attention on concentration in the grain processing industry.

Agricultural producers and farmers complain that this concentration gives the processors too much market power thereby allowing them to pay lower prices to producers and farmers. The producers and farmers argue that their share of the food dollar has been dropping precipitously while the packers and processors gain an ever larger share. Because of these low prices, producers and farmers, particularly smaller operators, complain that they cannot stay in business. They argue for more vigorous antitrust enforcement and also for more vigorous enforcement of the Packers and Stockyards Act.

Processors argue that their businesses are now necessarily global. They argue that recent mergers are essential to cutting costs so that they can compete with foreigners. They argue that low prices for these commodities arise not because of concentration, but because of oversupply. They also argue that producers are increasingly concentrated with larger operators taking an ever larger market share. They acknowledge that this tends to disadvantage smaller operators, but they argue that this is not a result of concentration of the processors. They believe the solution lies in producers responding to the market signals of low prices rather than in government action.

Several agencies have responsibility for this area and several statutes bear on the agricultural concentration issue. Both the Justice Department and the Federal Trade Commission enforce the antitrust laws. With respect to large mergers or acquisitions, one or the other of the agencies will review the transaction under the Hart-Scott-Rodino Act, 15 U.S.C. § 18A. Through a process of comity, the agencies have traditionally divided these reviews and other enforcement issues by industry with the Justice Department specializing in certain industries and the Federal Trade Commission specializing in others. The Justice Department has traditionally reviewed agricultural mergers. On the other hand, the Federal Trade Commission has traditionally dealt with grocery store issues.

The Agriculture Department does not have any jurisdiction to enforce the antitrust laws. However, it does have jurisdiction to enforce the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, both of which are discussed below.

At least two of the antitrust laws are relevant to the issues here. With respect to concentration in meat packing, grain processing, or grocery stores, § 7 of the Clayton Act, 15 U.S.C. § 18, prohibits mergers or acquisitions that substantially lessen competition in a particular line of commerce. As noted above, either the Justice Department or the Federal Trade Commission will review a large transaction under the H–S–R Act. If they determine that there are competitive problems, they are most often resolved with the merging companies voluntarily agreeing to divest various assets. However, in relatively rare instances, the agencies may bring a lawsuit to block a transaction. Ultimately, a court decides if the transaction violates § 7. An agency's decision not to bring a lawsuit does not constitute "approval" of the merger nor does it confer antitrust immunity on the transaction. Rather, it is simply an indication that the government will not bring an enforcement action. Private parties may sue to block a transaction irrespective of what the government agency does.

Several agricultural laws have some bearing on these issues. First, the Packers and Stockyards Act, 7 U.S.C. § 181 et seq., generally empowers the Secretary of Agriculture to prevent unfair practices by meat packers and stockyard dealers. The Secretary may impose civil money penalties for violations of the Act, and packers may be criminally prosecuted for violations of the Secretary's orders under the Act.

Second, the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq., generally empowers the Secretary of Agriculture to license and regulate dealers and brokers in perishable agricultural commodities. The Secretary may impose civil money penalties for violations of the Act.

Two other agricultural statutes deserve passing reference. The Capper-Volstead Act, 7 U.S.C. §§ 291–92, and the Cooperative Marketing Act, 7 U.S.C. § 455, specifically authorize joint marketing efforts by produce growers. They provide limited antitrust protection for these arrangements.

H.R. 4321 has three items that are directed at concentration in agriculture. First, it adds language to the antitrust laws and the agriculture laws to clarify that the words "commerce" and "competition" include not only trade or commerce among sellers, but also among wholesale purchasers. Many believe that such commerce is already included within those terms. However, some agricultural producers and farmers believe that antitrust places too much emphasis on the harm to consumers from antitrust violations. They believe that antitrust does not place enough emphasis on the harm to small sellers, like them, who must sell to a concentrated group of large buyers whom they believe may be violating antitrust laws. This amendment seeks to redirect attention toward that harm.

Second, H.R. 4321 sets up a study commission that would study agricultural antitrust and concentration issues for a year and report back to the President and the Congress. Third, it establishes an office of special counsel for agriculture in the Department of Justice's Antitrust Division. In that connection, it should be noted that in January 2000, the Antitrust Division established such a post administratively. Although this post does not have a specific statutory authorization, it is intended to perform the same function as that proposed by the bill.

Section 4 of the Clayton Act provides that "any person * * * who is injured in his business or property" by an antitrust violation may bring suit to claim damages. The statute does not specifically address how far down a distribution chain this right to sue goes. For example, in the recent vitamin price fixing case, the conspiring vitamin manufacturers sold the vitamins mainly to food companies like cereal manufacturers. Those cereal manufacturers overpaid for the vitamins and then presumably passed the cost of these overpayments on to consumers. Thus, as far as the statute goes, it is unclear whether only the cereal manufacturers could sue or whether the consumers might also be able to sue. The Supreme Court decided in 1977 that only the first purchaser—the cereal manufacturer in this example—could sue. Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977).

Some felt that this decision was a reasonable limit on the reach of the antitrust laws and helped to hold down the number of lawsuits with extremely complex proof problems. Others felt that it was unfair to prevent overcharged consumers form recovering despite their position in the chain of distribution. This decision led to a lot of legislative ferment during the late 1970s and 1980s. Several bills to overturn the result of Illinois Brick made progress in

Congress, but none ever became law. Also, some states have effectively overturned the result of Illinois Brick for purposes of their state antitrust laws. During the 1990s, the issue has been relatively quiet. H.R. 4321 would overturn the result of Illinois Brick for purposes of federal law and allow those further down the distribution chain to sue.

H.R. 4321 also contains a similar approach on merger filing fees as that in H.R. 4194 described above, but it does not change the filing thresholds. Under H.R. 4321, for transactions involving an asset worth $15–$100 million, the fee would drop to $25,000. For transactions involving an asset worth $100–$250 million, the fee would rise to $50,000. For transactions involving an asset worth $250 million–$1 billion, the fee would rise to $100,000. For transactions involving an asset worth more than $1 billion, the fee would rise to $150,000.

H.R. 4321 makes two other minor changes to H–S–R. First, it gives a short extension to the government to examine documents filed under a second request. A similar change was included in H.R. 4194 as reported by the Committee. Second, under current law, filings with the FTC or the DOJ are exempt from Freedom of Information Act disclosure. Representative Minge's bill applies that exemption to similar filings with state attorneys general. In some cases, the parties voluntarily allow an attorney general from a concerned state to review their H–S–R filing.

Under current law, a person or a company convicted of a criminal antitrust violation under §§ 1–3 of the Sherman Act may be fined the greater of $10 million or twice the gross gain or loss caused by the criminal violation. See 15 U.S.C. §§ 1–3; 18 U.S.C. § 3571. The Justice Department has supported increasing the Sherman Act limit from $10 million to $100 million. The double gain or loss provision can often yield fines of greater than $10 million, e.g., the recent vitamin price fixing case. However, in many circumstances, proving the gross gain or loss can be quite difficult. Thus, erasing the Sherman Act limit would afford greater flexibility in punishing these crimes.

Legislative History.—Representative Minge introduced H.R. 4321 on April 13, 2000, and it was referred to the Committee. On September 12, 2000, the Committee held a hearing on H.R. 4321 at which the following witnesses appeared: Honorable David Minger, United States Representative, 2nd District of Minnesota; Honorable Howard Metzenbaum, Chairman, Consumer Federation of America, Washington, D.C.; Mr. Bert Foer, President, American Antitrust Institute, Washington, D.C.; and Mr. Leland Swenson, President, National Farmers Union, Washington, D.C.

LIABILITY ISSUES

The Year 2000 Readiness and Responsibility Act—H.R. 775 (Public Law 106–37)

As the millennium neared, the Year 2000 (Y2K) computer problem posed a critical challenge to our economy. Tremendous investments were being made to fix Y2K problems, with United States companies expected to spend more than $50 billion. However, those efforts were being hampered by the fear of potential lawsuits, which was keeping some businesses from effectively engaging in Y2K remediation efforts. It was also anticipated that future litigation over Y2K failures could clog our courts and impose a large economic burden on our society.

The Year 2000 computer technology problem

The Y2K technology problem started as an innocuous short term solution to the oppressively high cost of computer memory in the 1950's and 1960's. Programmers represented four-digit years with only two digits. For instance, 1968 would be represented as 68, with the number 19 (indicating years in the 1900s) being implicitly understood. This worked smoothly until users started to input dates occurring after December 31, 1999. Computers started running into problems when required to calculate a number based on the difference in two dates, such as the interest due on a mortgage loan. Computers continued to assume that the prefix 19 was implied in any date, so they would incorrectly read 00 (input for 2000) or 01 (input for 2001) as 1900 or 1901. Consequently, computers could not correctly calculate the difference between years in the 20th and 21st centuries.

Another Y2K problem occurs in the storage of data. Many kinds of data are organized and processed by date, such as driver's license records and credit card accounts. Computers have had problems processing credit cards that have expiration dates after December 31, 1999, because computers read the cards as having expired almost a century ago.

Although programmers and managers knew in the 1950's and 1960's that they had built software with latent defects in it, no one thought that software written then would survive to the year 2000. Compounding that problem, newer software had to interface and share data with older software. Although the new software could have handled dates internally in four-digit formats and swapped data in two-digit formats with the older software, to do so added complexity and hence added cost to new software. The net result was that the two-digit standard for representing years continued much longer than anyone would have guessed.

The need for a proactive approach to Y2K-related litigation

In 1999, some technical analysts were predicting that widespread failures in systems across the country, including power outages, stalled assembly lines, and halted international transactions could result in a major nationwide or even worldwide, recession. Others contended that the efforts already underway or completed at that time would ensure a nearly disruption-free transition into 2000. History has shown that only minor problems occurred as we range in the new millennium, but at the time of the Committee hearings in 1999, the projected cost of Y2K litigation was as high as $1 trillion. The transaction costs associated with these potential lawsuits were also projected to be unprecedented: in August 1998, at the American Bar Association annual convention, a panel of experts predicted that the legal costs associated with Y2K would exceed that of asbestos, breast implants, tobacco, and Superfund litigation combined. That is more that three times the total annual estimated cost of all civil litigation in the United States.

In fact, eight months before the year 2000 began, over 50 Y2K lawsuits had already been filed. The Committee was told that the threat of litigation had resulted in a climate of fear and reluctance by many companies to acknowledge the potential problems which may be caused by their products. This atmosphere was counterproductive to the cooperative efforts necessary to ensure a seamless transition from 1999 to 2000, and was becoming disruptive to the stability of the nation's interstate commerce. The potential for litigation to overwhelm the nation's judicial system, and to cause severe damage to the nation's economy required incentives for proactive solutions to the problems before they could occur, and a system for prompt resolution of those failure which do occur.

The magnitude of this problem demanded solutions which would reduce litigation whenever possible without limiting the rights of aggrieved parties. One way was to provide clear legal rules and then encourage parties to find solutions to fix the problem without resorting to the courts. If potential litigants know how the courts will allocate responsibility for Y2K compliance, many disputes will settle rather than being litigated to an inevitable conclusion. Clear rules would also reduce the potential for frivolous lawsuits which might be filed when non-avoidable Y2K problems occur, thereby clearing the courts for the legitimate cases which deserve adjudication. Clear rules would also increase the likelihood that the entity who bears responsibility for Y2K compliance will work quickly to fix the problem and reduce damages.

H.R. 775, the "Year 2000 Readiness and Responsibility Act"

In response to these issues, Congress enacted the Year 2000 Readiness and Responsibility Act to create a legal framework by which Y2K-related disputes would be resolved. It was specifically designed to help consumers by creating incentives for businesses to address the Y2K computing crisis, thereby avoiding Y2K problems and eliminating the need for litigation. It also established clear, uniform rules for determining the rights and responsibilities of contracting parties in Y2K disputes. In addition, the Act gives companies as long as 90 days to fix any problems before a lawsuit can be brought, limits punitive damages for firms with fewer than 50 employees, generally holds companies liable only for their share of blame for any Y2K damage, and requires that class action suits involving 100 or more plaintiffs and $10 million or more in claims be tried in federal, instead of state, courts.

Legislative History.—H.R. 775 was introduced by Congressman Davis on February 23, 1999; it ultimately garnered 98 cosponsors. The full committee held a hearing on H.R. 775 on April 13, 1999. On April 29 and May 4, 1999, it was considered by the full committee and ordered reported to the House, as amended, by a recorded vote of 15 ayes to 14 nays. The report was filed on May 7, 1999. House Report 106–131, part 1. The House passed the bill on May 12, 1999 by a vote of 236 ayes to 190 nays, after defeating a motion to recommit by a vote of 184 ayes to 246 nays. The Senate version of the bill (S. 96) was approved by that body on June 15, 1999. On June 24, 1999, the House appointed Congressmen Hyde, Sensenbrenner, Goodlatte, Conyers and Lofgren as conferees on the bill, with Congressmen Bliley, Oxley and Dingell appointed as conferees for section 18 of the Senate amendment. Also on June 24, 1999, the House agreed to instruct the conferees by vote of 426 ayes to 0 nays. A conference report was filed on June 29, 1999 (House Report 106–212), and on July 1, 1999, the House agreed to the conference vote by a vote of 404 ayes to 24 nays. Also on July 1, 1999, the Senate agreed to the conference report by a vote of 81 ayes to 18 nays. On July 20, 1999, H.R. 775 was signed by the President (Public Law 106–37).

The Fairness in Asbestos Compensation Act of 2000—H.R. 1283

Summary.—H.R. 1283 establishes a comprehensive asbestos compensation program pertaining to asbestos-related personal injury lawsuits. The purpose of H.R. 1283 is to provide all asbestos victims with efficient and fair compensation by ensuring that claimants suffering from an asbestos-related impairment will be given priority over other asbestos related claims.

The heart of the bill's administrative compensation program is a non-adversarial determination of medical eligibility by an Office of Asbestos Compensation (OAC), established within the United States Department of Justice. Claimants that are determined to be medically eligible may assert their claim by proceeding to state or federal court at anytime, or electing non-adversarial settlement offers or an administrative adjudication. In addition, a determination of medical eligibility creates a presumption that the claimant has an asbestos related illness, this presumption may only be rebutted by "clear and convincing" evidence.

H.R. 1283 also contains a comprehensive set of rules pertaining to asbestos litigation. These rules eliminate practices that may diminish an individual's claim and hold major asbestos manufacturers and distributors to a higher standard of liability. In addition, a legal assistance program would assure that asbestos victims receive representation for a reasonable fee, which would be determined by Administrator of the Office of Asbestos Compensation.

Legislative History.—H.R. 1283 was introduced by the Chairman of the Committee on the Judiciary, Henry J. Hyde, on March 25, 1999, and ultimately garnered 75 cosponsors. H.R. 1283 was referred to the Committee on the Judiciary where it was held at the Full Committee. Accordingly, on July 1st, 1999, the Committee held an extensive hearing on H.R. 1283. The hearing consisted of ten witnesses on two panels. Witnesses on the first panel included Professor Christopher F. Edley Jr. of Harvard University School of Law; Louis W. Sullivan, President of the Morehouse School of Medicine and former Secretary of the Department of Health and Human Services; Richard H. Middleton, President of the Association of Trial Lawyers of America; Samuel J. Heyman, Chairman and Chief Executive Officer of the GAF Corporation; Dr. Christine Oliver, Associate Physician at Massachusetts General Hospital; and Dr. Gary Epler, Associate Physician at Brigham & Women's Hospital. The second panel included Maura J. Abeln Smith, Senior Vice President and General Counsel of Owens Corning; Thomas J. Donohue, President of the United States Chamber of Commerce; Johnathan Hiatt, General Counsel of the AFL–CIO; and Conrad L. Mallett Jr., former Chief Justice of the Michigan Supreme Court. On March 9th, 15th, and 16th, 2000 the Committee met in open session to consider H.R. 1283. On March 16th, 2000, H.R. 1283 was ordered favorably reported with a single amendment in the nature of a substitute. On July 24th, 2000 H.R. 1283 was reported to the Full House, House Report 106–782, and placed on the Union Calendar.

The Interstate Class Action Jurisdiction Act of 1999—H.R. 1875

Summary.—H.R. 1875, the Interstate Class Action Jurisdiction Act of 1999, expands federal diversity jurisdiction to permit most interstate class actions to be brought in or removed to federal court.

The class action device is a necessary and important part of our legal system. It promotes efficiency by allowing plaintiffs with similar claims to adjudicate their cases in one proceeding; it also leads to the adjudication of claims where there are small harms to a large number of people, which would otherwise go unaddressed because the cost to individuals of suing would far exceed any possible benefit to the individual. However, in recent years class actions have been used with an increasing frequency and in ways that do not promote the interests they were intended to serve.

Class action certification rules

Class actions were initially created in state courts of law and equity, and in 1849 became statutory with the advent of the Field Code, which several states adopted. In 1938, a federal class action rule was first enacted in the form of Federal Rule of Civil Procedure 23. Rule 23 was substantially amended in 1966, and granted courts more flexibility in certifying class actions. The Field Code, the original federal Rule 23 and amended federal Rule 23 remain the three models for present-day state class action rules: 36 states have adopted amended federal Rule 23; seven still use rules modeled on the original federal Rule 23; and four still use Field Code-based class rules. Three states still permit class actions at common law and have no formal class rules.

As a result of the adoption of different class action certification standards in the various states, the same class might be certifiable in one state and not another, or certifiable in state court but not in federal court. This creates the potential for abuse of the class action device, particularly when the case involves parties from multiple states and/or requires the application of the laws of many states. For example, some state courts routinely certify classes before the defendant is even served with a complaint and given a chance to defend itself. Other state courts employ very lax class certification criteria, rendering virtually any controversy subject to class action treatment. There are instances where a state court, in order to certify a class, has determined that the law of that state applies to all claims, including those of purported class members who live in other jurisdictions. This has the effect of making the law of that state applicable nationwide.

The existence of state courts which broadly apply class certification rules encourages plaintiffs to forum shop for the court which is most likely to certify a purported class. In many instances, the fact that a class is certified will determine the outcome of the case. Because the cases are brought on behalf of thousands (and sometimes millions) of claimants, the potential exposure for a defendant is enormous. Plaintiffs' counsel can use this potential exposure to coerce settlements that offer minimal benefits to the class members, but which result in hefty attorneys' fees.

Another problem created by the ability of state courts to certify class actions which adjudicate the rights of citizens of many states is that often times more than one case involving the same class is certified at the same time. In the federal court system, those cases involving common questions of fact may be transferred to one district for coordinated or consolidated pretrial proceedings. See 28 U.S.C. 1407. When these class actions are pending in state courts, however, there is no corresponding mechanism for cogently adjudicating the competing suits. Instead, a settlement or judgment in any of the cases makes the other class actions moot. This creates an incentive for each class counsel to obtain a quick settlement of the case, and opportunity for the defendant to play the various class counsel against each other and drive the settlement value down. Again, the loser is the putative class member whose claim is extinguished by the settlement, at the expense of counsel seeking to be the one entitled to recovery of fees.

H.R. 1875 is intended to prevent these abuses by allowing large interstate class action cases to be heard in federal court. It would expand the statutory diversity jurisdiction of the federal courts to allow class action cases involving minimal diversity—that is, when any plaintiff and any defendant are citizens of different states—to be brought in or removed to federal court.

Federal diversity jurisdiction

Article III of the Constitution empowers Congress to establish federal jurisdiction over diversity cases—cases "between citizens of different States." The grant of diversity jurisdiction was premised on concerns that state courts might discriminate against out of state defendants. Since 1806, with some exceptions, the federal courts have followed the rule of *Strawbridge* v. *Curtiss*, 7 U.S. (3 Cranch) 267 (1806), which states that federal jurisdiction lies only where all plaintiffs are citizens of states different than all defendants. This is known as the "complete diversity" rule. In a class action, only the citizenship of the named plaintiffs is considered for determining diversity, which means that federal diversity jurisdiction will not exist if the named plaintiff is a citizen of the same state as the defendant, regardless of the citizenship of the rest of the class. See *Snyder* v. *Harris*, 394 U.S. 332 (1969). And, since the early days of the country, Congress has imposed a monetary threshold—now $75,000—for federal diversity claims. 28 U.S.C. 1332(a). However, the amount in controversy requirement is satisfied in a class action only if all of the class members are seeking damages in excess of the statutory minimum. See *Zahn* v. *International Paper Co.*, 414 U.S. 291 (1973).

These jurisdictional statutes were originally enacted years ago, well before the modern class action arose, and they lead to perverse results. For example, under current law a citizen of one state may bring in federal court a simple $75,001 slip-and-fall claim against a party from another state. But if a class of 25 million product owners living in all 50 states brings claims collectively worth $15 billion against the manufacturer, the lawsuit usually must be heard in state court. The current statutes also allow attorneys to game the system to keep class actions out of federal court. Attorneys often name irrelevant parties to their class actions in an effort to "destroy diversity"—that is, to keep the case from qualifying for federal diversity jurisdiction. Further, counsel make other statements about the case to keep the defendant from removing the case to federal court (*e.g.*, "plaintiffs seek only a very small amount of money in this case"). After one year, however, the attorneys recant those statements, since at that point, current statutes bar removal of the case to federal court.

The act

H.R. 1875 would amend the diversity jurisdiction and removal statutes applicable to class actions to allow federal jurisdiction where there is a substantial risk of discrimination against out of state defendants. It amends 28 U.S.C. 1332 to grant original jurisdiction in the federal courts to hear interstate class actions where any member of the proposed class is a citizen of a state different from any defendant. An interstate class action would not include:

(1) Intrastate cases—cases in which a "substantial majority" of the class members and defendants are citizens of the same state and the claims will be governed primarily by that state's law.

(2) Limited scope cases—cases involving fewer than 100 class members or where the aggregate amount in controversy is less than $1 million.

(3) State action cases—cases where the primary defendants are states or state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief.

If a case is filed in state court where the federal court has original jurisdiction under the amended section 1332, H.R. 1875 would allow its removal using the existing procedures contained in Chapter 89 of Title 28, with three new features:

(1) Unnamed class members (plaintiffs) may remove to federal court class actions in which their claims are being asserted within 30 days after formal notice. Under current rules only the defendants are allowed to remove. *See* 28 U.S.C. 1446.

(2) Removal of class actions to federal court would be available to (a) any defendant without the consent of all defendants or (b) any plaintiff class member without the consent of all members. Current removal rules—which apply only to defendants—require the consent of all defendants.

(3) Section 1446 of Title 28 requires that a notice of removal be filed within 30 days of the receipt by the defendant of a copy of the pleading which gives notice of grounds for removal. However, that section bars the removal of cases to federal court after one year, even if the basis for removal does not occur until after that time. H.R. 1875 would eliminate the bar to removal of class actions after one year, and would apply the same removal notice rules to plaintiffs.

Under H.R. 1875, if a removed class action is found not to meet the requirements for proceeding on a class basis, the federal court would dismiss the action without prejudice. Plaintiffs would then be permitted to refile their claims in state court, presumably in a form amended either to fall within one of the types of cases not considered interstate class actions, or to be maintainable as a class action under federal Rule 23. The statute of limitations on individual class members' claims in such a dismissed class action would not run during the period the action was pending in federal court.

Legislative History.—H.R. 1875 was introduced by Congressmen Bob Goodlatte, Rick Boucher, and 30 co-sponsors on May 19, 1999. The full committee held a hearing on the bill on July 21, 1999; the Subcommittee on Courts and Intellectual Property had held a hearing on a similar bill introduced in the 105th Congress—H.R. 3789—on June 18, 1998. Following two days of markup on July 27 and August 3, 1999, the full committee ordered the bill reported to the House, as amended, by a vote of 15 ayes to 12 nays. House Report 106–320, filed September 14, 1999. By a vote of 222 ayes to 207 nays, the House of Representatives passed H.R. 1875 on September 23, 1999. Companion legislation—S. 353—was reported from the Senate Committee on the Judiciary on September 26, 2000 (Senate Report 106–420), but it was not considered by the Senate.

The Workplace Goods Job Growth and Competitiveness Act of 1999—H.R. 2005

Summary.—H.R. 2005, introduced by Congressman Steve Chabot, is premised on the notion that a product which is used safely for a substantial period of time is not likely to be defective at the time of manufacture, sale, or delivery. Thus any injury it causes after some reasonably long period of time is likely to have been due to either misuse or improper maintenance by someone other than the manufacturer. However, the passage of time increases a manufacturer's difficulty in disproving the existence of a defect at the time of manufacture. Although manufacturers often win cases based on injuries from old products, the litigation costs of defending these cases—where witnesses have died or disappeared, memories have faded, and evidence has been lost—may be enormous and can divert resources from job creation, research and development.

H.R. 2005 addressed this problem by creating a uniform federal statute of repose for cases involving injuries caused by durable goods. This statute of repose would bar a cause of action against the manufacturer of such a product after 18 years from the date the product was placed in the stream of commerce, regardless of when the injury occurred.

President Clinton recognized the value of a statute of repose when he signed the General Aviation Revitalization Act of 1994 (GARA), which provides an 18-year statute of repose for small general aviation aircraft. As a result of GARA, domestic aircraft manufacturers, which previously were failing and losing market share to foreign competitors, have been revitalized. Since the enactment of GARA, over 25,000 jobs have been created in the general aviation industry, and the piston-driven planes now rolling off the production line are the safest ever. Investment in research and development by general aviation companies has grown by more than 150 percent, leading to a host of new general aviation products.

As least 20 states have enacted products liability statutes of repose, ranging from 6 years to 15 years. Statutes of repose (or the equivalent) exist in the following states: Arkansas ("anticipated life" of product); Colorado (7 years for new equipment, presumption that product is not defective after 10 years); Connecticut (10 years if covered by worker compensation, otherwise after "useful safe life of the product"); Florida (12 years); Georgia (10 years); Idaho ("useful safe life" of product); Illinois (12 years from date of first sale, or 10 years from date of sale to first user, whichever is shorter); Indiana (10 years); Iowa (15 years); Kansas ("useful safe life" of product); Kentucky (presumption that product not defective if harm occurred more than 5 years after sale of product to first consumer or more than 8 years after date of manufacture); Michigan (if product in use for 10 years, plaintiff must prove prima facie case without benefit of any presumption); Minnesota ("useful life" of product); Nebraska (10 years); North Carolina (6 years); North Dakota (10 years from date of first sale, or 11 years from date of manufacture); Oregon (8 years); Tennessee (10 years); Texas (15 years for non-agricultural manufacturing equipment); Washington ("useful safe life" of product). However, for the many manufacturers whose products are found in virtually every state, protection through existing state statutes of repose is uneven. Furthermore, the European Community, Japan, and Australia each has a 10-year statute of repose for all products. The absence of a nationwide uniform standard in the United States has placed American manufacturers at a significant disadvantage relative to their foreign manufacturers.

H.R. 2005 is very narrow in scope. It covers only cases involving a "durable good," which is defined as one which either has a normal life expectancy of 3 or more years or is subject to depreciation under the IRS code, and is either used in a trade or business, held for the production of income, or sold or donated to an entity for the production of goods, etc. Where the injury involves death or personal injury, the reach of the statute of repose would be limited to cases where the claimant has received or is eligible to receive workers compensation. Furthermore, in a claim for death or personal injury, the statute of repose would not apply if the injury involves a toxic harm.

H.R. 2005 would not apply to motor vehicles, vessels, aircraft or trains that are used primarily to transport passengers for hire. Neither would it affect the limitations period established under GARA (which is 18 years). It would supercede any existing state statute of repose governing durable goods, thereby increasing the period of time within which an injured party could sue in the 20 states where shorter statutes of repose currently exist.

Procedural History.—H.R. 2005 was introduced by Congressman Steve Chabot on June 7, 1999. The full committee held a hearing on July 21, 1999, and on September 22, 1999, ordered the bill favorably reported, as amended, by a vote of 16 ayes to 14 nays. House Report 106–410, Part 1 was filed on October 21, 1999. On February 2, 2000, H.R. 2005 was passed by the House of Representatives by a vote of 222 ayes to 194 nays. The bill was not considered by the Senate.

The Small Business Liability Reform Act of 1999—H.R. 2366, and the Rental Fairness Act of 1999, H.R. 1954

Summary.—H.R. 2366, the Small Business Liability Reform Act of 1999, contained four discrete reforms to address problems that the Committee had found to exist in the current civil justice system. The first two—limitations on punitive damage awards and the imposition of a fair share limitation on non-economic damages—would apply only to small business defendants. The third would eliminate the liability of products sellers in products liability cases where they were not the manufacturer and where the manufacturer is subject to suit. Finally, the bill would eliminate the doctrine of vicarious liability, which currently allows persons in the business of renting or leasing a product to be liable for the conduct of others simply because they own the product that is involved in causing injury. A similar version of this final provision was also contained in H.R. 1954, the Rental Fairness Act of 1999.

Small businesses with twenty-five or fewer full-time workers employ nearly 60% of the American workforce, yet over 60% of these small business owners make an annual salary of less than $50,000. One lawsuit—frivolous or not—could put a small business out of business. There is evidence that particularly the smallest of the nation's small businesses operate in fear that they will be named defendant in a lawsuit, be found minimally responsible for the claimant's harm, and be financially crushed under the weight of all the damages as a result of the application of joint liability. In many cases, small businesses settle out of court for significant award amounts, even if the claim is unwarranted, because of the fear of exposure to unlimited punitive damages. According to a Gallup survey, one out of five of every small businesses decides not to hire more employees, expand its business, introduce a new product, or improve an existing product out of fear of litigation.

Title I of H.R. 2366 was designed to mitigate the negative and disproportionate impact that certain current liability rules have on small businesses—defined as those which employ 25 persons or less. However, the protections of the title would not apply to cases involving the misconduct of a defendant which constitutes a crime of violence, an act of international terrorism, or a hate crime; which involves a sexual offence or a violation of a civil rights law; which results in damages described in the Oil Pollution Act or CERCLA (Superfund); or where the defendant was under the influence of drugs or alcohol at the time of the injury.

Punitive damages, or exemplary damages, are intended to be quasi-criminal in nature. They are not designed to compensate victims, but are awarded in civil suits to punish for intentional harm to others or for acting in wanton disregard with respect to the safety of others. In addition to punishing wrongdoers, they are intended to deter such anti-social conduct in the future.

Title I imposed two distinct requirements on the imposition of punitive damages awards against a small business. First, it required a plaintiff to establish "by clear and convincing evidence that conduct carried out by that defendant through willful misconduct or with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.” Second, it limited the award of punitive damages against a small business defendant to three times the total amount awarded for economic and noneconomic losses, or $250,000, whichever is lesser.

Title I also prohibited the imposition of joint and several liability on a small business defendant. Under the traditional rule of joint and several liability, where more than one defendant is found liable in a case, each defendant found liable may be held responsible for paying 100% of the damages awarded. While the plaintiff cannot recover more than once, it can choose the defendant from whom to seek recovery. A defendant who pays more than its proportionate share of the damages can in turn seek contribution from other defendants or can sue another defendant for indemnification of its costs. Thus, in an automobile accident case where the other driver and the auto manufacturer are co-defendants, if a jury finds the other driver 75% responsible for the accident and the manufacturer 25% responsible, the plaintiff may recover 100% of its damages from the manufacturer (which may be considered a “deep pocket”). In turn, the manufacturer is left to seek contribution from the other driver (or its insurance company) for 75%.

By enabling a plaintiff to recover immediately all its damages from the “deep pocket” defendant, joint and several liability makes it more likely that the plaintiff will obtain full recovery in the event that one defendant does not have the assets to pay part of the judgment. The result, however, may be that a defendant who is minimally responsible for an injury, perhaps only 1% responsible, may be held liable for virtually all compensation damages—both economic and non-economic. Also, very often those more responsible for the harm are not even parties to the action. They may have settled with the plaintiff out of court, they may be beyond the jurisdiction of the Court, or they may simply be lacking in sufficient assets to pay the award (i.e. bankrupt).

The Small Business Liability Reform Act would have eliminated joint and several liability of small business defendants for non-economic damages (pain and suffering), but would have retained it for economic damages (such as medical expenses). This would partially relieve the situation where a small business defendant is held liable for damages far in excess of its actual responsibility. Consequently, any small business defendant found liable would be liable for pain and suffering only in proportion to its percentage of responsibility for the plaintiff’s injury and no more. Under this rule, the liability of defendants who do not fall within the definition of a small business would continue to be governed with the existing state liability rule.

Title II of H.R. 2366 was aimed at restoring legal fairness to product sellers and reducing costs to consumers. In a majority of the states, product sellers are liable for harms caused by a product as if they were the manufacturer. Ultimately, product sellers are held liable in less than five percent of product liability actions; nevertheless, they are drawn into the overwhelming majority of product liability cases. This is because thirty-one states treat product sellers as if they manufactured the product—they are made liable for a manufacturer's mistakes. The seller, however, rarely pays the judgment because it is able to show in over ninety-five percent of the cases where any liability is present that the manufacturer is the partly who actually caused, and is responsible for, the harm. Based on this showing, the seller gets contribution of indemnity from the manufacturer, and the manufacturer ultimately pays the damages.

The current state of the law generates substantial, unnecessary legal costs. Many product sellers are small wholesalers and retailers. The provision contained in Title II of H.R. 2366 would have prevented wasted time and effort for these small businesses and also, wasted expenses on attorneys. These costs are currently passed on to the consumer in the form of unnecessary higher prices for products and services. Thus, the provision would also help consumers by cutting the hidden "litigation tax." It would be much more efficient for the claimant to sue the manufacturer directly and to sue the product seller only if it has done something wrong.

The Small Business Liability Reform Act of 1999 would have remedied this situation. Under the bill, product sellers would no longer be subject to strict liability; they would be liable only for their own negligence or fault, breach of their own warranty, or intentional wrongdoing. Thus, the legislation would have eliminated product sellers being needlessly brought into product liability lawsuits.

To protect consumers, the bill contained two key exceptions to the general rule: (1) where a manufacturer cannot be brought into court in the state; or, (2) if a manufacturer lacks the funds to pay a judgment. In those circumstances, the product seller would have to bear responsibility for the manufacturer's conduct. There is a sound social policy behind this provision—it will encourage product sellers to deal with responsible (often domestic) manufacturers who do business in the state and have assets.

Companies that rent or lease products, such as car and truck rental firms, are currently subject in ten states and the District of Columbia to liability for the tortious acts of their renters and lessees, even though the rental company is not negligent and there is no defect in the product. In these states, by imposition of this theory of vicarious liability, the rental company is held liable for the injuries and damages caused by the negligence of its customers simply because it owns the product and has given permission for its use by the customer.

Title II of H.R. 2366 provided that a person engaged in the business of renting or leasing a product may not be liable to a claimant for the tortious act of another, solely because that person owns the product that caused the injury. The bill would have eliminated the theory of vicarious liability under those circumstances.

Legislative History.—H.R. 2366 was introduced by Congressman Jim Rogan on June 25, 1999. The full committee held a hearing on the bill on September 29, 1999. It was considered by the full committee on October 19, 1999, November 2, 1999, and February 1, 2000, and was ordered reported, as amended, by voice vote. House Report 106–494, Part 1, filed February 7, 2000. On February 16, 2000, the H.R. 2366 passed the House of Representatives with additional amendments, by a vote of 221 ayes and 193 nays. The bill was not considered by the Senate. H.R. 1954, a bill containing matters also included in H.R. 2366, was discharged from further consideration by the Committee on the Judiciary on September 15, 2000 but was not considered by the House.

MATTERS HELD AT FULL COMMITTEE

Bipartisan Campaign Finance Reform Act of 1999—H.R. 417

Summary.—On January 19, 1999, Representatives Christopher Shays and Martin Meehan introduced H.R. 417, the "Bipartisan Campaign Finance Reform Act of 1999." Among other things, H.R. 417 would rewrite campaign finance laws to increase individual "hard money" contributions, regulates independent expenditures by express advocacy groups, bans political party soft money, regulates the expenditures of non-party soft money, regulates issue advocacy, and enhances the power of the Federal Election Commission.

Legislative History.—On January 19, 1999, Representatives Christopher Shays and Martin Meehan introduced H.R. 417, the "Bipartisan Campaign Finance Reform Act of 1999," and was referred to the Committee. On August 5, 1999, the Committee discharged the bill without taking any action. The bill passed the House on September 14, 1999, by a vote of 252–177.

H.R. 808 and H.R. 2922, bills extending the period of time for which chapter 12 of title 11 of the United States Code is reenacted

During the 106th Congress, there were various bills introduced to extend chapter 12, a specialized form of bankruptcy relief available to a "family farmer with regular annual income" as defined in the Bankruptcy Code. H.R. 808 was introduced on February 23, 1999 by Representative Nick Smith (R–MI) (for himself, Subcommittee on Commercial and Administrative Law Chairman George W. Gekas (R–PA), and Representatives David Minge (D–MN), Ronnie Shows (D–MS), Bill Barrett (R–NE), James Leach (R–IA), J.C. Watts, Jr. (R–OK), Sherwood Boehlert (R–NY), and John McHugh (R–NY)) to extend chapter 12 for three additional months.

Chapter 12 permits eligible family farmers, under the supervision of a bankruptcy trustee, to reorganize their debts pursuant to a repayment plan. The special attributes of chapter 12 make it better suited to meet the particularized needs of family farmers in financial distress than other forms of bankruptcy relief, such as chapter 11 and chapter 13.

This form of bankruptcy relief was enacted on a temporary seven-year basis as part of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 in response to the farm financial crisis of the 1980's. Chapter 12 was subsequently extended on August 6, 1993 to September 30, 1998. During the 105th Congress, it was further extended until April 1, 1999 as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

In light of the imminent April 1, 1999 sunset date for chapter 12, H.R. 808 was held at the full Committee for markup. On March 2, 1999, the Committee met in open session and ordered favorably reported the bill with amendment by a voice vote (H. Rpt. 106–45, filed March 9, 1999). As amended, the bill extended chapter 12 to October 1, 1999. On March 11, 1999, the House passed H.R. 808 under suspension of the rules by a vote of 418 to 1. On March 24, 1999, the Senate passed H.R. 808 without amendment by unanimous consent. The bill was subsequently signed into law on March 30, 1999 (Public Law 106–5).

H.R. 2922, a bill to further extend chapter 12 was introduced on September 23, 1999 by George W. Gekas, Chairman of the Subcommittee on Commercial and Administrative Law (for himself and Representative Nick Smith (R–MI)). The bill would have extended chapter 12 for six additional months until April 1, 2000. There was no further action on this bill as it was superseded by H.R. 2942, a subsequently introduced bill. For the status of H.R. 2942 and other bills extending chapter 12, consult the section in this report pertaining to the activities of the Subcommittee on Commercial and Administrative Law.

H.R. 1658, the Civil Asset Forfeiture Reform Act of 2000

Background

I. Federal Civil Asset Forfeiture Statutes

Civil asset forfeiture is based on a legal fiction from medieval times that an inanimate object could itself be "guilty" of wrongdoing and forfeitable by the king, regardless of whether the object's owner was blameworthy in any way. Today, there are scores of federal forfeiture statutes. 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].

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. * * *"

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. * * *

Before the enactment of H.R. 1658, the government was required to make an initial showing of probable cause that property was subject to forfeiture if a property owner went to federal court to challenge the seizure of property under a federal civil forfeiture law. The property owner then had to establish by a preponderance of the evidence that the property was not subject to forfeiture. The government could meet its burden without having obtained a criminal conviction or even having charged the owner with a crime since it is the property itself that has done the misdeed. Since the government didn't need the proof beyond a reasonable doubt required for a criminal conviction, even the acquittal of the owner did not bar forfeiture of the property allegedly used in a crime. This contracts with criminal forfeiture, which can only follow upon the property owner's conviction of the underlying offense.

II. The Success—and Abuse—of Forfeiture

The monies realized from federal forfeitures 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. Federal forfeiture has proven to be a great monetary success. 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 $449 million in 1998.

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 the Judiciary Committee:

> 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. * * *
>
> Forfeiture is * * * 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, extor-

> tion, 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 carjacking 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.

These goals are all laudable and civil asset forfeiture has indeed become a valuable weapon in the war on crime and illicit drugs. However, a number of years ago, concerns began to be raised about abuses of civil forfeiture laws. Newspaper and television exposés appeared alleging that apparently innocent property owners unfortunate enough to match drug courier "profiles" through such acts as carrying large amounts of cash or by purchasing airline tickets with cash were having their property taken by federal and local law enforcement officers with nothing that could be called due process.

Federal courts began to echo these concerns. 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 (2nd Cir. 1992). The Seventh Circuit issued a decision containing a stinging rebuke of the federal government's use of civil forfeiture. In *United States* v. *$506,231 in U.S. Currency*, 125 F.3d 442, 454 (7th Cir. 1997), the court found the need to remind a U.S. Attorney that "the government may not seize money, even half a million dollars, based on its bare assumption that most people do not have huge sums of money lying about, and if they do, they must be involved in narcotics trafficking or some other sinister activity." The court also found the need to say that "[w]e are certainly not the first court 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.'" And Supreme Court Justice Clarence Thomas has stated that, "[i]mproperly used, forfeiture could become more like a roulette wheel employed to raise revenue from innocent but hapless owners whose property is unforeseeably misused, or a tool wielded to punish those who associate with criminals, than a component of a system of justice." *Bennis* v. *Michigan*, 516 U.S. 442, 456 (1996) (Thomas, J., concurring).

Civil forfeiture statutes must contain safeguards against abuse and give property owners innocent of any wrongdoing the means to recover their property and make themselves whole after wrongful government seizures. These are the goals that H.R. 1658 was designed to meet.

The act

H.R. 1658 amends the rules governing all civil forfeitures under federal law except those contained in the Tariff Act of 1930, the Internal Revenue Code of 1986, and a number of other statutes. It contains eight principal reforms:

- *Burden of Proof.*—Before enactment of H.R. 1658, when a property owner went to federal court to challenge a seizure of property, all the government needed to do was to make an initial showing of probable cause that the property is subject to civil forfeiture. The property owner then had to establish that the property was "innocent", or not subject to forfeiture. The probable cause the government needed to show is the lowest standard of proof in the criminal law. It is the same standard required to obtain a search warrant and can be established by evidence with a low indicia of reliability such as hearsay.

One federal judge stated that:

> [T]he current allocation of burdens and standards of proof requires that the [owner] prove a negative, that the property was not used in order to facilitate illegal activity, while the government must prove almost nothing. This creates a great risk of erroneous, irreversible deprivation. * * * The government, under the current approach, need not produce any admissible evidence and may deprive citizens of property based on the rankest of hearsay and the flimsiest evidence. This result clearly does not reflect the value of private property in our society, and makes the risk of an erroneous deprivation intolerable.

United States v. *$12,390, 956* F.2d 801, 811 (8th Cir. 1992) (Beam, J., dissenting).

The Act would require the government to prove by the customary civil suit standard—preponderance of the evidence—that property is subject to forfeiture.

- *Facilitating Property.*—The Act provides that if the government's theory of forfeiture is that property was used to commit or facilitate the commission of a crime or was involved in the commission of a crime (which often occurs with homes, bank accounts and conveyances such as cars and airplanes), the government must show that there was a substantial connection between the property and the crime. It is intended that this test require that facilitating property have a connection to the underlying crime significantly greater than just "incidental or fortuitous." In one area in particular, courts have been much to liberal in finding facilitation. An especially high standard should have to be met before a person or family is dispossed of their home. A primary residence should be accorded far greater protection than mere personal property.
- *Release of Property Pending Final Disposition of a Case.*—Even should a property owner prevail in a civil forfeiture proceeding, irreparable damage may have been done to the owner's interests. For instance, if property is used as a business, its lack of availability for the time necessary to win a victory in court could have forced its owner into bankruptcy. If the property is a car, the owner might not have been able to commute to work until it was won back. If

the property is a house, the owner may have been left temporarily homeless.

The Act provides that property can be released by a federal court pending final disposition of a case if continued possession by the government would cause the property owner substantial hardship (such as preventing the functioning of a business or leaving an individual homeless) and the likely hardship outweighs the risk that the property will be destroyed, damaged, lost, concealed or transferred if returned to the owner. The court may place conditions on the release of the property necessary to ensure its availability for forfeiture should the government eventually prevail.

• *Attorney's Fees for Prevailing Property Owners and the Appointment of Counsel.*—Before enactment of H.R. 1658, property owners who successfully challenge the seizure of their property almost never were awarded attorney's fees. In addition, indigents had no Sixth Amendment right to appointed counsel in civil forfeiture cases since imprisonment was not threatened. The Act provides that property owners who substantially prevail in civil forfeiture proceedings will receive reasonable attorney's fees. In addition, it allows a court to provide counsel for indigents who are represented by appointed counsel in related criminal cases.

• *Elimination of Cost Bond.*—Before enactment of H.R. 1658, a property owner wanting to contest a civil forfeiture in federal court had to provide a bond of the lesser of $5,000 or 10% of the value of the property seized (but not less than $250). The bond was unconstitutional in cases involving indigents, because it would deprive such claimants of hearings simply because of their inability to pay. However, even in cases not involving indigents, the bond should not be required as it serves as a deterrent to the challenge of meritless forfeitures. The Act would eliminate this requirement. The Act does provide that it a court finds that a claimant's assertion of an interest in property was frivolous, the court may impose a civil fine.

• *Innocent Owner Defense.*—A meaningful innocent owner defense is required by fundamental fairness. The act sets out a uniform innocent owner defense for all federal civil forfeitures. For an owner to be "innocent", the owner must either (1) not have known of the illegal conduct giving rise to the forfeiture of his or her property, or (2) upon learning of the conduct giving rise to the forfeiture, must have done what reasonably could be expected under the circumstances to terminate the illegal use by others.

To do what can reasonably be expected, the owner is not required to take steps that the owner reasonably believes would be likely to subject him or her to physical danger. An owner can show that he or she has done what can be reasonably expected if he or she (1) has given timely notice to the police and (2) has in a timely fashion revoked or made a good faith attempt to revoke permission to use the property from those engaging in the illegal conduct, or has taken reasonable action in consultation with a law enforcement agent to discourage the illegal use. Thus, a safer harbor is created for an owner who notifies police and revokes or attempts to revoke (to the extent permitted by law) permission to use the property by those who are using it in the course of criminal activity. The owner's obligations end there—property owners should not have to assume the role of police officers in stopping crime.

• *Remedy for Property Damaged While in Government Custody.*—The federal government is exempted from liability under the Federal Tort Claims Act for damage to property caused during its handling or storage by federal law enforcement officers. Property can be damaged by searches, lack of care, inadequate storage, and other factors. The Act would allow property owners to sue the government for compensation for damage unless forfeiture is successful.

• *Uniform Definition of Proceeds.*—The Act provides that in cases involving illegal goods or services, unlawful activities and telemarketing and health care fraud schemes, forfeitable proceeds are property obtained directly or indirectly as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense. In cases involving lawful goods or services that are sold or provided in an illegal manner, forfeitable proceeds are money acquired through the illegal transactions less the direct costs incurred in providing the goods or services.

The Act also contains measures designed to enhance the effectiveness of civil and criminal forfeiture statutes, including:

• *Availability of Criminal Forfeiture and Proceeds Forfeiture*.—The Act provides that wherever federal law allows for civil forfeiture of property involved in a specific crime, criminal forfeiture will also be available. It also provides that the proceeds of specified money laundering predicate offenses will be subject to civil forfeiture.

• *Statute of Limitations*.—Under current law, the federal government must bring a civil forfeiture action within five years after the date of the alleged crime involving the property. The Act provides that the statute of limitations is the later of this date or two years after the time when the involvement of the property in the alleged crime is discovered.

• *Fugitive Disentitlement*.—The Act provides that a court may in a civil forfeiture action dismiss a claim brought by a property owner if the property owner is a fugitive from the United States.

• *Enforcement of Foreign Forfeiture Judgments*.—The Act sets up a procedure whereby federal courts can enforce forfeiture judgments of foreign nations in conformity with international agreements.

• *Access to Records in Bank Secrecy Jurisdictions*.—The Act provides that if a property owner who has filed a claim in a civil forfeiture case refuses to provide the government with access to potentially material financial records in a foreign country, the court can impose sanctions, up to and including dismissal of the owner's claim.

• *Civil Restraining Orders*.—The Act provides that a federal court can issue a civil restraining order, require a performance bond, appoint a conservator, or take other actions to preserve the availability of property for forfeiture where there is a substantial probability the government will prevail in the forfeiture and failure to enter the order will result in the property being destroyed or otherwise made unavailable for forfeiture.

Procedural history

On May 4, 1999, Judiciary Committee Chairman Henry Hyde introduced H.R. 1658. The bill as introduced was composed of reforms of federal civil asset forfeiture law. Its reforms differed from those in the bill as enacted in a number of ways. The bill as introduced required the federal government to prove by clear and convincing evidence that property was subject to forfeiture. It did not award attorney's fees to prevailing property owners but did allow a judge to appoint counsel for indigents. It did not address the standard for forfeiture of facilitating property or the definition of forfeitable proceeds.

On June 15, 1999, the Judiciary Committee ordered H.R. 1658 reported by a vote of 27–3. On June 18, 1999, the Judiciary Committee reported H.R. 1658 to the House (H. Rept. 106–192). On June 24, 1999, the House passed the House Rules Committee resolution (H. Res. 216) by a voice vote. On June 24, 1999, the House passed H.R. 1658 as amended by a vote of 375–48. A substitute offered by Representative Asa Hutchinson was defeated by a vote of 155–268. On March 23, 2000, the Senate Judiciary Committee ordered H.R. 1658 favorably reported with an amendment in the nature of a substitute. On March 27, 2000, the Senate passed H.R. 1658 by unanimous consent. On April 11, 2000, the House passed H.R. 1658 as amended by the Senate under suspension of the rules by a voice vote. On April 25, 2000, the President signed H.R. 1658 into law (Public Law 106–185).

H.R. 1659—National Police Training Commission Act of 1999

On May 12, 1999, the Full Committee held a hearing on H.R. 1659, the "National Police Training Commission Act of 1999." The focus of the hearing was the establishment of a federal commission that would study and produce a report on police training, recruitment and hiring and oversight issues and to authorize funding for four metropolitan police departments—District of Columbia, City of New York, and cities of Chicago and Los Angeles—to engage in training relating to the use of force which will be the subject of the study.

Significant controversy has surrounded the use of force by law enforcement at the local, state and national levels. "Use of force" issues can arise during a variety of police/community contacts: use of weapons (guns, night sticks and other objects); use of physical force to restrain; use of non-lethal force (i.e. pepper spray and like technologies); verbal communication; tactical and defensive tactical strategies; arrests, searches and handcuffing; and vehicle use. All of these tactics are integral and necessary to an effective policing strategy and to ensuring the protection of the police and the community. In implementing these strategies ineffectively or inappropriately, both police and members of the public have needlessly lost their lives. Further, members of various police departments across the country have been indicted and convicted on manslaughter and murder charges after using their weapons. In some cases, it appears that the police officers' ongoing training with their weapons is inadequate. In some major police departments, weapons training is less over a full career than one year of weapons training received by agents with the Federal Bureau of Investigation.

Police/community relations are central to the public safety, impacting on the cooperation of the community members with the police and in turn the success rate the police may have in curbing and preventing crime. These relations include having police officers of varying races and ethnic diversity who are knowledgeable about and sensitized to members of diverse communities. Without effective police/community relations, the policing function and the safety of our communities are at risk. One retired police officer, who himself had experienced verbal assault charges while on the job, started a program called "Verbal Judo" in which he instructs police officers in effective verbal communication and, particularly, in confrontational situations. Also, African American police officers in New York have taken it upon themselves to go out into the community to acquaint community members and youth with the requirements of policing and effective means of interacting with the police so as to avoid unnecessary confrontations. In addition, the U.S. Civil Rights Commission has recommended that police officers undergo mediation training to more effectively resolve conflicts they encounter. Accordingly, police/community relations have a direct impact on use of force issues.

In New York, immigrant Amadou Diallo was the target of 41 bullets shot by four police officers in New York City. This incident refocused the nation's attention on the use of force by law enforcement. While some members of the New York community claim that it was a racial incident—four white police officers fired at a black immigrant, others have concluded that race is not at the heart of the incident but, rather, the training of the particular police officers. The particulars of the incident raised a number of questions in the minds of many Americans: How is it that four officers shot at one unarmed man? Why is it that 41 bullets were discharged? What factors contributed to the public reaction to the incident and the ensuing outcry?

Although individual incidents of excessive use of force can be addressed through the criminal and civil court systems, this avenue of redress does not provide overarching, long term solutions. In addition, the court system has a significant delay in addressing these matters and does not produce solutions designed to remedy the root causes of the excessive or inappropriate use of force. Focusing on the training, hiring, recruitment, oversight and discipline of officers, however, can address the underlying causes.

H.R. 1659, the Police Training Commission Act of 1999, is designed to be one of the solutions to the occurrences of excessive and inappropriate uses of force, to recruiting and hiring issues that may be related thereto, and to oversight and discipline of officers who engage in inappropriate or excessive use of force. The bill has two components. The first component consists of a grant of seed money to some of the nation's largest and more diverse police departments for the purposes of training, hiring and recruiting, and oversight. The second component provides a congressional oversight mechanism; that is, a Commission to study these departments' use of the grant monies and the effectiveness of the training programs and policing strategies, the hiring and recruiting practices and policies, and oversight policies and practices. The bill calls for the Commission to then report its findings to Congress and to make recommendations concerning the continued involvement of the federal government in these areas—both in terms of oversight as well as funding.

The selection of the police departments was not based on determinations that they had particular excessive use of force issues. Rather, in recognition that all police departments around the country have and are experiencing use of force issues, the bill identifies four of the larger more diverse police departments to receive grant monies—the District of Columbia, city of New York and the cities of Chicago and Los Angeles. Most of these departments have embraced the bill, have been and will continue to be engaged in improved initial and ongoing training for police officers, and have agreed to make their training and policing programs and hiring, recruiting and oversight policies and practices available to the Commission for study.

It is expected that because these larger departments experience a wide range of contacts between police and citizens, their activities will provide better insight into a wider range of effective training programs in the use of force areas identified in the bill. In turn, this diversity will offer greater assistance to Congress and police departments for future consideration of effective training programs and policing strategies, hiring, recruiting, and oversight policies and practices.

The Commission is to be a bipartisan Commission comprised of knowledgeable professionals with policing, sociological, organizational and other relevant law enforcement experience. Four Commission members will be selected by the Speaker of the House, the House Minority Leader, the Senate Majority Leader and the Senate Minority Leader. Those four members will then select the fifth member and together they will determine the Chairman of the Commission. The Commission will have the ability to call upon appropriate experts and knowledgeable persons and resources both inside and outside of government in performing its oversight study. At the conclusion of the Commission, a report will be forwarded to Congress detailing the findings of the study and its recommendations as to further Congressional involvement and funding of these programs.

Legislative History.—The Full Committee held a hearing on H.R. 1659 on May 12, 1999. The witnesses were: Congressman Jose Serrano (New York), Congressman Gregory W. Meeks (New York), Congressman James T. Walsh (New York), Deputy Chief Julius Davis, Human Resources, Los Angeles Police Department, Chief Edward A. Flynn, Police Executive Research Forum, Chairman of the Legislative Committee and Chief of Arlington County Police Department, Assistant Chief Terrance W. Gainer, District of Columbia Metropolitan Police Department, Clarence N. Wood, President, Human Relations Foundation, Chicago, Illinois, Martin L. Pfeifer, Trustee, National Fraternal Order of Police, Chairman, Fraternal Order of Police Memorial Committee, Sergeant District of Columbia Metropolitan Police Department Callie L. Baird, Administrator In Charge, Office of Professional Standards, Chicago Police Dept. Charles B. Roberts, Assistant Deputy Superintendent, Training Division, Chicago Police Department. The Committee amended the bill and ordered it favorably reported to the House on May 19, 1999. H. Rept. 106–190 was filed on June 18, 1999.

Consumer and Investor Access to Information Act of 1999—H.R. 1858

On May 19, 1999, Representative Bliley introduced H.R. 1858, the "Consumer and Investor Access to Information Act of 1999." The legislation was referred sequentially to the Committee on the Judiciary on September 30, 1999. Although the bill was held at the Full Committee for the purpose of floor consideration and was discharged without action, the Subcommittee on Courts and Intellectual Property held hearings on the issue of database protection. Those hearings and the legislative history of H.R. 354 are detailed in the Subcommittee section later in this report.

A bill to prohibit a state from imposing a discriminatory commuter tax on nonresidents—H.R. 2014

H.R. 2014 provides that states must tax residents and nonresidents in a substantially equal manner. It was intended to codify the standard enunciated by the Supreme Court in *Austin* v. *New Hampshire,* 420 U.S. 656 (1974). That standard is a "rule of substantial equality of treatment for the citizens of the taxing state and the non-resident taxpayers." The case law, and the bill, are based on the Privileges and Immunities Clause of the United States Constitution (article IV, section 2), which provides that "citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

The legislation was introduced on June 7, 1999 by Mr. Franks, after the state of New York passed a law exempting New York state residents from New York City's commuter tax. On June 23, 1999, the full committee ordered the bill reported by a vote of 17 ayes to 7 nays. House Report 106–203. At the time of committee consideration, there were several lawsuits pending which challenged the tax's constitutionality. Because that litigation resulted in an invalidation of the statute, no further action was taken on the bill.

A bill to exempt certain reports from automatic elimination—H.R. 3111 (S. 1769)

The committee ordered reported favorably the bill H.R. 3111, a bill to exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, as amended. The Federal Reports Elimination and Sunset Act of 1995 provided that all periodic reports provided to Congress will sunset on December 21, 1999, unless reauthorized by Congress. The intent of the act was to spur Congress to reexamine all the periodic reports it receives and eliminate the obsolete reports. After careful review, the Committee in conjunction with the Senate determined that about 56 reports, out of thousands of reports subject to sunset, are necessary for the committee to perform its legislative and oversight duties. Examples include the U.S. Department of Justice's annual report on crime statistics and the Immigration and Naturalization Service's annual statistical report. The text of the bill was included in S. 1769, relating to reporting requirements under section 2519 of title 18, United States Code. For further information about S. 1769, see the discussion in the Subcommittee on Crime's section of this report. S. 1769 became law on May 2, 2000, as Public Law 106–197.

The Student Athlete Protection Act—H.R. 3575

Summary.—H.R. 3575 would establish a gambling on Olympic, college, and high school athletic events, or gambling on any competition in which a college, or high school athlete is competing. This ban is a response to recommendation 3.7 of the National Gambling Impact Study Commission's (NGISC) Final Report, issued in June 1999. The NGISC was established on June 3, 1996 by Public Law 104–169. Recommendation 3.7 states "that the betting on collegiate and amateur athletic events be banned altogether." Under current law, the Professional and Amateur Sports Protection Act (PASPA), signed by President Bush in 1992, gambling on these events is only permitted in Nevada, H.R. 3575 would amend PASPA and close this loophole.

Legislative History.—H.R. 3575 was introduced on February 3rd, 2000 by Representatives Lindsey Graham (SC), Tim Roemer (IN), David McIntosh (IN), and James Greenwood (PA), was referred to the Committee on the Judiciary, and ultimately garnered 81 cosponsors. The full Judiciary Committee held one day of hearings on H.R. 3575 on June 13th, 2000. Testimony was received from 12 witnesses, representing colleges and universities, the National Collegiate Athletic Association, collegiate athletic coaches, the President and Chief Executive officer of the American Gaming Association, Chairman of the Nevada Gaming Commission, a board member of the Nevada Gaming Control Board, and members of Congress. Additional material was submitted by a Nevada Regent, Professional Sports Organizations, an expert doctor, and the committee is in receipt of the National Gaming Impact Study Commission's Final Report. On September 13th, 2000, the Committee met in open session and ordered H.R. 3575 favorably reported without amendment by a vote of 19 ayes, 9 nays, and 1 present. On September 27th, 2000, H.R. 3575 was reported to the Full House, House Report 106–903, and placed on the Union Calendar.

Partial-Birth Abortion Ban Act—H.R. 3660 and S. 1692

On February 15, 2000, Subcommittee Chairman Charles T. Canady introduced the "Partial-Birth Abortion Ban Act of 2000" (H.R. 3660), a bill that would ban the partial-birth abortion procedure. A partial-birth abortion is any abortion in which an intact living fetus is partially delivered until some portion of the fetus is outside the body of the mother before the fetus is killed and the delivery completed. An abortionist who violates the ban would be subject to fines or a maximum of two years imprisonment, or both. H.R. 3660 also establishes a civil cause of action for damages against an abortionist who violates the ban. The cause of action can be maintained by the father of the child or, if the mother is under 18, the maternal grandparents.

H.R. 3660 is similar to legislation first introduced during the 104th Congress to ban the partial-birth abortion procedure. That legislation passed the House by a vote of 286 to 129, and the Senate by a vote of 54 to 44. Following a veto by President Clinton on April 10, 1996, a two-thirds majority of the House voted to override the veto, but the vote in the Senate fell short of the two-thirds needed to override the veto.

Legislation banning the partial-birth abortion procedure was introduced again in the 105th Congress. The House passed the bill on March 20, 1997, by a vote of 295–136, and the Senate passed the bill on May 20, 1997, by a vote of 64 to 36. The President vetoed the legislation on October 10, 1997, however, and although the House readily overrode the veto, the Senate again fell just short of the necessary votes for an override. Prior to passage, the language of the legislation was modified slightly from the previous version in order to ensure that the bill would not chill the performance of conventional abortion procedures, thereby gaining the endorsement of the American Medical Association.

H.R. 3660 is quite similar to the bill that passed the House and Senate during the 105th Congress. The language of the bill has been modified slightly from the previous version in order to alleviate concerns raised in response to various court decisions striking down State partial-birth abortion bans on the grounds that the bans also reached conventional late-term abortion procedures. Specifically, the previous version of the bill defined a partial-birth abortion as "an abortion in which the person performing the abortion partially-vaginally delivers a living fetus before killing the fetus and completing delivery." Many of the State partial-birth abortion bans include similar language, and some courts have construed that language to also encompass the conventional late term abortion procedure known as "dilation and evacuation." During the dilation and evacuation procedure, the cervix is dilated and the fetus is dismembered and removed through the use of surgical instruments, and according to some abortionists, the dismemberment sometimes occurs after a part of the fetus has been pulled through the cervix.

H.R. 3600 is drafted to ensure that the dilation and evacuation procedure is not covered by the ban. Under H.R. 3660, "partial-birth abortion" is defined as "an abortion in which the person performing the abortion deliberately and intentionally—(A) vaginally delivers some portion of an intact living fetus until the fetus is partially outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the fetus while the fetus is partially outside the body of the mother; and (B) performs the overt act that kills the fetus while the intact living fetus is partially outside the body of the mother."

H.R. 3660 passed in the House on April 5, 2000, without amendment, by a vote of 287 to 141. Following passage of H.R. 3660, the House took up the Senate version of the ban (S. 1692), which had passed in the Senate on October 21, 1999 by a vote of 63 to 34. Because opponents of the partial-birth abortion ban in the Senate had succeeded in amending S. 1692 to include several amendments, the House struck the text of S. 1692, inserted the text of H.R. 3660, insisted on its amendment, and requested a conference with the Senate. No further action was taken on the measure.

H.R. 4205, a bill authorizing appropriations for fiscal year 2001 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

H.R. 4205, a bill authorizing appropriations for fiscal year 2001 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, was introduced by representative Floyd Spence (R–SC) on April 6, 2000. The bill, as amended, passed the House on May 18, 2000. Thereafter, the Senate substituted the text of S. 2549 for that of H.R. 4205 and passed the bill as amended.

Chairman Hyde, Representative Canady and Ranking Member Conyers of the Committee on the Judiciary were appointed to the conference on H.R. 4205 with respect to certain provisions within the Committee's jurisdiction. While the introduced version of this bill did not include any provisions relating to bankruptcy law, the Senate amendment added several provisions pertaining to the dischargeability of certain debts under the Bankruptcy Code. These provisions, however, were not among those for which the Judiciary Committee conferees were appointed.

The conference report on H.R. 4205 contained several sections dealing with the dischargeability in bankruptcy of certain obligations relating to service in the military. These included section 624 (enlistment bonuses), section 628 (special pay and accession bonuses for pharmacy officers), section 633 (special pay obligations relating to retention incentives for members in the armed services who qualified in a critical military skill), and section 922 (financial assistance for certain educational purposes). The Judiciary Committee conferees were also appointed for consideration of provisions relating to the organization and management of the Civil Air Patrol, employment and compensation provisions for employees of temporary organizations, payment of military retired pay to Federal judges, settlement of claims for payments for unused accrued leave and retired pay, additional benefits for illness and injury in performance of funeral honors duty, and Department of Energy workers' compensation. The Judiciary Committee conferees took no action with respect to these provisions as they generally comported with others presently codified in title 10 of the United States Code. After passage by both bodies, the conference report was signed into law on October 30, 2000 (Public Law 106–398).

H.R. 4845, The Federal Property Campaign Fundraising Reform Act of 2000

Summary.—Over the past several years, the House Committee on the Judiciary has been closely following the actions of the Department of Justice ("DOJ") relating to the campaign finance investigation and the decisions not to seek the appointment of an independent counsel in that or related matters. The Committee reviewed thousands of pages of documents relating to the Campaign Finance Task Force ("CFTC") investigation and independent counsel issues. Among the thousands of pages reviewed by the Committee are many that address issues about campaign fundraising on federal property. This review led to the inevitable conclusion that the statute prohibiting campaign fundraising of federal property needed to be amended.

Under current law, the Federal criminal code, 18 U.S.C. § 607, prohibits any person from soliciting or receiving campaign contributions within the meaning of the Federal Election Campaign Act (i.e. hard money—contributions intended to influence a federal election) in any room or building occupied in the discharge of official duties. According to the DOJ, the current ban does not apply to soft money (i.e. contributions that are not regulated by the Federal Election Campaign Act ("FECA")), contributions designed to influence races for state and local office, or contributions intended to influence ballot measures. Furthermore, the Department of Justice has publicly stated how difficult it would be to prosecute someone for soliciting campaign funds over a telephone from federal property to a person on private property. The "Federal Property Campaign Fundraising Reform Act of 2000" was introduced on July 13, 2000 by Mr. Hyde and 18 cosponsors, in order to address all of these issues. Specifically, this legislation:

- Prohibits the solicitation of hard and soft money in, to, or from federal property;
- Bans campaign solicitations made on federal property by any means (including the telephone); and
- Bans solicitations made on federal property for funds that are meant to influence state and local elections and ballot measures such as initiatives and referenda.

The intent of H.R. 4845 is to amend section 607 to embody what was previously thought to be proscribed under current law. The House Committee on Standards of Official Conduct described their understanding of the law as follows:

> The general rule on *solicitation,* briefly state, is that members and staff may not solicit political contributions in or from House offices, and this general prohibition applies no matter how the solicitation is made (in person, over the telephone, or through the mail), and no matter the nature of the contribution solicited (hard money, soft money, or contributions for a state or local campaign). *Memorandum For All Members, Officers and Employees from the House Committee on Standards of Official Conduct,* relating to Rules and Standards of Conduct Relating to Campaign Activity, 6, March 2, 2000 (emphasis in original).

Legislative History.—On July 20, 2000, the full Committee held a hearing on H.R. 4845 at which the following witness appeared: Mr. John C. Keeney, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice.

Innocent Child Protection Act of 2000—H.R. 4888

On July 19, 2000, Representative Ileana Ros-Lehtinen introduced the "Innocent Child Protection Act of 2000" (H.R. 4888), a bill that would make it unlawful for the federal government or any state government to execute a woman while she is pregnant. This legislation was designed to fulfil the United States' obligations under the International Covenant on Civil and Political Rights. Article 6(5) of the Covenant provides, in pertinent part, that a "[s]entence of death * * * shall not be carried out on pregnant women." The United States agreed to this prohibition, and promised to "take necessary steps * * * to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." On July 25, 2000, the Committee was discharged and on a motion to suspend the rules, H.R. 4888 passed the House by a vote of 417 to 0.

H. Con. Res. 124, sense of Congress relating to loyalty of Americans of Asian ancestry/S. Con. Res. 53, condemning all prejudice against individuals of Asian and Pacific Island ancestry in the United States

On May 27, 1999, Representative David Wu introduced H. Con. Res. 124, a resolution expressing the sense of the Congress relating to recent allegations of espionage and illegal campaign financing that may have brought into question the loyalty and probity of Americans of Asian ancestry. This resolution pronounced the sense of Congress to heighten awareness and focus attention on guarding against stereotyping and discriminating against Americans of Asian descent. The Full Committee ordered the resolution to be favorably reported by voice vote to the House on September 22, 1999. The Committee was discharged from further consideration of the bill on November 2, 1999. H. Con. Res. 124 passed the House on November 2, 1999.

On August 5, 1999, Senator Dianne Feinstein introduced S. Con. Res. 53, a resolution that expresses the sense of Congress that no Member of Congress or any other individual in the United States should stereotype or generalize the actions of an individual that an entire group of people; individuals of Asian and Pacific Island ancestry in the United States are entitled to all rights and privileges afforded to all individuals in the United States; and the Attorney General, the Secretary of Energy, and the Commissioner of the Equal Employment Opportunity Commission should, within their respective jurisdictions, investigate all allegations of discrimination in public or private workplaces and vigorously enforce the security of U.S. national laboratories, without discriminating against such individuals. The measure was referred to the Senate Committee on Judiciary. On July 20, 1999, the Senate Committee on the Judiciary ordered that the resolution be favorably reported with an amendment in the nature of a substitute and an amendment to the title and with an amended preamble. On July 27, 2000, the Senate passed the amended resolution by unanimous consent. On September 6, 2000, the resolution was received in the House and referred the House Judiciary committee. The measure was then held at Full Committee.

H. Con. Res. 180—expressing the sense of the Congress that the President should not have granted clemency to terrorists

Summary.—H. Con. Res. 180 expressed the sense of the Congress that the President should not have granted clemency to The Armed Forces of National Liberation (FALN) terrorists. On August 11, 1999, President Clinton granted clemency to 16 FALN terrorists, contrary to the recommendations of numerous law enforcement agencies and the families of the victims of the FALN's reign of terror.

The FALN is a militant terrorist organization that claimed responsibility for the bombings of approximately 130 civilian, political, and military sites throughout the United States and Puerto Rico in the 1970's and 1980's. During the FALN's violent attempts at seeking independence for Puerto Rico, six people died, and dozens of others were injured, including law enforcement officials. In addition, millions of dollars of property damage was caused by the FALN's violence.

Upon their capture, the 16 members of the FALN were tried for numerous crimes, including seditious conspiracy, robbery, weapons charges and other felonies. They were convicted and sentenced to prison for terms up to 90 years. None of the terrorists expressed remorse for their actions at their trial, sentencing or while in prison. Once these 16 were imprisoned, not a single act of terrorism occurred that was attributed to the FALN.

When it became apparent that the President was contemplating release of the terrorists, numerous law enforcement agencies advised against granting clemency. The FBI, Federal Bureau of Prisons, and two United States Attorneys all reportedly recommended against granting leniency to them. The Bureau of Prisons reportedly based its decision in part on the existence tape-recorded telephone calls made by the terrorist inmates that indicated that some of the 16 vowed to resume their violent activities upon release from prison. Families of the victims of the FALN's activities pleaded with the President to keep the terrorists in prison and not grant them clemency.

On August 11, 1999, President Clinton offered the 16 FALN members clemency and 14 of them were released back into the community.

Legislative History.—Because of the United States' long-standing counter-terrorism policy against conceding to terrorists and bringing them to justice for their crimes, H. Con. Res. 180 was introduced on September 8, 1999 by Mr. Fossella for himself, along with Mr. Dreier, Mr. Hyde, Mr. Bliley, Mr. Archer, Mr. Saxton, Mr. Gilman, Mr. Bonilla, Mr. Royce, Mr. Bartlett of Maryland, Mr. Hayworth, Mr. Smith of New Jersey, Mr. Ballenger, Mr. DeLay, Mr. Stump, Mr. Watts of Oklahoma, Mr. Pickering, Mr. Sessions, Mr. Traficant, Mrs. Kelly, Mr. Cox, Mr. Tancredo, Mr. Upton, Mr. Istook, Mr. Chambliss, Mr. Rogan, Mr. Packard,, Mrs. Roukema, Mr. Buyer, Mr. Hostettler, Mr. Vitter, Mr. Green of Wisconsin, Mr. Rohrabacher, Mr. Walden of Oregon, Mr. Sweeney, Mr. Knollenberg, Mr. Wicker, Mr. Franks of New Jersey, Mr. Weller, Mr. Ewing, Mr. Largent, Mr. Reynolds, Mr. Coburn, and Mr. Shadegg. It was referred to the Committee on the Judiciary and held at full committee on September 8, 1999. On September 8, 1999, the Committee on Rules reported and the House adopted H. Res. 281, the rule providing for a motion to suspend the rules and pass H. Con. Res. 180 (H. Rept. 106–309). On September 9, 1999, the Committee on the Judiciary was discharged from further consideration of H. Con. Res. 180 which was as agreed to by the House under suspension of the rules, by a vote of 311 yeas, 41 nays, and 72 "present".

On September 13, 1999, it was received in the Senate and referred to the Senate Committee on the Judiciary on September 29, 1999.

Appointment of Managers to conduct the Impeachment Trial of President William Jefferson Clinton—H. Res. 10

During the One Hundred and Fifth Congress, on December 19, 1998, President William Jefferson Clinton was impeached by the House of Representatives. On that same day, the House appointed, pursuant to H. Res. 614, 13 managers to conduct the impeachment trial in the Senate. On January 6, 1999, in continuance of the authority conferred in H. Res. 614 of the One Hundred Fifth Congress, the House of Representatives reappointed, pursuant to H. Res. 10, Mr. Hyde of Illinois, Mr. Sensenbrenner of Wisconsin, Mr. McCollum of Florida, Mr. Gekas of Pennsylvania, Mr. Canady of Florida, Mr. Buyer of Indiana, Mr. Bryant of Tennessee, Mr. Chabot of Ohio, Mr. Barr of Georgia, Mr. Hutchinson of Arkansas, Mr. Cannon of Utah, Mr. Rogan of California, and Mr. Graham of South Carolina managers to conduct the impeachment trial against William Jefferson Clinton, President of the United States.

Disavowing racism and bigotry—H. Res. 121

On March 17, 1999, Representative J.C. Watts introduced H. Res. 121, a resolution affirming Congress' opposition to all forms of racism and bigotry. H. Res. 121 was referred to the House Committee on the Judiciary and subsequently discharged on March 23, 1999 without Committee consideration. The resolution was considered by the full House under suspension of the rules on March 23, 1999 and it failed to attain the necessary two-thirds majority, 254–152 (218 Republicans and 36 Democrats voted yes; 1 Republican and 150 Democrats voted no), with 24 members voting present. H. Res. 121 declared that the House of Representatives: (1) insists that individuals' rights are nonnegotiable; (2) opposes those seeking to divide Americans on the grounds of race, religion, or ethnic origin; (3) denounces all who practice racism, anti-Semitism, ethnic prejudice, or religious intolerance; and (4) calls on all American of good will be reject hatred and bigotry.

Recognizing the service of police officers—H. Res. 165 and H. Res. 501

Representative Joel Hefley (R–CO) introduced H. Res. 165 to express the sense of the House of Representative that all peace officers slain in the line of duty should be honored and recognized and to urge the President to issue a proclamation calling on all citizen to honor and recognize such officers with appropriate ceremonies. On May 11, 1999, the Committee on the Judiciary was discharged from consideration of the resolution, and House agreed to the resolution by a recorded vote of 420 ayes to 0 nays.

Represenative Jim Ramstead (R–MN) introduced H. Res. 501 to honor and recognize slain peace officers and the sacrifices and risks taken daily to all police officers and to urge the President to issue a proclamation calling on all citizens to honor and recognize such officers with appropriate ceremonies. On May 15, 2000, the Committee on the Judiciary was discharged from consideration of the resolution the House agreed to the resolution by voice vote.

Recognizing the historical significance of the Supreme Court's unanimous decision in Brown v. Board of Education—H. Res. 176

On May 18 1999, Representative Thompson introduced H. Res. 176 a resolution recognizing the historical significance of the Supreme Court's unanimous decision in *Brown* v. *Board of Education,* repudiating segregation, and reaffirming the fundamental belief that we are all "one Nation under God, indivisible". The matter was referred to the House Committee on the Judiciary, which was discharged from further consideration that day. The resolution was then considered by unanimous consent and passed the House on May 18, 1999.

S. 900, the Financial Services Modernization Act of 1999

S. 900, the Financial Services Modernization Act of 1999, was introduced by Senator Phil Gramm (R–TX) on April 28, 1999. After its passage by the Senate on May 6, 1999, the House substituted the text of H.R. 10, the Financial Services Act of 1999, for the text of S. 900, and passed the bill as amended.

Chairman Hyde, Subcommittee on Commercial and Administrative Law Chairman Gekas, and Ranking Member Conyers of the Committee on the Judiciary were appointed to the conference on S. 900 with respect to certain provisions within the Committee's jurisdiction, two of which pertained to bankruptcy law. Section 136 of S. 900 established various regulatory requirements for wholesale financial institutions, including the creation of a new subchapter under chapter 7 of the Bankruptcy Code to deal with their liquidation. Section 197 was intended to enhance the "source of strength doctrine," which requires bank holding companies to provide financial assistance to its bank subsidiaries in financial distress. While the conference report on S. 900 did not include section 136, it did incorporate a modified version of section 197. Included in S. 900 as section 730, this provision differed from the House amendment in several respects. First, it clarified that the transferred assets must be those of an affiliate or a controlling shareholder of an insured depository institution. The House amendment did not so specify. Second, section 730 provided that the transfer must be to or for the benefit of an insured depository institution and that it must be made by an affiliate or controlling shareholder of such insured depository institution. The House amendment did not include such clarifying language. Third, section 730 specified that no person may bring a claim against a Federal banking agency for monetary damages, or for other legal or equitable relief in connection with such transfer. The House amendment only referred to claims for monetary damages or for the return of assets or other property. Fourth, section 730 eliminated the House amendment's provision concerning its application to the rights of certain entities. Further, section 730 added a definition of the term "claim." For purposes of this provision, a claim was defined as a cause of action based on Federal or State law providing for the avoidance of preferential or fraudulent transfers or conveyances, or providing for similar remedies. The definition, however, explicitly excepted any claim based on actual intent to hinder, delay or defraud pursuant to such fraudulent transfer or conveyance law.

S. 900 also contained provisions that implicated the Committee's antitrust jurisdiction. Under current law, bank mergers are reviewed under special bank merger statutes, and they do not go through the Hart-Scott-Rodino merger review process that covers most other mergers. Under S. 900, banks will be able to get into other businesses which they have not been able to do before.

The principle that S. 900 follows is that when mergers occur, the bank part of that merger will be judged under the current bank merger statutes, and no change is intended in that process or in any of the agencies' respective jurisdictions. The non-bank part of that merger will be subject to the normal Hart-Scott-Rodino merger review by either the Justice Department or the Federal Trade Commission.

This is, in all likelihood, the result that would have obtained anyway. Hybrid transactions involving complex corporate entities—some parts of which are in industries subject to merger review by specialized regulatory agencies and other parts of which are not—have occurred in the past. In those cases, the various parts of the consolidation were considered according to agency jurisdiction over their respective parts, so that normal Hart-Scott-Rodino Act requirements applied to those parts that did not fall within the specialized agency's specific authority. See, e.g., 16 C.F.R. § 802.6. These precedents would have probably dictated the desired result here.

The clarification for the new financial holding company structure contained in § 133(c) is consistent with, and in no way disturbs, those existing precedents. Even so, S. 900 makes a big change in our banking laws, and the Judiciary conferees thought it would be most helpful to clarify this point with respect to financial holding companies in the statute. That clarification was achieved with the language in § 133(c) of the Conference Report. Similar language was a part of the House bill.

As the shape of the new activities in which banks were going to be permitted to engage through operating subsidiaries became clear in conference, the conferees ideally would have further revised the House language to make a similar clarification regarding consolidations of non-banking entities that are operating subsidiaries of merging banks. But the operating subsidiary situation so closely parallels the precedents mentioned above that a clarification for that situation was probably unnecessary.

Of course, whatever aspect of a banking merger is not subject to normal Hart-Scott-Rodino premerger review will be subject to the alternative procedures set forth in the Bank Merger Act and the Bank Holding Company Act, including the automatic stay. So one way or another, there will be some avenue for effective premerger review by the antitrust enforcement agencies. These alternative procedures would be in some ways more potentially disruptive to the merging banking entities, particularly when the antitrust concern involves non-banking entities. But it is our intent that the precedents will be followed.

In short, under this bill and the precedents, no bank is treated differently than it otherwise would be because it has some other business within its corporate family. Likewise, no other business is treated differently than it otherwise would be because it has a bank within its corporate family.

The conference report also includes conforming language found in § 133(a) to clarify that the Federal Trade Commission's authority in the non-banking sphere is preserved. These provisions were advisable in light of the fact that the FTC's enforcement authority specifically excludes banks and savings associations, but does not and should not exclude the non-banking entities that will be brought into the banking picture as a result of the new law. S. 900 clarifies that the existing exemption is limited to the bank or savings association itself and that the FTC retains jurisdiction over nonbank entities despite any corporate connections they may have with banks or savings associations. This clarification applies to the FTC's jurisdiction over non-banking firms under the FTC Act, and accordingly under any statute that may provide for enforcement under the Act like the consumer credit laws and the Telemarketing and Consumer Fraud and Abuse Prevention Act. For example, the FTC would continue to have jurisdiction over a telemarketer of financial services, even if it is a subsidiary or affiliate of a bank. The FTC's authority would not be expanded or extended to any new statute that may not be enforced under the FTC Act. These provisions were also included in the House bill.

Again, no bank is treated differently than it otherwise would be because it has some other business within its corporate family. Likewise, no other business is treated differently than it otherwise would be because it has a bank within its corporate family.

After passage by both the House and the Senate, the conference report on S. 900 was signed into law on November 12, 1999 (Public Law 106–102).

H.R. 1401 (S. 1059), a bill authorizing appropriations for fiscal year 2000 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

Members of the Committee served as conferees on H.R. 1401 (S. 1059), to authorize appropriations for fiscal years 2000 and 2001 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 for consideration of provisions relating to government access to classified information on Department of Energy defense-related computers, the conduct of security clearances, and restriction on access to national laboratories by foreign visitors from sensitive countries. S. 1059 became law on October 5, 1999 as Public Law 106–65.

Oversight Activities

Pursuant to Rule X, clause 2(d), the Committee adopted an oversight plan for the 106th 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

Antitrust Aspects of the Ocean Shipping Reform Act of 1998. May 5, 1999. (Serial No. 30).

Youth Culture and Violence. May 13, 1999. (Serial No. 20).

Competitive Issues in Electricity Deregulation. July 28, 1999. (Serial No. 69).

Hate Crimes Violence. August 4, 1999. (Serial No. 74).

Competitive Issues in Agriculture and the Food Marketing Industry. October 20, 1999. (Serial No. 67).

Solutions to Competitive Problems in the Oil Industry. March 29, April 7, June 28, 2000. (Serial No. 127).

Antitrust Enforcement Agencies: The Bureau of Competition of the Federal Trade Commission and the Antitrust Division of the Department of Justice. April 12, 2000. (Serial No. 104).

State of Competition in the Airline Industry. June 14, 23, 2000. (Serial No. 126).

Investigation of Misconduct and Mismanagement at ICITAP, OPDAT and the Criminal Division's Office of Administration. September 21, 2000. (Serial No. 128).

Full Committee Oversight Activities

REVIEW OF DOCUMENTS RELATING TO THE ATTORNEY GENERAL'S DECISION NOT TO SEEK THE APPOINTMENT OF AN INDEPENDENT COUNSEL IN THE CAMPAIGN FINANCE MATTER

Over the past several years the House Committee on the Judiciary has been closely following the actions of the Department of Justice ("DOJ") relating tot he campaign finance investigation and the decisions not to seek the appointment of an independent counsel in that and related matters. In fact, the Committee on March 12, 1997, and September 3, 1997, requested that the Attorney General apply for the appointment of an independent counsel to investigate this scandal. The Committee then held an oversight hearing on October 15, 1997, at which the Attorney General testified about the investigation and her decision not to seek the appointment of an independent counsel. Concerned about reports about management and operational problems encountered by the Campaign Finance Task Force ("CFTF"), the Committee requested on October 30, 1998, that the General Accounting Office ("GAO") review the operation of the Public Integrity Section and the CFTC. The Committee's Subcommittee on Commercial and Administrative Law held a hearing on March 2, 1999, regarding the reauthorization of the Independent Counsel statute. The Committee's Chief investigative Counsel reviewed the Freeh [1] and La Bella [2] memoranda, Chief of

[1] Memorandum from the Director of the Federal Bureau of Investigation, Louis J. Freeh, to the Attorney General, dated November 24, 1997 ("Freeh Memo").

[2] Interim Report for Janet Reno, Attorney General, and Louis J. Freeh, Director, FBI regarding the campaign finance investigation, prepared by Charles LaBella, Supervising Attorney, Campaign Financing Task Force and James DeSarno, Assistant Director, FBI CAMPCON Task Force ("LaBella Memo") (July 16, 1998).

Public Integrity Section Lee Radek's rebuttal[3] to the La Bella memorandum, and La Bella's response[4] to Radek's rebuttal, at the Department of Justice on February 8 and 9, 2000. After that review, the Committee requested on February 24, 2000, that the GAO be permitted to review the same memoranda; however, the DOJ never responded to that reasonable request.[5]

Because of the Committee's lingering concerns about the decision not to seek the appointment of an independent counsel in the campaign finance matter, the operation and management of the Task Force, and the Department's interpretation of various criminal laws implicated in this matter, the Committee requested, along with the Senate Committee on the Judiciary, in an April 5, 2000, letter, that the Attorney General produce pertinent records.[6] Subsequent to the delivery of the April 5, 2000, letter, the Subcommittee on the Constitution noticed a meeting to authorize the issuance of a subpoena duces tecum for April 13, 2000. At the request of Ranking Member John Conyers, the Subcommittee postponed the meeting and instead met with Deputy Attorney General Eric Holder, Assistant Attorney General for Legislative Affairs Robert Raben, and other DOJ officials about the March 29 document request. At that meeting both Chairmen Hyde and Canady stressed the seriousness and importance of the matter and indicated that the Committee was willing to litigate the matter and would seek review of the Department's noncompliance in Federal

[3] Memorandum from Lee J. Radek, Chief, Public Integrity Section to James K. Robinson, Assistant Attorney General, Criminal Division, reviewing the LaBella and DeSarno Interim Report (August 5, 1998).

[4] Addendum to Interim Report Interim Report for Janet Reno, Attorney General, and Louis J. Freeh, Director, FBI, regarding the campaign finance investigation, prepared by Charles LaBella, Supervising Attorney, Campaign Financing Task Force and James DeSarno, Assistant Director, FBI CAMPCON Task Force ("LaBella Memo") (August 12, 1998).

[5] Letter to the Honorable Janet Reno, Attorney General, from the Honorable Henry J. Hyde, Chairman, House Committee on the Judiciary, February 24, 2000.

[6] Letter to the Honorable Janet Reno, Attorney General, from the Honorable Henry J. Hyde, Chairman, House Committee on the Judiciary, the Honorable Orrin Hatch, Chairman, Senate Committee on the Judiciary, the Honorable Charles Canady, Chairman, House Committee on the Judiciary's Subcommittee on the Constitution, and the Honorable Arlen Specter, Chairman of the Senate Committee on the Judiciary's Department of Justice Oversight Investigation, Subcommittee on Administrative Oversight and the Courts, April 5, 2000. The authors expressed their concerns as follow:

> As you know, over the past several years there has been intense public and congressional concern regarding the Department of Justice's handling of the campaign finance investigation, including (1) whether the Department used the independent counsel law to prevent law enforcement officials from investigating high level "covered" persons, (2) whether decisions regarding the appointment of an independent counsel and other key prosecutorial decisions were made by taking the most exculpatory view of all potentially damaging evidence, (3) whether such decisions were made based on untested factual assumptions that turned out to be false, (4) whether consistent and principled judgments were made regarding important legal issues, such as the legality of using federal property for fundraising purposes, (5) whether the Department failed to investigate credible allegations that might have implicated high level government officials, such as Common Cause's allegation of a conspiracy to violate campaign funding laws, (6) whether the Department failed adequately to consider the possibility that innumerable individual examples of campaign fundraising violations or improprieties reflected an overall scheme or pattern, (7) why high level government officials were never asked key questions about their knowledge regarding these violations and improprieties, (8) why lawbreakers such as Charlie Trie and John Huang were given plea agreements which were too lenient, (9) why the recommendations and views of distinguished and career law enforcement officials such as FBI Director Freeh and Charles La Bella, your hand-picked prosecutor, were repeatedly overruled or ignored by senior officials at the Department, and why these officials were excluded from some aspects of the investigation and (10) why there are still no answers to important questions such as why Chinese government officials provided hundred of thousands of dollars for contributions to an American political campaign. These concerns have not been alleviated by recent disclosures regarding the now famous Freeh and La Bella memoranda.

Court under 28 U.S.C. § 1331 (general federal question jurisdiction). In an April 13, 2000, letter to Messers. Holder and Raben, Chairmen Hyde and Canady wrote: "Because your have assured us that the Justice Department is acting in good faith, will seriously consider our legal and institutional prerogatives, and will search for and collect all documents responsive to our request over the next two weeks, we have postponed consideration of the subpoena until Wednesday, May 3, 2000." Over the course of the following several weeks, majority and minority staff had several meetings with DOJ representatives about the production of pertinent documents. A final meeting with the principles was scheduled for May 3, 2000, and the Subcommittee on the Constitution postponed the issuance of the subpoena. At the May 3, 2000 meeting, a final agreement was worked out for the production and receipt of responsive documents.[7] The Committee received the first installment of documents on May 8, 2000. Other committees of the Congress received the same documents several weeks thereafter. On June 6, 2000, the House Committee on Government Reform publicly released these at a hearing.

CAMPAIGN FINANCE TASK FORCE

At the request of the Committee, the General Accounting Office issued a May 2000 report titled: Campaign Finance Task Force: Problems and Disagreements Initially Hampered Justice's Investigation, GAO/GGD–00–101BR. The report addressed (1) strained working relationships and trust concerns; (2) disagreement over investigative approach; (3) management and analysis of evidence problems; (4) management changes, staffing fluctuations, and oversight; (5) CFTF prospective results and costs; (6) limitations in the Federal Election Campaign Act that may inhibit prosecutions.

THE ELIAN GONZALEZ MATTER

In November, 1999, Elian Gonzalez, a five year old Cuban child, was rescued while drifting in the ocean off the coast of Florida. A few days earlier, he had left Cuba in a boat with his mother and several others. The boat subsequently capsized and Elian's mother and most of the other passengers perished. After his rescue, Elian was paroled by the Immigration and Naturalization Service into the care of his great uncle, Lazaro Gonzalez. After several months of legal action, Elian's father, Juan Miguel Gonzalez, traveled to the United States from Cuba to claim his son. On April 12, Attorney General Reno revoked parole and ordered Lazaro Gonzalez to turn Elian over to her. Lazaro Gonzalez refused, and in the early morning hours of April 22, 2000, Federal authorities forcibly seized Elian Gonzalez from the home of his great-uncle, Lazaro Gonzalez, in Miami, Florida and delivered him to his father in Maryland.

On April 22, 2000 Speaker Hastert asked Chairman Hyde to exercise the Judiciary Committee's appropriate oversight function

[7] Letter to the Honorable Janet Reno from the Honorable Henry Hyde, Chairman, House Committee on the Judiciary, the Honorable Charles Canady, Chairman, Subcommittee on the Constitution, the Honorable John Conyers, Jr., Ranking Minority Member, Committee on the Judiciary, and Melvin Watt, Ranking Minority Member, Subcommittee on the Constitution, (enclosing the Protocol Agreement for Production of Document to the House Committee on the Judiciary by the Department of Justice), May 3, 2000.

and examine the Justice Department's tactics and response to the Elian Gonzalez matter. In response to this request, Chairman Hyde announced on April 24, 2000 that he had directed House Judiciary Committee staff to "begin a preliminary inquiry into the tactics employed in the seizure of Elian Gonzalez by federal authorities."

The following is a summary of the oversight Committee staff conducted of the Elian Gonzalez matter. Staff, majority and minority, had two briefings from main Justice and INS officials regarding the government's seizing of Elian Gonzalez from his Miami relatives on April 22, 2000. On May 3, 2000, Committee staff met with Bob Wallis, the INS District Director for Florida and Jim Goldman, the head of INS investigations in Florida. Brad Glassman from the Deputy Attorney General's office was also at the meeting. The briefing focused on the preparation and execution of the raid, as well as a detailed discussion of the security threat in and around Lazaro Gonzalez's home. Committee staff met again with Brad Glassman on May 15, 2000 to discuss all aspects of the negotiations that took place between the government and the Gonzalez families from January through April, 2000. Staff also reviewed INS documents that were provided to the Committee after a telephone request. These documents included summaries of INS interviews with Juan Miguel Gonzalez in Cuba and after action reports from the six man Border Patrol Tactical Unit that entered Lazaro Gonzalez's home and seized Elian on April 22, 2000. In addition, staff read and analyzed the various court decisions that were rendered in the case.

On July 27–28, 2000, committee staff, two from the majority and two from the minority, traveled to Miami, Florida and interviewed Miami businessmen and civic leaders Carlos De la Cruz and Carlos Saladrigas. They also interviewed University of Miami President Tad Foote and the two lead attorneys for Lazaro Gonzalez, Kendal Coffey and Manny Diaz. These interviews focused on each of the interviewees involvement in, and assessment of, the negotiations that took place from Thursday April 20 through Saturday April 22, 2000. These negotiations directly involved Attorney General Reno and were aimed at effectuating the reunification of Elian Gonzalez with his father. On Wednesday October 11, 2000, committee staff, two from the majority and three from the minority, interviewed via telephone Aaron Podhurst—Miami attorney, friend of Janet Reno, and the lead mediator and liaison with Attorney General Reno during the April 20–22, 2000 negotiations. This concluded the committee's oversight of the Elian Gonzalez matter. At this point it was determined by the Chairman that no further action by the Committee was required.

JUSTICE DEPARTMENT PROSECUTION OF OBSCENITY CASES

In a June 10, 1998 memorandum from Deputy Attorney General Eric Holder to all United States Attorneys, Mr. Holder acknowledged the "unprecedented growth" in the distribution of obscenity and used the memorandum to remind the U.S. Attorney of the Department's policies and priorities in the prosecution of federal obscenity cases. Mr. Holder stated that, "the Federal role in prosecuting obscenity cases should be to focus upon the major producers and interstate distributors of obscenity of child pornography, while leaving to local jurisdictions the responsibility of dealing with local exhibitions and sales." Additionally, although he stated that the focus should be on major distributors, Mr. Holder also acknowledged the efficacy in prosecuting smaller distributors:

> prosecutors of cases involving relatively small distributors can have a deterrent effect and would dispel any notion that obscenity distributors are insulated from prosecution if their operations fail to exceed a predetermined size of if they fragment their business into small-scale operations. Therefore, prosecution of such distributors also may be appropriate on a case-by-case basis.

In light of this articulated policy of the Department of Justice, the Republican members of the House Judiciary Committee's Crime Subcommittee sent a letter to Attorney General Reno on March 22, 1999 regarding prosecution of obscenity and child pornography cases. In this letter, the members requested Ms. Reno to provide the Subcommittee with the annual number of cases brought by the U.S. Department of Justice under each of the Federal obscenity statutes (title 18 U.S.C. § 1460 et seq.) and the Federal child exploitation and pornography statutes (title 18 U.S.C. § 2251 et seq.) during the past 10 years (beginning with 1988). The Attorney General was also requested to specifically identify Internet obscenity prosecutions brought pursuant to P.L. 104–104, § 507 et seq. Finally, the Subcommittee members asked for an explanation of the Justice Department's policies and priorities with respect to the prosecution of obscenity and child pornography. The Subcommittee members received a reply letter dated June 11, 1999 from Jon P. Jennings, Acting Assistant Attorney General for Legislative Affairs. On January 24, 2000, Committee staff sent a follow-up letter to the Department requesting copies of all obscenity related indictments (18 U.S.C. § 1460 et seq.) filed by the Department from 1997 through 1999. Robert Raben, Assistant Attorney General for Legislative Affairs, responded to this letter on April 6, 2000. Furthermore, Committee staff was briefed by officials from the Justice Department's Child Exploitation and Obscenity Section on May 24, 2000.

From the review of the statistics provided by Mr. Jennings and copies of Justice Department indictments provided by Mr. Raben, the Committee's majority staff determined that the Clinton Justice Department has failed to prosecute either large or small scale distributors of obscenity. Additionally, the Department has not prosecuted a single distributor of obscenity over the Internet under 18 U.S.C. §§ 1462 or 1465, despite the fact that Mr. Holder declared that "priority also should be given to large-scale distributors of obscenity over the Internet," and that "investigation and prosecution of Internet obscenity is particularly suitable for federal resources."

The Department has a widely supported policy of giving priority to cases involving the use of children in "producing pornography and cases involving interstate or foreign shipment of material depicting minors engaging in sexually explicit conduct." However, the Department has utterly ignored its stated policy of also enforcing the federal obscenity laws. The Congress has provided the Department with adequate resources to pursue obscenity prosecutions (including an earmarked $1 million appropriation in fiscal year 1999 solely for online obscenity prosecutions) and the Child Exploitation and Obscenity section of the Department of Justice has the capabilities to successfully prosecute obscenity cases, as evidenced by the determined and successful approach this section took towards distributors of obscenity in the late 1980's and early 1900's.

It is clear from copies of indictments provided by the Department to the Committee that the Department of Justice has no policy to prosecute large or small producers or distributors of obscenity. The Department should have a comprehensive program which would vigorously prosecute obscenity cases involving children, child pornography cases, and online predator cases. Such a program should also include as a necessary component the aggressive prosecution of large scale producers and distributors of obscenity. Clearly the policy makers in Congress have determined that obscenity is harmful and even adults should be prohibited from producing, buying, or selling obscene materials. That is why Congress has enacted Title 18, United States Code, Chapter 71, sections 1460–1470. These laws against obscenity were vigorously enforced during the 1980's and early 1990's. They have been neglected, however, over the last 6 years.

REVIEW OF FEDERAL BUREAU OF PRISONS' MANAGEMENT OF INMATE TELEPHONE PRIVILEGES IN THE WAKE OF THE FALN TERRORIST CLEMENCIES

In August, 1999, the Department of Justice's Office of Inspector General (OIG) released a special report titled, Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges. This report concluded that "a significant number of federal inmates use prison telephones to commit serious crimes while incarcerated—including murder, drug trafficking, and fraud." The inmates were permitted to make seemingly unlimited amounts of telephone calls and they were not adequately monitored. The review also concluded that the Bureau of Prisons had been aware of this particular problem for a long time, but had not taken sufficient steps to address the issue.

At the same time, the House Judiciary Committee was closely scrutinizing the President's offer of clemency to 16 terrorist members of the FALN (Armed Forces of National Liberation) on August 11, 1999. The Committee was concerned that inmate members of the FALN had expressed intentions to pursue their objectives of Puerto Rican independence while vowing to resume their violent activities upon their release from prison while on tape-recorded prison telephone calls. On January 18, 2000, Chairman Hyde wrote to the Director of the Federal Bureau of Prisons (BOP), Kathleen Hawk Sawyer, asking why the BOP's management of inmate telephone calls should not be completely revamped to prevent inmates from committing serious crimes using prison phones. Concerns were expressed that if the phones had been adequately monitored and policed in this instance, perhaps the prisoners' intentions to continue their violent struggle for independence would have been brought to the attention of the proper authorities prior to the President's grant of clemency.

The Office of Inspector General recommended several changes to the BOP's management of inmate telephone calls. The Bureau of Prisons concurred with most of the recommendations and has begun implementing many of the recommendations. The OIG will be conducting a follow-up through site visits beginning in December, 2000.

REVIEW OF THE OFFICE OF PROFESSIONAL RESPONSIBILITY

The House Committee on the Judiciary has been concerned about the process for which federal prosecutors are held accountable for allegations of ethical violations and transparency issues over its investigations. After reviewing numerous citizen and Members of Congress' complaints about the Department of Justice's Office of Professional Responsibility (OPR), Committee staff met with OPR officials and conducted a review of their procedures and public summaries of cases after their adjudication by OPR. On October 14, 1999, Chairman Hyde and Congressman Delahunt asked the General Accounting Office to conduct a comprehensive review of OPR policies and processes for holding Justice's attorneys accountable to ethical standards. Specifically, GAO was asked to determine:

- How OPR conducts inquiries into allegations of misconduct;
- To what extent OPR's workload and budgets have changes, if any;
- The possible range of disciplinary actions and procedures if misconduct if found;
- OPR's oversight relationship with similar Justice components;
- The degree in which OPR has implemented prior GAO recommendations; and
- How OPR monitors and implements the Hyde Attorneys Fees Amendment and the Citizens Protection Act.
- The data evidencing the types of allegations made in the cases whereby OPR made findings of professional misconduct or poor judgment;
- Information demonstrating whether or not OPR monitors and records the disposition of any state bar referrals, and if so, what OPR then does with the information;
- Data regarding resignations and retirements which occur during or as a result of any inquiry or investigation;
- DOJ's policy with regard to monitoring cases which are administratively closed due to it's tendency in a court at the time it is filed with OPR;
- DOJ's policy concerning documentation of an OPR complaint and it's disposition in an attorney's personnel file; and
- Further information on the one case that OPR closed without a finding of misconduct concerning the Hyde Amendment.

GAO issued a report on some of these issues on August 14, 2000 and the GAO expects to be able to complete an addenda to that report in January 2001.

SUBCOMMITTEE ON CRIME

BILL McCOLLUM, Florida, *Chairman*

STEPHEN E. BUYER, Indiana [1]
STEVE CHABOT, Ohio
BOB BARR, Georgia
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
CHARLES T. CANADY, Florida
ASA HUTCHINSON, Arkansas [2]

ROBERT C. SCOTT, Virginia
MARTIN T. MEEHAN, Massachusetts
STEVEN R. ROTHMAN, New Jersey
ANTHONY D. WEINER, New York
SHEILA JACKSON LEE, Texas

[1] Stephen E. Buyer, Indiana, resigned from the Committee effective March 4, 1999.
[2] Asa Hutchinson, Arkansas, was assigned to the subcommittee on March 24, 1999.

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	331
Private legislation referred to the Subcommittee	1
Legislation reported favorably to the full Committee	17
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	8
Legislation pending before the full Committee	2
Legislation reported to the House	24
Legislation discharged from the Committee	29
Legislation pending in the House	5
Legislation passed by the House	48
Legislation pending in the Senate	17
Legislation vetoed by the President	0
Legislation enacted into Public Law	17
Legislation on which hearings were held	23
Days of hearing (legislative and oversight)	31

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, 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 106th Congress include:

FIGHTING THE WAR ON DRUGS MORE EFFECTIVELY

Oversight Hearing of the Drug Enforcement Administration

On July 29, 1999, the Crime Subcommittee held an oversight hearing on the Drug Enforcement Administration (DEA). The DEA's resources have been increased substantially in recent years, at the same time that new challenges have arisen in our national effort to combat illegal drugs. The witnesses included: Norman J. Rabkin, Director, Administration of Justice Issue Area, United States General Accounting Office; Donnie R. Marshall, Acting Administrator, Drug Enforcement Administration, United States Department of Justice; William Berger, Chief of Police, North Miami Beach, Florida, Peter Reuter, Professor, School of Public Affairs, University of Maryland, and Robert Maginnis, Senior Researcher, Family Research Counsel.

The Methamphetamine and Club Drug Anti-Proliferation Act of 2000

In 1996, Congress passed the Comprehensive Methamphetamine Control Act, the first legislative effort specifically directed at controlling the proliferation of methamphetamine in America. This important, bipartisan measure targeted the diversion of the most commonly used precursor chemicals and imposed strict reporting requirements on the sales of those chemicals. Notwithstanding the effectiveness of the 1996 Act, laboratory operators and drug traffickers continue to produce and traffic significant quantities of methamphetamine. More can and should be done to help law enforcement officials uncover, arrest, and hold accountable those who produce methamphetamine. Drug trafficking organizations operating out of Mexico and California have virtually taken control of the production and distribution of methamphetamine in the United States. Over the past five years, an upsurge of methamphetamine trafficking and abuse has swept across America, and clandestine methamphetamine laboratories have been discovered in all 50 states.

The methamphetamine epidemic in America differs in kind from the threat of other illegal drugs because methamphetamine can be made from readily available and legal chemicals and substances, and because it poses serious dangers to both human life and to the environment. Additionally, these chemicals and substances are utilized in a manufacturing process that is unstable, volatile, and highly combustible. Even small amounts of these chemicals, when mixed improperly, can cause explosions and fires. For every one pound of methamphetamine that is produced, approximately five pounds of toxic and often lethal waste products may be left behind at the laboratory site, or disposed of in rivers, kitchen sinks, or sewage systems in an effort to conceal evidence of illegal manufacturing. More distributing is that most of these laboratories are situated in residences, motels, trailers, and vans, and often times are operated in the presence of children. Contributing to this danger are countless Internet web sites devoted specifically to providing detailed instructions for producing methamphetamine.

In the 106th Congress, the Subcommittee on Crime held one field oversight hearing and five (5) oversight forums on methamphetamine production, trafficking, and use in Arkansas, California, New Mexico, and Kansas. Testimony was received from numerous witnesses, including former methamphetamine addicts, family members of the victims of methamphetamine related violence, law enforcement professionals, and prevention and addiction treatment professionals.

The Subcommittee on Crime held a field hearing on Friday, February 25, 2000 at the Jones Center for Families in Springdale, Arkansas to examine the explosive growth in recent years in the production, trafficking, and use of methamphetamine in rural areas such as northwest Arkansas. Testimony was heard from: Kelli Eales, McAlester, Oklahoma (wife of an Oklahoma state trooper slain by a methamphetamine dealer); George Cazenavette, Special Agent in Charge, Drug Enforcement Administration, New Orleans Division Office, Metairie, Louisiana; The Honorable Bill Hardin, Director, Office of the State Drug Director, Arkansas State Police, Little Rock, Arkansas; Blaine Hajok, Pharmacy Loss Prevention Division, Walmart Stores Incorporated, Bentonville, Arkansas; William Ashcraft, Director, Chemical Dependency Program, Pinnacle Pointe Hospital, Little Rock, Arkansas; Mike Smith, Supervisory Special Agency, Federal Bureau of Investigation, Little Rock, Arkansas; Tim Keck, Chief, Rogers Police Department, Rogers, Arkansas; Cindy McCoy, Fayetteville, Arkansas; James Clark, Executive Director, Arkansas State Crime Laboratory, Little Rock, Arkansas; Jean Sackman, Prevention Resource Center, Harrison, Arkansas; and, Larry Counts, Executive Director, Decision Point Incorporated, Springdale, Arkansas.

According to the National Institute on Drug Abuse (NIDA), the term “club drugs” includes LSD (acid), MDMA (Ecstasy), GHB, GBL, Ketamine (Special-K), Kentanyl, Rohypnol, and amphetamines. Primarily, they are used by teens and young adults who frequent nightclubs, bars, and “raves.” Club drug use appears to be increasing in many cities around the country. Atlanta, Seattle, Chicago, Detroit, Mimi, and Newark have reported widespread use at raves and clubs. MDMA, called “Adam,” “Ecstasy,” or “XTC,” on the street, is a synthetic, psychoactive drug with hallucinogenic and amphetamine-like properties. Use of Ectasy has surged dramatically in recent years, and it may well be on its way to becoming an epidemic. Seizures by the United States Customs Service have risen from less than 500,000 tablets during fiscal year 1997, to 9.3 million tablets during fiscal year 2000. In certain regions of the country, hospital emergency rooms have seen a dramatic increase in patients suffering negative effects of usage. Arrests of Ecstasy traffickers are on the rise, as certain foreign organized crime groups have reportedly developed sophisticated and effective distribution networks both worldwide and within U.S. borders. The margin of profit is significant; for a $100,000 investment in production of 200,000 tablets, $5 million may be realized.

In the 106th Congress, the Subcommittee on Crime held a hearing on June 15, 2000 on “The Threat Posed by the Illegal Importation, Trafficking, and Use of ‘Ecstasy’ and Other ‘Club’ Drugs.” Testimony was heard from: Lewis Rice, Jr., Special Agent in Charge, New York Division, Drug Enforcement Administration; and, John Varrone, Acting Deputy Assistant Commissioner, Office of Investigations, United States Customs Service; David McDowell, MD, Assistant Professor of Psychiatry, Columbia University and Director, Columbia University Substance Treatment Research Service; Laurence DesRochers, MD, Staff Emergency Physician, Community Hospital, Toms River, New Jersey; Andrea Craparotta, Investigator, Middlesex County Prosecutor’s Office, New Brunswick, New Jersey; Eladio Paez, Detective, Miami Police Department, Miami, Florida; and, Phillip Jenkins, Distinguished Professor of History and Religious Studies, Pennsylvania State University.

On September 30, 2000, Representative Cannon (R–UT) introduced H.R. 2987, the "Methamphatemine and Club Drug Anti-Proliferation Act of 2000." This legislation is aimed at preventing the proliferation of methamphetamine and club drug manufacturing, trafficking, use, and addition in America by enhancing Federal, State, and local law enforcement resources, increasing penalties on methamphetamine and club drug related offenses, and authorizing prevention and treatment initiatives providing law enforcement officials with tools and training to more adequately address the methamphetamine epidemic. The bill was referred to the Committees on the Judiciary and Commerce. Subsequentley, the Subcommittee on Crime discharged H.R. 2987 and it was ordered reported favorably by the Committee on July 25, 2000, and the bill was reported on September 21, (H. Rept. 106–878, Part I). On September 21, 2000 the Committee on Commerce discharged the bill and it was placed on the Union Calendar. On September 22, 2000, an amendment containing provisions substantially similar to the Committee passed version of H.R. 2987 was offered to H.R. 4365, the "Children's Health Act of 2000" during its consideration in the Senate. The Senate subsequently approved H.R. 4365, as amended containing that text, on that same date. The House approved the bill without amendment on September 27, 2000 by a vote of 394 yeas to 25 nays. The president approved the bill on October 17, 2000 and it became Public Law 106–310.

On November 19, 1999, S. 486, the "Methamphetamine Anti-Proliferation Act of 1999," passed the Senate by unanimous consent and was subsequently referred to the Committee on Commerce on January 27, 2000 and the Subcommittee on Crime on February 3, 2000. This legislation is a substantially similar companion to H.R. 2987 as introduced, and no further action was taken on it in the 106th Congress.

Drug Dealer Liability Act of 1999

On March 9, 1999, Representative Tom Latham (R–IA) introduced H.R. 1042, the "Drug Dealer Liability Act of 1999," to provide civil liability for illegal manufacturers and distributors of controlled substances for harm caused. This legislation was referred to the Committees on the Judiciary and Commerce.

Both Committees were subsequently discharged from further consideration of the bill and it was passed by the House on October 10, 2000 by voice vote. No further action was taken on the bill during the 106th Congress.

Protecting Our Children From Drugs Act of 2000

Crime is down in America in large part because we are incarcerating more individuals who commit anti-social acts, and keeping them there for longer periods of time. On September 27, 2000, Representative Bill McCollum (R–FL) introduced H.R. 5312, the "Protecting Our Children From Drugs Act of 2000," to protect children from illegal drugs, drug trafficking, and the violence associated with the drug trade by increasing the prison sentences for Federal drug felonies involving or affecting children. The bill increases the mandatory minimum sentence from one year to three years for any person who uses children (persons under the age of 18) to distribute drugs and increases the mandatory minimum sentence for a second-time offender from one year to five years. The mandatory minimum sentence would be increased from one year to three years for any person who distributes drugs to children and the mandatory minimum sentence for a second-time offender from one year to five years. For any person who distributes drugs in or near a school or other protected location, including schools, colleges, playgrounds, public housing facilities, youth centers, public swimming pools, or video arcade facilities, this legislation increases the mandatory minimum sentence from year to three years and increases the mandatory minimum sentence for a second-time offender from three years to five years.

The bill was Referred to the Committee on the Judiciary, and in addition to the Committee on Commerce. Both Committees subsequently discharged the bill, and on October 17, 2000 the House passed the House by voice vote. No further action was taken on the bill during the 106th Congress.

Drug Treatment Alternative to Prison Act of 2000

On May 18, 2000, Representative John Mica (R–FL) introduced H.R. 4493, the "Prosecution Drug Treatment Alternative or Prison Act of 2000," to authorize a new funding program within the Department of Justice, to be administered through the Office of Justice Programs, for State and local prosecutors to develop and implement drug treatment options for eligible nonviolent offenders. It will enable prosecutors to establish and oversee a drug treatment option for offenders with serious drug abuse and addictions, with the full leverage of a sentence of incarceration if they fail to complete the program and comply with its stringent requirements. The authorization funding level for this national program begins at $75 million, with annual increases over the following four years.

On October 17, 2000 the House passed the bill by voice vote. On December 6, 2000 it passed the Senate, as amended, by unanimous consent. No further action was taken on the bill during the 106th Congress.

Drug Addiction Treatment Act of 1999

On July 29, 1999 Representative Thomas Bliley (R–VA) introduced H.R. 2634, the "Drug Addiction Treatment Act of 1999," to amend the Controlled Substances Act with respect to registration requirements for practitioners who dispense narcotic drugs in schedule IV or V for maintenance treatment or detoxification treatment. This legislation was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary. On November 3, 1999 the Committee discharged consideration of the bill and it was placed on the Union Calendar. On July 18, 2000, Mr. Bliley moved to suspend the rules and pass the bill, as amended, and it was passed by the House by a vote of 412 yeas to 1 nay.

While no further action was taken on this bill in the 106th Congress, an amendment containing provisions substantially similar to the House passed version of H.R. 2634 was offered to H.R. 4365, the "Children's Health Act of 2000" during its consideration in the Senate. The Senate subsequently approved H.R. 4365, as amended containing that text, on that same date. The House approved the bill without amendment on September 27, 2000 by a vote of 394 yeas to 25 nays. The president approved the bill on October 17, 2000 and it became Public Law 106–310.

Foreign Narcotics Kingpin Designation Act

H.R. 3164 was introduced by Representative Porter Goss (R–FL) on October 28, 1999. H.R. 3164 provides authority for the identification of and worldwide sanctions against foreign narcotics traffickers whose activities threaten U.S. security, foreign policy, or the economy.

On November 2, 1999, H.R. 3164 was agreed to under suspension of the rules by the Yeas and Nays (385–26). No further action on this bill was taken during the 106th Congress.

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, criminals committing offenses in the United States are using foreign banks and bank secrecy jurisdictions to conceal the proceeds of their offenses.

In the 106th Congress, the Subcommittee on Crime sought to address this truly international law enforcement problem. On February 9, 2000, 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: Jim Robinson, Assistant Attorney General, Criminal Division, U.S. Department of Justice; Stefan D. Cassella, Assistant Chief, Asset Forfeiture and Money Laundering Section, U.S. Department of Justice; John Varrone, Executive Director, Domestic Operations East, Office of Investigations, U.S. Customs Service; John Byrne, Senior Counsel and Compliance Manager, American Bankers Association; Bill Bruton, Certified Fraud Examiner, the Kroll Lindquist Avey Company; Ian Comisky, Esquire, Blank Rome Comisky & McCauley LLP; and David Smith, Esquire, English & Smith.

On June 20, 2000, Representative Bill McCollum (R–FL) introduced H.R. 4695, the "Money Laundering Act of 2000." H.R. 4695 updates the money laundering laws to enable law enforcement to respond to the increasingly international nature of money laundering. No action was taken on the bill during the 106th Congress.

Oversight forums

During the 106th Congress, the Subcommittee held a series of regional forums across the country to examine regional trends in the production, trafficking, and use of methamphetamine. In particular, the forums were designed to determine how Congress might respond to the methamphetamine crisis. State and local law enforcement officials, prevention and treatment professionals, former methamphetamine addicts, and others victimized by the methamphetamine epidemic appeared before the Subcommittee. The oversight forums were held in five cities: Redondo Beach, California; San Diego, California; Albuquerque, New Mexico; Pasadena, California; and Salina, Kansas.

Participants in the oversight forum in Redondo Beach, California, on April 20, 2000, included: Kevin Hendershot, Resident, Beacon House Association, San Pedro, California; Mark Trouville, Associate Special Agent in Charge, Los Angeles Field Division, Drug Enforcement Administration; Edward Manavian, Executive Director, Los Angeles County Regional Criminal Information Clearinghouse; John Allen Ramseyer, Deputy District Attorney, Major Narcotics Division, City of Los Angeles; Andrew Hutchcroft, Youth Outreach, Beacon House Association, San Pedro, California; Richard Rawson, M.D., Associate Director, University of California at Los Angeles (UCLA) Integrated Substance Abuse Programs, UCLA School of Medicine; The Honorable Gregory Hill, Mayor, City of Redondo Beach, California; Stephen R. Port, Chief of Police, Hawthorne, California; James C. Christian, Director, Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force; and Bob Doyle, Undersheriff, Riverside County, California.

Participants in the oversight forum in San Diego, California, on April 21, 2000, included: Wayne Eddington, El Cajon, California; Gary Helson, Supervisory Special Agent, San Diego Field Division, Drug Enforcement Agency; Tom Manning, Deputy District Attorney, County of San Diego; Bob Ross, M.D., Director of Health and Human Services Agency, County of San Diego; Bob Amador, Deputy District Project Director for the Drug Endangered Children Program, San Diego, California; Lieutenant Bob Kanaski, San Diego Police Department; Richard W. Robinson, Deputy Chief Administrative Officer for Public Safety, County of San Diego; and Michael Sise, M.D., Director of Trauma, Mercy Hospital, San Diego.

Participants in the oversight forum held in Albuquerque, New Mexico, on April 24, 2000, included: Sue Rowland and Niki Tungate, Albuquerque, New Mexico; William Hansen, Assistant Special Agent in Charge for New Mexico, Drug Enforcement Administration; Captain Ruben Davalos, Albuquerque Police Department, Albuquerque, New Mexico; Stan Whitaker, Special Commissioner for Domestic Violence, New Mexico District Court; and Dr. Bobby Sykes, Director, Relevancy Inc., Albuquerque, New Mexico; Peter Golden, Sheriff, Torrance County, New Mexico; Mr. Gil Gallegos, Coordinator, Region 1 HIDTA, Deputy Chief (retired) Albuquerque Police Department, National President, Fraternal Order of Police; Jim Stokes, Counselor, Bi Treatment Center, Albuquerque, New Mexico; and Ms. Kim Covey, Seattle, Washington.

Participants in the oversight forum in Pasadena, California, on July 6, 2000, included: Loraine Brown, Special Agent in Charge, United States Customs Service, Los Angeles Field Office; Michelle Leonhart, Special Agent in Charge, United States Drug Enforcement Administration, Los Angeles Field Office; Jack Friedman, Impact Drug and Alcohol Treatment Center, Pasadena, California; Jerry Hunter, California Bureau of Narcotics Enforcement, Los Angeles Regional Office; Sgt. Chris Jurado, Special Investigation Section, Pasadena Police Department; Sgt. Tony Hollins, Los Angeles County Sheriff's Department; and The Honorable Chip Martin, Judge, Los Angeles Superior Court.

Participants in the oversight forum in Salina, Kansas, held on August 8, 2000, included: Bruce Sawlley (former convicted and incarcerated methamphetamine addict), Coral Spring, Florida; Joseph J. Corcoran, Special Agent in Charge, U.S. Drug Enforcement Administration, St. Louis Division, St. Louis, Missouri; Kirk Thompson, Assistant Director, Special Operations Division, Kansas Bureau of Investigation, Topeka, Kansas; Dean Akings, Chief of Police, Great Bend Police Department, Great Bend, Kansas; and Pamela McCoy, M.D., Assistant Clinical Professor of Emergency Medicine, University of Kansas Medical Center, Kansas City, Kansas; Roxann Dupré, Salina, Kansas; Tom Stanton, Assistant County Attorney, Saline County Attorney's Office, Salina, Kansas; Dwain Worley, Chemist and Forensic Scientist, Kansas Bureau of Investigation, Topeka, Kansas; Leon Shearrer, Sheriff, Pawnee County, Larned, Kansas; and Kelly Ralston, Special Agent in Charge, Great Bend Office, Kansas Bureau of Investigation, Great Bend, Kansas.

Hillory J. Farias Date-Rape Prevention Drug Act of 1999

H.R. 2130 was introduced by Representative Fred Upton (R–MI) on June 10, 1999. H.R. 2130 is an act to amend the Controlled Substances Act to direct the emergency scheduling of gamma hydroxybutyric acid, to provide for a national awareness campaign, and for other purposes.

On October 8, 1999, the Committee discharged from further consideration of the bill. On October 12, 1999, H.R. 2130 was agreed to under suspension of the rules by the Yeas and Nays (423–1). On November 11, 1999, the bill was laid before the Senate by unanimous consent, and the Senate struck all after the Enacting Clause and substituted the language of S. 1561 amended. The House agreed to the Senate amendments under suspension of the rules on January 31, 2000, by the Yeas and Nays (339–2). H.R. 2130 was signed into law by the President on February 18, 2000 and became Public Law 106–172.

PROTECTING OUR CHILDREN

Child Abuse Prevention and Enforcement Act

H.R. 764, the "Child Abuse Prevention and Enforcement Act," was introduced by Representative Deborah Pryce (R–OH). The bill amended provisions of existing law collectively known as the Byrne Grant Program that authorize the Federal government to award both block grants and discretionary grants to States for crime-related purposes. Under this program, funds can be used to obtain personnel, equipment, training, technical assistance, and information systems to improve criminal justice systems. The Bryne Grant statute specifies 26 permissible uses for these funds. H.R. 764 amended the Byrne Grant Program to add an additional permissible use for these federal funds, namely "to enforce child abuse and neglect laws and programs design to prevent child abuse and neglect."

The bill also amended the Victims of Crime Act of 1984, which created the Crime Victims Fund, which is financed from the collection of criminal fines, penalty assessments, and forfeited appearance bonds of persons convicted of crimes against the United

States. In FY 1998, $363 million was deposited into this fund for distribution in FY 1999. The Fund grants money to States to compensate crime victims directly, and it provides other grants to States which are then distributed to public and nonprofit agencies that provide direct services to victims of crime. Under current law the first $10 million deposited in the fund each year are to be expended by the Secretary of Health and Human Services for grants relating to child abuse prevention and treatment. Of the remaining funds, 48.5 percent are to be used for grants to State crime victim compensation programs, 48.5 percent are to be used for victim assistance programs, and 3 percent are to be used for grants for demonstration projects and training in technical assistance services to eligible crime assistance programs.

H.R. 764 increased the “earmark” for child abuse and domestic assistance programs from $10 million to $20 million. Doubling this “earmark” will, therefore, result in a $10 million reduction in the funds that would otherwise be available for the grants to the victims compensation programs and the victim assistance programs.

On September 17, 1999, the Subcommittee was discharged H.R. 764 from further consideration. On September 28, 1999, the full Committee ordered the bill reported favorably to the House, and the bill was reported on October 1, 1999 (H. Rept. 106–360). The House passed the bill on October 5, 1999 by a recorded vote of 425 yeas to 2 nays. On November 11, 1999, the Senate passed the bill by unanimous consent with an amendment. On February 1, 2000, the House agreed to the Senate amendment by a recorded vote of 410 yeas to 2 nays. The President approved the bill on March 10, 2000 and it became Public Law 106–177.

The Amber Plan

On October 2, 2000, Representative Heather Wilson (R–NM) introduced H. Res. 605, expressing the sense of the House that communities should implement the so-called “Amber Plan” to expedite the recovery of abducted children. Congress has played a significant roll in the national effort to protect children by providing grant money to the States to fight crime committed against children and by passing new Federal laws to prosecute criminals who victimize them. Yet, most of the work to prevent these crimes and punish those who commit them occurs at the local level.

H. Res. 605 brings national attention to an effective program working at the local level called the “Amber Plan.” This program, begun in the Dallas-Fort Worth metropolitan area, helps save the lives of children who have been kidnaped. The Amber Plan was created in 1996 in memory of nine-year-old Amber Hagerman, who was tragically kidnaped and murdered in Arlington, Texas. Because of its success in Dallas-Fort Worth, it has been replicated in communities across the country.

The Amber Plan works by utilizing the national Emergency Alert System. When a child is reported abducted, the abduction—including a description of the alleged perpetrator—is immediately broadcast on local radio and television stations using the Emergency Alert System. These alerts get the word to everyone who might recognize the child, or the abductor, and then call the police. Since its inception, the Amber Plan has led to the safe recovery of at least nine children nationwide.

H. Res. 605 was referred to the Committee on the Judiciary on October 2, 2000, and to the Subcommittee on Crime on October 6, 2000. The Committee did not take formal action on the bill. On October 24, 2000, the House passed the resolution by voice vote.

Aimee's Law

H.R. 894, "Aimee's Law," was introduced by Representative Matt Salmon (R–AZ) on March 2, 1999. It is similar to a bill he introduced during the 105th Congress (H.R. 4258), on which the Subcommittee on Crime held a hearing on September 17, 1998.

H.R. 894 would provide that whenever someone convicted of murder, rape, or a dangerous sexual offense is released from prison and commits another of those offenses in a different state, the state from which the offender was released will lose a portion of the Federal law enforcement assistance funds to which it would be otherwise entitled, which will be given to the state in which the second offense was committee. The amount to be transferred is the cost of the incarceration, prosecution, and apprehension by the second state. The Attorney General is to administer the transfer by deducting the appropriate amount from the annual amount that would have been paid to the state under the several Federal law enforcement funding programs that make annual distributions. In the event the person had committed similar crimes in more than one state, the costs of the state convicting he person last would be apportioned among all of the states that convicted the offender previously.

As introduced, the bill would also award up to $100,000 to the victim or their family of persons injured by offenders who commit these crimes. These funds would also be paid by the state or states in which the offender previously committed one of the offenses that trigger the statute.

A provision similar to H.R. 894 was passed was part of H.R. 3244, the Victims of Trafficking and Violence Protection Act of 2000. The provision in the bill differed from H.R. 894 as introduced in that it did not provide for any payment by a state to the victim or the victim's family. The amendment also contained a safe harbor provision that would exempt some states for liability under the bill. States would not lose any of their Federal law enforcement funds under the bill if the average term of imprisonment for murder, rape, or a dangerous sexual offense in that state was more than 10% above the nation average for those crimes, or if the offender had served at least 85% of the sentence imposed on them.

The House passed the bill by voice vote on July 11, 2000. No further action was taken on the bill during the 106th Congress, however H.R. 3244 was approved by the President on October 28, 2000 and became Public Law 106–386.

National Youth Crime Prevention Demonstration Act

H.R. 102 was introduced by Representative John Conyers (D–MI). H.R. 102 would provide grants to grassroots organizations in certain cities to develop youth intervention models.

The bill was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce. On May 14, 1999, the Subcommittee was discharged from further consideration on the bill H.R. 102. On May 20, 1999, the Committee held a mark-up session on the bill. No further action was taken on H.R. 102 during the 106th Congress.

Matthew's Law

H.R. 4045, "Matthew's Law" was introduced by Representative Randy "Duke" Cunningham (R–CA). H.R. 4045 would direct the Sentencing Commission to amend the Federal Sentencing Guidelines to increase the penalty range for every Federal crime in the event that the crime involves violence against a person under 13 by five levels. The bill also authorizes the FBI to assist state and local authorities in any case involving a homicide of a person under the age of 13.

It is similar to a provision passed by the House as an amendment to H.R. 1501 by a recorded vote of 401 yeas to 27 nays. No further action was taken on the bill during the 106th Congress.

Two Strikes and You're Out Child Protection Act

H.R. 1989 and H.R. 4047, each entitled the "Two Strikes and You're Out Child Protection Act" were introduced by Representative Mark Green (R–WI). They are similar to a provision passed as an amendment to H.R. 1501 by a voice vote.

The bills would mandate that any person convicted of a "Federal sex offense" be imprisoned for life if they have previously been convicted of a similar offense under either Federal or state law. The court would have no discretion in sentencing the offender to any other term of imprisonment. H.R. 1989 defines Federal sex offense to include offenses involving sexual abuse, abusive sexual contact, child pornography, coercion and enticement of a minor for sexual purposes, and the interstate transportation of minors for sexual purposes. H.R. 4047 defines Federal sex offense in a similar way, but without including the pornography or coercion and enticement crimes, and then only if the offense involves a crime against a person under the age of 16.

The House passed the bill by voice vote on July 25, 2000. No further action was taken on the bill during the 106th Congress.

Stop Material Unsuitable for Teens Act

H.R. 4147, the "Stop Material Unsuitable for Teens Act," was introduced by Representative Tom Tancredo (R–CO). It is similar to a provision offered by Representative Charles Canady (R–FL) and passed as an amendment to H.R. 1501 by a voice vote. The amendment can be found at section 105 of the bill, as passed by the House.

Under current law, it is a crime to knowingly transmit obscene material through the mails or otherwise in interstate commerce. In 1998, Congress passed H.R. 3494 (Public Law 105–314), the "Protection of Children From Sexual Predators Act," a bill I introduced. This act contained a provision that created a new crime of "transferring obscene matter to minors" which made it illegal to transfer obscene matter to a person under the age of 16. 18 U.S.C. § 1470.

This crime carries a more severe punishment than the other obscenity provisions.

In the form passed by the House, the bill would have made it a crime to transfer obscene matter to a person under the age of 18. When the bill was considered in the Senate, however, the Senate Judiciary Committee amended this provision to lower the age to 16. The lower age then was retained in the bill when it passed the full Senate and when the Senate amendments were adopted by the house. H.R. 4147 would amend section 1470 to apply the higher punishment to persons who transfer obscene materials to any person under the age of 18.

The House passed the bill on October 2, 2000 by a recorded vote of 397 yeas to 2 nays. No further action was taken on the bill during the 106th Congress.

On May 11, 2000, the Subcommittee on Crime held a legislative hearing on H.R. 894, H.R. 4045, H.R. 4047, and H.R. 4147. The following witnesses testified: Representative Randy Cunningham (R–CA); Representative F. James Sensenbrenner, Jr. (R–WI); Representative Matt Salmon (R–AZ); and Representative Thomas G. Tancredo (R–CO); The Honorable Mike Lawlor, State Representative, Connecticut; Marc Klaas, Sausalito, California; Gail Willard, Brookhaven, Pennsylvania; Janet M. LaRue, Esq., Senior Director of Legal Studies, Family Research Council, Washington, D.C.; Mr. Fred Goldman, Scottsdale, Arizona; Franklin Zimring, Professor of Law, University of California, Berkeley, Berkeley, California; and Jeffrey Haugaard, Professor of Human Development and Family Studies, Cornell University, New York.

Illegal Pornography Prosecution Act of 2000

H.R. 4710 was introduced by Representative Steve Largent (R–OK) on June 21, 2000. H.R. 4710 would authorize appropriations to the Department of Justice for FY 2001 to be used by the Criminal Division, Child Exploitation and Obscenity Section, for the hiring and training of staff, travel, and other necessary expenses to prosecute obscenity cases.

On July 25, 2000, Representative Steve Chabot (R–OH) moved to suspend the rules and pass H.R. 4710, which was agreed to by the Yeas and Nays (412–4). No further action was taken on H.R. 4710 during the 106th Congress.

Child Sex Crimes Wiretapping Act of 1999

H.R. 3484, the “Child Sex Crimes Wiretapping Act of 1999” was introduced by Representative Bill McCollum (R–FL) together with Rep. Nancy Johnson (R–CT). The bill amended Federal law to authorize the use of wiretaps in investigations of three sex crimes, principally involving children, for which the use of that tool was not previously authorized.

Under current law, law enforcement agencies may only see court authority to use a wiretap in investigations of a limited number of crimes. The crimes as to which a wiretap may be used to investigate, commonly called “wiretap predicates,” are set forth in 18 U.S.C. § 2516. In every case, law enforcement authorities must seek a court order authorizing the use of the wiretap. Some crimes involving the sexual exploitation of children are already wiretap predicates, but several are not. Given the dramatic increase in the use of the Internet by persons intent on luring children into sexual activities, law enforcement agencies have been turning their attention to this aspect of these crimes. Fortunately, acts that involve the enticing of children to meet with these predators, are themselves crimes under Federal law. The benefit of making these acts crimes has been that the government does not have to wait until a child is actually abused before acting. Catching and punishing predators who are enticing children, stops them before they can inflict greater harm on the child.

All of the crimes that involve sex predators attempting to entice children into engaging in sex with them are not wiretap predicates. Many of these crimes begin on the Internet—where predators engage children in conversations in "chat rooms" or send pornography to them to lower their natural defenses to the advances of adults. Through these acts, they entice the child to travel to meet them, or offer to travel themselves to meet the child, in hopes of engaging in sexual activities with them. If law enforcement officials cannot investigate these crimes using a wiretap, they are put at a disadvantage in trying to apprehend these predators before they physically harm their victims.

H.R. 3484 would have added three crimes as new wiretap predicates. The crimes added by the bill are: 18 U.S.C. § 2252A, which deals with selling, receiving, or shipping child pornography; 18 U.S.C. § 2422(1)(c), which deals with coercion and enticement to engage in prostitution or other illegal sexual activity; and 18 U.S.C. 2423, which relates to the transportation of minors to engage in prostitution or other illegal sexual activity.

On July 13, 2000, the Subcommittee held a hearing on H.R. 3484. The following person testified; Representative Nancy L. Johnson (R–CT); David R. Knowlton, Deputy Assistant Director, Federal Bureau of Investigation, Criminal Investigation Division; and John Varrone, Acting Assistant Commissioner, Office of Investigations, United States Customs Service; David B. Kopel, Research Director, Independence Institute, Golden, Colorado.

On July 20, 2000, the Subcommittee held a mark up and ordered H.R. 3484 reported favorably to the full Committee. On September 20, the full Committee ordered the bill reported favorably to the House, and the bill was reported on October 2 (H. Rept. 106–920). The House passed the bill on October 3 by a voice vote. No further action was taken on the bill during the 106th Congress.

Jeremy and Julia's Law

H.R. 469, "Jeremy and Julia's Law" was introduced by Representative Rick Lazio (R–NY). The bill would have created a new Federal crime involving false statements made by child care providers or reckless conduct by those providers. The bill would have enacted a new section 1822 to chapter 89 of title 18 of the United States Code (which relates to crimes involving specific profession or occupations) in order to make it a crime for any child day care provider, or employee of such a provider, to knowingly make a false representation regarding the provider or the care given by that provider to a parent or guardian considering the placement of a child in the care of that provider or to a law enforcement officer, if the child's safety or health is thereby placed at substantial risk. The maximum punishment under the statute is imprisonment for up to one year. The statute would also make it a crime for a child day care provider to recklessly cause serious bodily injury to a child. The maximum punishment for that crime would be three years imprisonment. The bill defined the term "child day care provider" to mean any person or entity that provides child day care in a place other than the home of the child or children for whom the care is provided. The bill only applied to providers who act in or affect interstate commerce.

Forty-five states license and regulate day care providers. Most of these statutes require providers to employ a minimum number of care givers, depending on the number of children being cared for. Many states also require that providers undergo some state sponsored or approved training before the provider may obtain the required state license. Of the states that require day care providers to be licensed, 29 establish a misdemeanor penalty for violations of their regulatory requirements. All 50 states outlaw recklessly causing a child's death and 40 states have a reckless endangerment statute that proscribes recklessly causing physical injury to another person.

There is no current Federal criminal statute that specifically punishes misconduct by day care providers. Two current statutes might be used to address the conduct to which the bill is aimed. The mail and wire fraud statutes (18 U.S.C. §§1341, 1343) make it a crime to use the mails or a means of interstate commerce to transmit a communication that is part of a scheme or artifice to defraud, or intended to obtain money by false pretenses. And 18 U.S.C. §1001 makes it a crime to make any materially false, fictitious, or fraudulent statement or misrepresentation in connection with any matter within the jurisdiction of the Executive Branch. In that case however, absent some Federal statute that governed day care providers in some way, there might be a question as to whether a provider's representations as to her qualifications, the conditions of the care she provides, or actions with respect to an injured child would fall within the jurisdiction of some Executive Branch agency.

The Subcommittee held a hearing on H.R. 469 on October 4, 2000. The following witnesses testified at the hearing: Michael Horowitz, Deputy Assistant Attorney General, Department of Justice; Mark Fiedelholtz, Plantation Florida; Joe Haas and Tina Haas, Albany, New York. No further action was taken on the bill during the 106th Congress.

Secure Our Schools Act

On March 28, 2000, Representative Steven Rothman (D–NJ) introduced H.R. 4108, the "Secure Our Schools Act." H.R. 4108 would amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to authorize the appropriation of $60 million for each of fiscal years 2001 through 2003 in grants to State and local governments and Indian tribes to improve security at Schools. Up to 50% of the costs of security enhancement programs would be paid by the Federal Government through such grants, and money would be distributed directly to qualifying States, units of local government, and Indian tribes. Grants could be used for the placement and use of metal detectors, locks, lighting, and other deterrent measures, security assessments, security training of personnel and students, coordination with local law enforcement, and any other measure that the Attorney General determines may provide a significant improvement in security.

Over the past few years, public concern over school safety has grown tremendously, fueled in part by tragic shootings at Columbine High School in Littleton, Colorado, and Westside Middle School in Jonesboro, Arkansas. The shootings in these and other schools across the nation have demonstrated the continued need to improve school safety. Safe and secure schools facilitate teaching and learning, while violence, or the threat of violence, divert attention and valuable resources away from the educational mission. The safety of children in the nation's schools is a community and national concern, and as such, schools alone should not be solely responsible for providing funding for security measures. H.R. 4108 would give State and local governments an incentive to improve school security by providing matching grants.

On May 19, 2000, the Subcommittee was discharged from further consideration on the bill H.R. 4108. On May 24, the full Committee ordered the bill reported favorably to the House, and the bill was reported on July 10 (H. Rept. 106–718). No further action was taken on the bill during the 106th Congress.

Expressing the sense of the Congress regarding child abuse and neglect

H. Con. Res. 93 was introduced by Representative Deborah Pryce (R–OH) on April 27, 1999. H. Con. Res. 93 expresses the sense of Congress that the faith community, nonprofit organizations, State and local officials involved in prevention of child abuse and neglect, and volunteers throughout the United States should recommit themselves and mobilize their resources to assist children in danger of abuse or neglect. Furthermore, it states that Federal resources should be marshaled in a manner that maximizes their impact on the prevention of child abuse and neglect, and that State and local officials should be provided with increased flexibility to use Federal law enforcement resources to prevent child abuse and neglect if appropriate. Finally, H. Con. Res. 93 states that child protection services agencies, law enforcement agencies, and the judicial system should coordinate efforts to the maximum extent possible to prevent child abuse and neglect.

On April 29, 1999, the Committee, and in addition, the Committee on Education and the Workforce was discharged from further consideration of the bill. The bill was considered by unanimous consent and was agreed to by voice vote on April 29, 1999. No further action was taken on this bill during the 106th Congress.

ENHANCING PROTECTIONS FOR VULNERABLE PERSONS

The Violence Against Women Act

In response to growing rates of crimes committed against women, Congress passed the Violence Against Women Act as Title IV of the Violent Crime Control and Law Enforcement Act of 1994. "VAWA" as it is called, created new criminal enforcement authority and enhanced penalties to combat sexual assault and domestic violence in federal court. It also authorized several multi-million dollar grant programs to fight violence against women by providing funds to state and local law enforcement agencies, as well as for education, prevention, and outreach programs.

On March 24, 1999 Representative Connie Morella (R–MD) introduced H.R. 1248, the Violence Against Women Act of 2000. This legislation, referred to the Committees on Judiciary, Education and Workforce, and Commerce, reauthorizes and makes key improvements in programs created by the Violence Against Women Act of 1994. Those programs include: Law Enforcement and Prosecution Grants to Combat Violence Against Women; National Domestic Violence Hotline; Battered Women's Shelter and Services; Grants for Community Initiatives; Education and Training for Judges and Court Personnel; Grants to Encourage Arrest Polices; Rural Domestic Violence And Child Abuse Enforcement; National Stalker and Domestic Violence Reduction; Federal Victims' Counselors; Education and Prevention Grants to Reduce Sexual Abuse of Runaway, Homeless, and Street Youth; Victims of Child Abuse; and, Rape Prevention Education.

The Subcommittee on Crime held one hearing on H.R. 1248 on Wednesday, September 29, 1999. Testimony was received from Bonnie J. Campbell, Director, United States Department of Justice Violence Against Women Office, Department of Justice; Juley Fulcher, Public Policy Director, National Coalition Against Domestic Violence; Carole Alexander, Executive Director, House of Ruth; and Patrick Fagan, Heritage Foundation.

On May 4, 2000 the Subcommittee on Crime met in open session and ordered the bill favorable reported. On June 21, 2000, the full Committee met in open session on this matter, and on Tuesday, June 27, 2000, ordered the bill reported favorably. The bill as amended also included several new programs, including Civil Legal Assistance for Victims; Safe Havens for Children Pilot Program; Protections Against Violence and Abuse for Women with Disabilities; Standards, Practice, and Training for Sexual Assault Examinations, and provided for the appointment of a Domestic Violence Task Force to report back to Congress on any overlapping or duplication of federal agency efforts addressing domestic violence.

On September 26, 2000 the Committees on Education and the Workforce and Commerce discharged the bill and it was placed on the Union Calendar. It was considered, as amended, under suspension of the rules and passed by the House by a recorded vote of 415 yeas to 3 nays. No further action was taken on the bill during the 106th Congress, however a provision substantially similar to this bill was included in the conference report on H.R. 3244, the Victims of Trafficking and Violence Protection Act of 2000, which was approved by the President on October 28, 2000 and it became Public Law 106–386.

VAWA programs have aided the prosecution of domestic violence, sexual assault and child abuse cases across the country, and have increased victim services like domestic violence shelters for women and the National Domestic Violence Hotline. Yet despite the dramatic drop in most categories of crime across the country over the past several years, violent crime committed against women is still a serious problem.

Victims of Trafficking and Violence Protection Act of 2000

H.R. 3244, the "Victims of Trafficking and Violence Protection Act of 2000", was introduced by Representative Chris Smith (R–NJ). The bill was referred to the Committee on International Relations, and also to several other committees, including the Judiciary Committee. The bill was referred to the Subcommittee on Immigration and Claims. The full Committee reported the bill favorably on April 4, 2000.

The bill, as enacted, contains several criminal provisions. These provisions include: a new crime involving the forced labor of person; a new crime involving trafficking in a person who is the victim of involuntary servitude, peonage, slavery, involuntary servitude, or forced labor; a new crime involving sex trafficking of children or of person by force, fraud, or coercion; a new crime involving unlawful conduct with respect to documents in furtherance of involuntary servitude, peonage, slavery, involuntary servitude, or forced labor.

During the conference committee meetings between the House and Senate to resolve differences in the bill, a number of crime provisions that were considered by the Subcommittee were added to this bill that are similar to other bills described elsewhere in this report. They include: H.R. 894 "Aimee's Law;" H.R. 1248 "Violence Against Women Act of 2000;" H.R. 3485, "Aid to Victims of Terrorism."

Stalking Prevention and Victim Protection Act of 1999

On May 19, 1999, Representative Sue Kelly (R–NY) introduced H.R. 1869, the "Stalking Prevention and Victim Protection Act of 1999." H.R. 1869 amends the Federal anti-stalking law, 18 U.S.C. § 2261A, making several significant changes or additions to current law. First, it expands Federal jurisdiction over stalking to reach stalkers who use the mail or any facility in interstate or foreign commerce to stalk their victims. Second, H.R. 1869 requires that a Federal court, when sentencing a defendant convicted of stalking, issue a protection order designed to protect the victim from further stalking. Third, H.R. 1869 permits a Federal court to order the detention of an alleged stalking defendant pending trial in order to assure the safety of the community or the defendant's appearance at trial.

The Subcommittee on Crime held a one day legislative hearing on H.R. 1869 on September 29, 1999. Testifying on the bill was Robert Fein, U.S. Secret Service; David Beatty, National Center for Victims of Crime; and Jayne A. Hitchcock. On October 7, 1999, the Subcommittee held a mark up and ordered H.R. 1869 reported favorably to the full Committee. On November 2, 1999, the full Committee ordered the bill reported favorably, as amended (H. Rept. 106–455) to the House, and the bill was reported on November 5, 1999 (H. Rept. 106–455). On November 10, 1999, the House passed H.R. 1869, as amended, under suspension of the rules. A provision similar to H.R. 1869 was included in the conference report to H.R. 3244, the "Victims of Trafficking and Violence Protection Act of 2000," which passed the House on October 6, 2000. H.R. 4344 was signed into law by the President on October 28, 2000 and it became Public Law 105–386.

Kristen's Act

On August 5, 1999, Representative Sue Myrick (R–NC) introduced H.R. 2780, "Kristen's Act." Each year about one million people are reported missing in the United States, and about 42% of them are adults. The many Federal, State and local law enforcement agencies across the country dutifully enter these missing person reports in the FBI's national missing persons database, and most of them are quickly found—within a day or two. Still, many children and adults are not found right away, and that is one reason why Congress created the Center for Missing and Exploited Children. The Center acts as a clearinghouse for missing child cases and provides much needed support to families whose children are missing. The Center has helped locate thousands of missing children and reunite them with their families. But there is no such clearinghouse for missing adults.

Once the names of these missing adults are inputted into the FBI's National Crime Information Center computer, there is little else the families can do but wait and hope that their loved ones will be found. Kristen's Act establishes the first national clearinghouse for missing adults. It authorizes grants to states to (1) assist law enforcement and families in locating missing adults; (2) create a national database for the purpose of tracking missing adults who are determined by law enforcement to be endangered due to age, mental capacity, or the circumstances of their disappearance; (3) maintain statistics on missing adults; (4) provide information resources and referrals to families of missing adults; and (5) assist in public notification and victim advocacy of this issue.

The Committee took no formal action on H.R. 2780. The House passed the bill on October 19, 2000 under suspension of the rules by voice vote. On October 26, the Senate passed the bill by unanimous consent. The President approved the bill on November 9 and it became Public Law 106–468.

Jennifer's Law

Representative Rick Lazio (R–NY) introduced H.R. 1915, Jennifer's Law. The bill authorized the appropriation of $2,000,000 for each of fiscal years 2000, 2001, and 2002 to be awarded to states to use the funds to establish or expand programs developed to improve the reporting of unidentified persons to the government.

On June 7, 1999, the Committee was discharged from further consideration of the bill. On that day, the House passed by the bill by a recorded vote of 370 yeas, to 4 nays. No further action was taken on the bill during the 106th Congress.

Victims of Rape Health Protection Act

On October 14, 1999 Representative Curt Weldon (R–FL) introduced the "Victims of Rape Health Protection Act" to reduce by ten percent the funds available to a State under the drug control grant program unless that State demonstrates that its laws or regulations with respect to a defendant against whom a rape charge is brought require that: (1) the defendant be tested for HIV if the nature of the crime would have placed the victim at risk of HIV and the victim requests such a test; (2) the defendant be so tested within 48 hours after the information or indictment is presented and that the test results be made immediately available to the victim; (3) the defendant undergo any appropriate follow-up tests and that those test results be made immediately available to the victim; and (4) if results indicate that the defendant has HIV, such fact may be considered in the judicial proceedings conducted for the crime.

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 they must be administered with 2 to 24 hours after exposure and have extremely unpleasant side effects. Knowing the HIV status of the alleged perpetrator will enable the victim to make a more informed decision as to whether to undergo this course of treatment.

The Subcommittee on Crime and the Committee subsequently discharged H.R. 3088 and on October 2, 2000 it was considered under suspension of the rules and passed by a vote of 380 yeas to 19 nays. No further action was taken on this legislation in the 106th Congress.

Protecting Seniors from Fraud Act

Older Americans are among the most rapidly growing segments of our society. The nation's elderly are too frequently the victims of violent crime, property crime, and consumer and telemarketing fraud, and they are often targeted and retargeted in a range of fraudulent schemes. The TRIAD program, originally sponsored by the National Sheriffs' Association, International Association of Chiefs of Police, and the American Association of Retired Persons unites sheriffs, police chiefs, senior volunteers, elder care providers, families, and seniors to reduce the criminal victimization of the elderly. Congress should continue to support TRIAD and similar community partnerships that improve the safety and quality of life for millions of senior citizens.

There are few other community-based efforts that forge partnerships to coordinate criminal justice and social service resources to improve the safety and security of the elderly. According to the National Consumers League, telemarketing fraud costs consumers nearly $40,000,000,000 each year. Senior citizens are often the target of telemarketing fraud. Fraudulent telemarketers compile the names of consumers who are potentially vulnerable to telemarketing fraud into the so-called "mooch lists." It is estimated that 56 percent of the names on such "mooch lists" are individuals age 50 or older. The Federal Bureau of Investigation and the Federal Trade Commission have provided resources to assist private-sector organizations to operate outreach programs to warn senior citizens whose names appear on confiscated "mooch lists."

S. 3164, the "Protecting Seniors from Fraud Act" authorizes appropriations to the Attorney General for fiscal years 2001 through 2005 for programs for the National Association of TRAID (a program originally sponsored by the National Sheriffs' Association, International Association of Chiefs of Police, and the American Association of Retired Persons to unite Sheriffs, police chiefs, senior volunteers, elder care providers, families, and seniors to reduce the criminal victimization of the elderly). S. 3164 directs the Comptroller General of the Untied States to submit to Congress a report on the effectiveness of the TRAID program. It also requires the Secretary of Health and Human Services, acting through the Assistant Secretary of Health and Human Services for Aging, to provide to the Attorney General of each State and to publicly disseminate in each State, including to area agencies on aging, information designed to educate senior citizens and raise awareness about the dangers of fraud, including telemarketing and sweepstakes fraud. Directs the Secretary to give priority, in disseminating information, to areas with high incidents of fraud against senior citizens. Additionally, S. 3164 directs the Attorney general to: (1) conduct a study to assist in developing new strategies to prevent and otherwise reduce the incidence of crimes against seniors; and (2) include as part of each National Crime Victimization Survey statistics related to crimes targeting or disproportionately affecting seniors, crime risk factors for seniors, and specific characteristics of the victims of crimes who are seniors. Finally S. 3164 expresses the sense of the Congress that State and local governments should fully incorporate fraud avoidance information and programs into programs that provide assistance to the aging.

S. 3164 was introduced by Senator Bayh on October 5, 2000, and it passed the Senate by unanimous consent on October 24, 2000. On October 27, the bill was referred to the Subcommittee on crime. On October 30, 2000, the Committee was discharged from further consideration of S. 3164, and on that day the House passed the bill under suspension of the rules. On November 22, 2000, the President signed the bill and it became Public Law 106–534.

IMPROVING LAW ENFORCEMENT THROUGH ENHANCED TECHNOLOGY

The DNA Analysis Backlog Elimination Act of 2000

In the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) Congress authorized the FBI to create a national index of DNA samples taken from convicted offenders, crime scenes and victims of crime, and unidentified human remains. In response to this authority, the FBI established the Combined DNA Index System (CODIS), which the FBI had been developing as a pilot program since the early 1990s. CODIS allows State and local forensics laboratories to exchange and compare DNA profiles electronically in an attempt to link evidence from crime scenes for which there are no suspects to DNA samples of convicted offenders on file in the system. Today, CODIS is installed in over 90 laboratories in 41 states and the District of Columbia. There are approximately 445,000 offender samples and 31,000 crime scene samples classified and stored in CODIS.

All 50 states have enacted statutes requiring convicted offenders to provide DNA samples for analysis and entry into the CODIS system. The crimes which trigger the requirement to provide a sample vary from state to state. Samples from Federal offenders are not included in CODIS (unless they previously committed a state offense for which a sample was taken) because the language of the 1994 act only authorized the creation of the CODIS system, and not the taking of samples from persons convicted of Federal crimes, crimes under the District of Columbia Code, or offenses under the Uniform Code of Military Justice (UCMJ). In a 1998 report of Congress the FBI requested that Congress enact statutory authority to allow the taking of DNA samples from persons committing Federal crimes of violence, robbery, and burglary, or similar crimes in the District of Columbia or while in the military, and authorizing them to be included in CODIS.

The development of DNA identification technology is one of the most important advances in criminal identification methods in decades. As a direct result of the proven ability of DNA evidence to solve crime, many of the 120 public forensic laboratories operating across country have developed significant testing backlogs that have yet to be cleared. These backlogs have been exacerbated in recent years as new developments in DNA analysis technology has required that many samples, especially those taken from convicted offenders and cataloged in the CODIS database, be reanalyzed using new technology.

In a report issued by the Justice Department's Bureau of Justice Statistics (Bureau of Justice Statistics, U.S. Department of Justice, Survey of DNA Crime Laboratories, 1998 (February 2000)), as of December 1997, approximately 69% of publicly operated forensic crime labs across the country had at least 6,800 unprocessed DNA cases and an additional 287,000 unprocessed convicted offender DNA samples. The public labs reporting a backlog include the FBI's crime lab in Washington. In 1997, for example, these labs received about 21,000 cases involving DNA evidence for analysis and processed about 14,000 of those cases. In that same year, 116,000 convicted offender samples were submitted for analysis, an increase from 72,000 in 1996. Of these totals, only 45,000 were analyzed in 1997 and 37,000 in 1996.

As a result of these backlogs, killers, rapists, and other dangerous offenders who might be successfully identified through DNA matching remain at large to engage in further crimes against the public. And promptly identifying the actual perpetrator of a crime through DNA matching clears all other persons who might wrongfully be suspected, accused, or convicted of the crime. Where this cannot bed done because of an inability to analyze and index convicted offender or crime scene samples in a timely manner, the risks to the innocent increase accordingly.

H.R. 4640, the "DNA Backlog Elimination Act of 2000" was introduced by Representative Bill McCollum (R–FL). The bill establishes a $170 million grant program whereby the Federal government may make grants to states to enable them to conduct DNA analyses of biological samples taken from offenders who are required to provide such a sample and samples taken from crime scenes and from victims of crime. The bill authorizes funding for analysis of convicted offender samples analysis of $15 million a year for each of fiscal years 2001 through 2003. The bill also authorizes $25 million in fiscal year 2001, $50 million in fiscal year 2002, and $25 million in each of fiscal year 2003 and fiscal year 2004 for the analysis of crime scene sample and the building of capacity to conduct analysis in the future. Addressing the crime scene sample backlog is intrinsically more expensive because of the higher cost of analyzing crime scene samples. States wishing to receive funding under the program created by the bill are required to make application to the Attorney General through the Office of Justice Programs. To qualify for funding, a state must develop a plan to eliminate its backlog of samples awaiting DNA analysis.

The bill also authorizes DNA samples to be collected and included into CODIS from offenders convicted of certain Federal offenses, crimes under the District of Columbia Code, and offenses under the UCMJ. The Federal and military offenses triggering the sample requirement are specified in the bill and consist principally of serious violent crimes and crimes involving sex offenses. The bill authorizes the District of Columbia government to determine which crimes under the District of Columbia code will trigger this requirement. The bill also requires that samples of offenders whose convictions are reversed be removed from CODIS.

H.R. 4640 is similar to three other bills which have been introduced in the 106th Congress: H.R. 2810, the "Violent Offender DNA Identification Act of 1999" introduced by Representative Patrick Kennedy (D–RI); H.R. 3087, the "DNA Backlog Elimination Act," introduced by Representative Anthony Weiner (D–NY); and H.R. 3375, the "Convicted Offender DNA Index System Support Act," introduced by Representative Benjamin Gilman (R–NY). The sponsors of those bills are original co-sponsors of H.R. 4640.

All three of these bills were the subject of a hearing in the Subcommittee on Crime on March 23, 2000. The following witnesses testified: Rep. Benjamin A. Gilman (R–NY); Representative Anthony D. Weiner (D–NY); Representative Patrick J. Kennedy (D–RI); Dwight E. Adams, Deputy Assistant Director, Laboratory Division, Federal Bureau of Investigation; Washington, D.C.; David G. Boyd, Director, Office of Science and Technology, National Institute of Justice; United States Department of Justice, Washington, D.C.; Michael G. Sheppo, Bureau Chief, Division of Forensic Science Command, Illinois State Police, Springfield, Illinois; David Coffman, Crime Laboratory Analyst Supervisor, Investigation and Forensics Program Area, Florida Department of Law Enforcement, Tallahassee, Florida; Paul B. Ferrara, Director, Division of Forensic Science, Commonwealth of Virginia Department of Criminal Justice Services, Richmond, VA; Barry Steinhardt, Esq., Associate Director, American Civil Liberties Union, Washington, D.C.; Jane Siegel Greene, Esq., executive Director, the Innocence Project, New York, New York.

On June 15, 2000, the Subcommittee held a mark up and ordered H.R. 4640 reported favorably to the full Committee. On July 26, the full Committee ordered the bill reported favorably to the House, and the bill was reported on September 26 (H. Rept. 106–900). The House passed the bill on October 2 by voice vote. The Senate passed the bill with an amendment by unanimous consent on December 6, 2000. On December 7, the House agreed to the senate amendment by unanimous consent. On December 19, 2000, the President approved the bill and it became Public Law 106–546.

Paul Coverdell National Forensic Science Improvement Act

S. 3045, the Paul Coverdell National Forensic Science Improvement Act of 2000, was introduced by Senator Jeff Sessions (R–AL) as a tribute to the late Senator Paul Coverdell (R–GA). Senator Coverdell had introduced similar legislation earlier this Congress but did not live to see it acted upon. S. 3045 is similar to a bill, H.R. 2340, introduced in the House by Representative Sandford Bishop (D–GA) on which the House took no action.

The bill expands the list of permitted uses of the Federal Byrne Grants program to allow states to use those funds to improving the quality, timeliness, and credibility of forensic science services, including DNA, blood, and ballistics tests. The act requires States to develop a plan outlining the manner in which the grants will be used to improve forensic science services provided by State and local crime labs and limits administrative expenditures to 10% of the grant amount. And the act adds a reporting requirement so that the backlog reduction can be documented and tracked. We need to know how these grants are impacting backlogs in each State.

The bill also included two provisions unrelated to forensic science grants. One clarifies a provision of the Civil Asset Forfeiture Act (codified at 18 U.S.C. § 983 (a)(2)(C)(ii)) which was passed into law during the 106th Congress. the other provision expresses a sense of the Congress regarding the use of DNA samples in cases involving the imposition of the death penalty.

On October 26, 2000, the Senate passed the bill by unanimous consent. In the house, the bill was referred to the Committee on the Judiciary and the Subcommittee on Crime. On December 7, 2000, the Committee was discharged from further consideration of the bill and passed the bill by unanimous consent. On December 21, 2000, the President approved the bill and it became Public Law 106–561.

Computer Crime Enforcement

On December 15, 2000, the Committee was discharged from further consideration of the bill, H.R. 2816, a bill introduced by Representative Matt Salmon (R–AZ). On that day the House passed the bill by unanimous consent with an amendment. Also on that day, the Senate passed the bill, as amended by the House, by unanimous consent. The President approved the bill on December 28, 2000 and it became Public Law 106–572.

The bill authorizes the appropriation of $100 million over four fiscal years to be awarded by the Department of Justice to each State to be used to: (1) assist State and local law enforcement agencies in enforcing State and local criminal laws relating to computer crime and in educating the public to prevent and identify computer crime; (2) educate and train State and local law enforcement officers and prosecutors to conduct investigations and forensic analyses of evidence and prosecutions of computer crime; (3) assist State and local law enforcement officers and prosecutors in acquiring computer and other equipment to conduct investigations and forensic analysis of evidence of computer crimes; and (4) facilitate and promote the sharing of Federal law enforcement expertise and information about the investigation, analysis, and prosecution of computer crimes with State and local law enforcement officers and prosecutors, including the use of multi-jurisdictional task forces.

Innocence Protection Act

H.R. 4167 was introduced by Representative William Delahunt (D–MA) together with Representative Ray LaHood (R–IL). H.R. 4167 contains three major titles: (I) exonerating the innocent through post-conviction review, (II) ensuring competent legal services in capital cases, and (III) compensating the unjustly condemned.

Title I of the bill would establish a procedure whereby offenders convicted in Federal court (of any crime) could obtain a post-conviction DNA analysis of biological evidence found in connection with their case. The bill would only permit these tests when the offender alleges that the material in question was not tested in connection with the offender's trial or that the material could be re-tested using improved DNA analysis techniques which would provide a reasonable likelihood of more accurate or probative results. If the result of the test on the evidence is "favorable" to the offenders, the bill would also require the court to order a hearing and fashion appropriate relief. The bill also requires the government to preserve all biological material related to a case for as long as the offender remains in custody. The bill does allow the government to seek court permission to destroy such evidence but, in that case the defendant first must be given an opportunity to test the material to be destroyed.

The bill also requires all states to permit similar post-conviction testing procedures in state cases. The bill relies on the 14th amendment to impose this mandate on the states. The bill also would condition certain Federal funding to states on their adoption of similar procedures. One of the Federal crime funding programs so conditioned is the Bryne Memorial State and Local Law Enforcement Assistance Program, which distributes hundreds of millions of dollars each year to state and local governments.

Title II of the bill would further condition Federal funding under the Byrne program on a state's adoption of procedures in death penalty cases that are designed to "establish[] and maintain[] an effective system for providing competent legal services to indigent defendants at every stage of a state death penalty prosecution in which a death sentence is sought." It would require the Director of the Administrative Office of the United States Courts to promulgate regulations specifying the elements of an effective system. This section would also limit the applicability of certain procedural rules in the current habeas corpus provisions, enacted in 1996 (that require Federal courts pay deference to findings of fact made in state criminal trials.) This title of the bill would also authorize the appropriation of Federal funds to public and private agencies for the purpose of increasing the availability of counsel in Federal and state death penalty cases.

Title III of the bill would also increase from $5,000 to $50,0000 the amount of damages that can be awarded for each 12 month period in which as person was wrongly incarcerated. The bill would further condition a state's receipt of Federal "truth-in-sentencing" prison construction grant funding on the state's adoption of a similar compensation scheme.

Title IV of the bill contains several "miscellaneous" provisions. One of these would prohibit the Federal government from imposing a sentence of death in any Federal criminal prosecution if the state in which the Federal court is located does not also allow for the imposition of the death penalty in state prosecutions. The bill does contain some exception to this prohibition, such as cases involving acts of terrorism, the murder of a high public official, or murder of a Federal inmate by another. Another provision would amend current habeas corpus provisions, also enacted in 1996, that require offenders convicted in state court to exhaust state court remedies before proceeding in Federal court.

The Subcommittee held a hearing on H.R. 4167 on June 20, 2000. The following witnesses testified at the hearing: Representative Ray LaHood (R–IL); Representative William D. Delahunt (D–MA); The Honorable George H. Ryan, Governor, State of Illinois; Kirk Bloodsworth, Baltimore, Maryland; Stephen B. Bright, Esq., director, Southern Center for Human Rights, Atlanta, Georgia; Ward Campbell, Esq., Deputy Attorney General, Sacramento, California; James E. Coleman, Jr., Esq., Professor of Law, Duke University, Durham, North Carolina; Justice Gerald Kogan, Alliance for Ethical Government, University of Miami School of Law, Coral Gables, Florida, Peter Neufeld, Esq., The Innocence Project, New York, New York; The Honorable Eliot Spitzer, Attorney General, State of New York; and The Honorable Stuart VanMeveren, President, National District Attorney's Association.

No further action was taken on the bill H.R. 4167 during the 106th Congress.

Volunteer Organization Safety Act of 1999

H.R. 3410, the "Volunteer Organization Safety Act of 1999" was introduced by Representative Pete Sessions (R–TX). The bill provides that, notwithstanding any other provision of law, the Federal government may not require volunteer organizations who request background checks to be completed on potential volunteer workers to submit fingerprints to the government in order to complete the background check. The purpose of the bill is to allow volunteer organizations seeking background checks on potential volunteer workers to request the FBI to conduct those checks using the system of criminal record organized by name and other personal identifiers as part of the National Crime Information Center system rather than using the FBI's fingerprint system.

In 1993, Congress passed the National Child Protection Act (42 U.S.C. § 5119a), which authorized the FBI to conduct background checks on persons who work with children upon the request of the organization for which these persons would work. The Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) expanded the scope of the law to include the elderly and person with disabilities. To take advantage of this law, however, a state must first pass its own law requiring that the check be performed. As it was envisioned, states would require persons working with children, the elderly, and the disabled, whether in a for-profit business or in a volunteer agency, to submit fingerprints to a designated state law enforcement agency (such as the state police). That agency would them submit them to the FBI which would run the prints through its fingerprint system, the Integrated Automated Fingerprint Identification System (IAFIS), to determine whether the person had ever been convicted of a crime. The FBI would provide the results to the referring state agency which would then determine, under state law, whether the person checked was qualified to hold the position he or she was seeking. The agency would inform the company or organization for which the person was apply to work or volunteer whether the person had been passed or denied by the system. In order to protect the privacy of the applicant/volunteer, the state agency would not inform any employees or volunteers at the agency of the actual basis for the denial, but just that the person in question had been denied during the background check process.

Only a few states passed a law authorizing fingerprints to be submitted through a state agency to the FBI. In an effort to encourage greater use of the law, Congress amended the Act in 1998 in the Interstate Criminal Justice Improvements Act (Public Law 105–251) to enact Senate bill (S. 2022) to provide that in the absence of any state-enacted procedure authorizing background checks, a qualified entity could contact an agency authorized by the governor of that state and request the fingerprint background check be performed.

The FBI's National Crime Information Center is an information system that provides local, state, and Federal law enforcement agencies with information 24 hours-a-day on 17 different files of records, such as wanted persons, stolen cars, stolen firearms, and other stolen property. The system includes over 500,000 records on "wanted persons" (persons as to whom as arrest warrant is outstanding) and 200,000 records on persons subject to restraining or protecting orders. The system is not designed to be a final determiner of a person's identity but to ascertain in a short period of time (i.e., a few minutes) whether a person is wanted by another jurisdiction or is subject to a restraining or protective order. The system is most commonly used by police making arrests or traffic stops in order to determine if the person apprehended or detained is wanted for another crime and whether the car they are driving has been reported stolen.

The use of the NCIC system is limited because it is only designed to search for records that match the data inputted. For example, if the person arrested is carrying false identification showing a fictitious name or date of birth, the NCIC system will not reveal any records that pertain to him. Because fingerprints are unique to each person, only a fingerprint system search will reveal these records.

On May 18, 2000, the Subcommittee on Crime held a legislative hearing on H.R. 3410. The following witnesses testified: Representative Sessions (R–TX); and Representative Kay Granger (R–TX); David R. Loesch, Assistant Director of the FBI for the Criminal Justice Information Services Division; Julie Thomas, Executive Director, Volunteer Center of Dallas County, Dallas Texas; Ben Casey, President, YMCA of Metropolitan Dallas, Texas; and Al Philippus, Chief of Police, San Antonio, Texas.

No further action was taken on the bill H.R. 3410 during the 106th Congress.

Internet denial of service attacks

On February 28, 2000, the Subcommittee held a joint hearing together with the Subcommittee on Criminal Oversight of the Senate Judiciary Committee concerning a series of well-planned and coordinated cyber attacks on several of the nation's largest Internet sites that began on February 8, 2000 and continued for several days. Within seconds of the first wave of attacks, two popular sites—search engine Yahoo.com and retailer Buy.com—were effectively shut down for several hours. Over the next two days, more of the Internet's flagship sites were similarly disrupted, including news outlets CNN.com and ZDNet.com, retailer Amazon.com, auction house eBay.com, and brokerage house E*Trade.com. The attacks inconvenienced millions of Internet users and resulted in a loss of revenue for several of the affected sites. The Subcommittee received testimony on the nature of the attacks and suggestions as to how best to respond to the continuing threat.

Testifying at the hearing were Eric Holder, Deputy Attorney General, U.S. Department of Justice; Martha Stansell-Gamm, Chief, Computer Crime and Intellectual Property Section, Criminal Division, U.S. Department of Justice; Michael Vatis, Director, National Infrastructure Protection Center, Federal Bureau of Investigation; Ron Dick, Deputy Director, National Infrastructure Protection Center, Federal Bureau of Investigation; Howard Schmidt, Director, Information Security, Microsoft Corporation, Redmond, Washington; Charles Giancarlo, Senior Vice President, Cisco Systems Incorporated, San Jose, California; Paul Misener, Vice President, Global Public Policy, Amazon.com, Seattle, Washington; Henry Wolfgang Carter, Chief Compliance Officer, E*Trade, Menlo Park, California; Dan Rosensweig, President and Chief Executive Officer, ZDNet.com, New York, New York; Katherine T. Fithen, Manager, CERT Coordination Center, Software Engineering Institute, Pittsburgh, Pennsylvania; "Mudge," Vice President of Research and Development, @Stake, Inc., Cambridge, Massachusetts; and James Dempsey, Esquire, senior Staff Counsel, The Center for Democracy and Technology, Washington, D.C.

Reporting requirements concerning intercepted wire, oral, or electronic communications

On November 5, 1999, the Senate passed by unanimous consent S. 1769, a bill introduced by Senator Patrick Leahy (D–VT). On November 18, 1999 the Committee was discharged from further consideration and the House passed the bill with an amendment by unanimous consent. On April 13, 2000 the Senate concurred in the House amendment by unanimous consent. On May 2, 2000, the President approved the bill and it became Public Law 106–197.

The bill makes a provision of the Federal Reports Elimination and Sunset Act of 1995 (which terminates as of December 31, 1999, all reporting requirements contained on a list prepared by the Clerk of the House of Representatives for the first session of the 103rd Congress) inapplicable to certain reporting requirements under specified Federal provisions and Acts, including: (1) the reports that the Director of the Administrative Office of the United States Courts is required to transmit to Congress each April concerning the number of applications for orders authorizing or approving wire, oral, or electronic communications interception; (2) the requirements for the Department of Justice's annual report on crime statistics; and (3) the Immigration and Naturalization Service's annual statistical report.

The bill also amends the Federal criminal code to require the Attorney General or specified other officials to report to the Administrative Office each January on the number of such orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted. And the bill directs the Attorney General to include within an annual report to Congress on pen registers and trap and trace devices information concerning: (1) the period of interceptions authorized by each order and the number and duration of any extensions of the order; (2) the offense specified in the order, application, or extension of an order; (3) the number of investigations involved; (4) the number and nature of the facilities affected; and (5) the identity, including district, of the applying investigative or law enforcement agency making the application and the person authorizing the order.

JUVENILE JUSTICE REFORM AND FIREARMS SAFETY

Juvenile justice reform remained a top priority of the Crime Subcommittee in the 106th Congress. Consequently, the Subcommittee held two days of hearings on juvenile justice reform, on March 10 and 11, 1999. On March 10, the following witnesses were heard: Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice; Sherry Matteucci, United States Attorney for the State of Montana; and Frank A. Orlando, a retired Judge and the Director of Center for the Study of Youth Policy of Nova Southeastern University in Ft. Lauderdale, Florida. On March 11, the following witnesses were heard: David Grossmann, a retired judge from Hamilton County Juvenile Court of Cincinnati, Ohio; Patricia West, judge of the Juvenile and Domestic Relations District Court of Virginia Beach, Virginia; Kenneth W. Sukhia, an attorney of the law firm of Fowler, White, Gillen, Boggs, Villareal and Banker of Tallahassee, Florida; Jim Kester of the Criminal Justice Division of the Office of the Governor of Texas, Austin, Texas; Wesley Shackelford, attorney of the Texas Juvenile Probation Commission, Austin, Texas; Mike Lawlor of the State of Connecticut, House of Representatives of Hartford, Connecticut; Laurence Steinberg, professor of psychology of Temple University at Philadelphia, Pennsylvania; and Richard D. Taylor, judge of the Juvenile and Domestic Relations District Court of Richmond, Virginia.

Representative Bill McCollum (R–FL) introduced H.R. 1501, the "Consequences for Juvenile Offenders Act of 1999" on April 21, 1999. All Crime Subcommittee members—Republicans and Democrats—were original co-sponsors. It was marked up by the Subcommittee on April 22, 1999, and considered by the House on June 16 and 17, 1999, and then passed by a vote of 287–139. The bill provides much-needed resources to State and local juvenile justice systems to help them do more to focus on the youthful, first-time offender. And it ties these additional resources to graduated sanctions—an approach that seeks to ensure meaningful, proportional consequences for juvenile wrongdoing, starting with the first offense, and intensifying with each subsequent more serious offense.

At the same time that the bill calls for graduated sanctions, it provides flexibility. It ensures that a court's disposition is tailored to the individual juvenile. It also allows for the imposition of graduated sanctions to be discretionary: That is, a state or locality can still qualify even if its system of graduated sanctions allows juvenile courts to opt out. the bill simply provides that when there are such opt-outs, a record must be sent at the end of the year, explaining why a sanction wasn't imposed. This is working well in certain states and localities, and is not an undue burden.

Furthermore, the bill ensures flexibility by providing that a wide range of juvenile justice system activities and services can be supported. From new detention facilities and hiring more judges and probation officers, to juvenile gun courts, drug court programs and accountability-based school safety programs—this bill allows States and localities to strengthen their juvenile justice systems as they see fit.

The bill was substantially amended on the House floor to include numerous provisions addressing a wide range of issues related to juvenile justice and children's safety.

The Senate subsequently considered juvenile justice legislation and the Speaker appointed conferees on July 30, 1999. The House-Senate Conference met on August 5, 1999. The House instructed conferees on H.R. 1501 on July 30, September 22, September 23, September 24, October 14, March 15, 2000, and April 11, 2000. No further action was taken on the bill during the 106th Congress.

On June 10, 1999, Representative Bill McCollum (R–FL) introduced H.R. 2122, the "Mandatory Gun Show Background Check Act." The legislation provided for mandatory background checks at gun shows. It was considered by the House on June 16, 1999. Numerous amendments related to firearms safety were made to the bill while being considered by the House. The bill was defeated on final passage by a vote of 147 yeas to 280 nays. No further action was taken on the bill during the 106th Congress.

PRISON INDUSTRIES REFORM

The Federal Bureau of Prisons ("BOP") has custody of over 130,000 prisoners convicted of federal crimes. Over 115,000 of these prisoners are incarcerated in the 94 institutions that the BOP operates. Every prisoner who is physically able to work is required to perform some type of labor five days a week. Approximately 17% of the federal prison population works in Federal Prison Industries, a correction program in which inmates manufacture goods and provide services to agencies of the federal government. Under the trade name "UNICOR," Federal Prison Industries (FPI) currently produces goods in over 150 different product lines. In 1998, its gross annual revenues were approximately $534 million.

There are over 1.8 million persons incarcerated in state prison systems. Each of the 50 states and the District of Columbia operate some type of prison industry program. Some states limit the sales of the goods manufactured in these programs to the state government, while others authorize sales to the commercial market under the Prison Industry Enhancement (PIE) program. As of mid-1996 (the last year for which data is available) there were over 64,000 state inmates employed in these prison industry programs. Expressed as a percentage, state prison industry programs employ approximately 6.3% of all state prisoners.

The FPI program is entirely self-sufficient—no taxpayer monies are used to operate it. Revenues exceed costs by about 2% of gross sales, and this money is retained by FPI to finance the activation of future facilities. Of each dollar of revenue, 7 cents is paid as wages to prisoners and 20 cents is paid as wages to the BOP employees who oversee the operation of UNICOR factories. The remaining 70 cents is paid to the American businesses which supply the goods, raw materials, and supplies used in the UNICOR operation.

Congress has placed a number of requirements on FPI. Under the statute authorizing the operation of federal prison industries (18 U.S.C. § 4121, et sec.), FPI is required to provide employment "for the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible." The Board is also required to diversify prison industrial operations, so far as practicable, so that "no single private industry shall be forced to bear an undue burden of competition" from the products of the prison workshops and also to maintain a "minimum competition" with private industry or free labor. FPI is to conduct its operations so as to "avoid capturing more than a reasonable share of the market" among federal departments, agencies, and institutions for any specific products. Additionally, FPI is to concentrate on producing "only those products which permit employment of the greatest number of * * * inmates who are eligible to work as is reasonably possible."

FPI and states prison industry programs are prohibited by Federal law from selling the goods inmates produce in the commercial market. This prohibition dates to the late 1920s when Congress enacted the Cooper-Hawes Act to enable States to control the flow of prison-made goods and, in 1935, enacted the Ashurst-Sumners Act to generally prohibit interstate commerce in those goods. In 1979, Congress created the Prison Industry Enhancement (PIE) Program. This law, as later amended, establishes an exception to the prohibition for up to 50 state prison industry projects and permits them to sell "goods, wares, or merchandise" in interstate commerce as long as labor representatives were consulted and currently employed workers were not displaced in establishing the project. The program also requires that participating inmates be paid prevailing wages, with deductions to be taken from those wages for taxes, charges for room and board, family support, and victim compensation. These programs are only available to state prisons industry programs. It is not available to FPI.

The departments and agencies of the Federal government are required to purchase "such products of the industries authorized by [Chapter 307 of the United States Code] as meet their requirements and may be available" as long as the products to not exceed "current market prices." This provision is commonly known as the "mandatory source preference." In practice, this law gives FPI the exclusive right to sell goods to the federal agencies, up to an annual market percentage previously authorized by the FPI board. Of the 150 products FPI sells, in only 12 instances do sales exceed 20% of the federal market for that product. The total sales of all FPI products represent only 3% of the total federal government purchases of these products. Of the total federal government purchases of all products, FPI's total sales represent 1/4 of 1%.

Disputes as to the price, quality, character, or suitability of FPI products are to be arbitrated by a board comprised of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives.[1] Departments and agencies may request a waiver of the mandatory source rule so that they may purchase goods from a source other than FPI. In fiscal year 1997, FPI granted 82% of all waivers requested, enabling private business to sell approximately $236 million in additional goods to federal departments and agencies.

The FPI program is operated as a "government corporation" created by Congress in 1934. The board of directors of FPI consists of six persons appointed by the President and who serve at his pleasure without compensation. By statute, one director is to be appointed from each of the following backgrounds: industry, labor, agriculture, retailers and consumers, the Office of the Secretary of Defense, and the Office of the Attorney General. Before FPI begins to produce a new product, or significantly expands the production of an existing product, the FPI Board must approve that change.

In 1991, researchers of the Bureau of Prisons published preliminary findings in a study entitled "The Effect of Prison Work Experience, Vocational, and Apprenticeship Training on the Long Term Recidivism of U.S. Federal Prisoners" (the "PREP study"). The study began in 1983 and data was collected through October 1987 on over 7,000 offenders. The findings published in 1987 demonstrated that inmates who participated in the work programs had statistically significant lower rates of recidivism and higher levels of employment than inmates who did not participate in these programs.

In 1995, the BOP conducted a follow-up study in which it examined whether the inmates from the first study had been recommitted to prison, Most of the inmates involved in the study had been released for at least 8 years, and some for as long as 12 years. This report confirmed the 1987 findings that inmates who had received this type of training, and especially male inmates, were 24% less likely to commit new offenses than inmates who did not receive the training. A 1995 Ohio study conducted by the Ohio Department of Rehabilitation and Correction showed a similar result for prisoners who worked in Ohio's prison industries program. That study showed that participation in any prison industry jobs reduced the recidivism rate for offenders by 20 percent, while participation in a high skilled prison industry job reduced the rate by 50 percent. A study conducted by the Maryland State Use Industries over a five year period showed that participation in that prison industry program reduced recidivism by half.

H.R. 2558, the "Prison Industries Reform Act of 1999" was introduced by Representative Bill McCollum (R–FL), together with Representative Bobby Scott (D–VA). The principal purpose of H.R.

[1] 18 U.S.C. § 4124(b).

2558 was to increase the work opportunities available to both Federal and state prisoners. It would have accomplished this by allowing private sector companies to participate in federal prison industry programs. The bill required FPI to open all present and future prison industry programs to any private company that wishes to operate its business using inmate workers at a federal prison. These companies would have been permitted to sell the products made by their inmate workers on the open market, just as if they were made by non-inmate workers. The bill would also have allowed FPI to sell products made by prisoners directly to other American companies (e.g., should that companies not wish to operate the prison industry program itself but prefer that FPI operate the industry for it.)

The bill required FPI, and any private company that uses FPI inmate workers to produce products or services, to pay to the inmate workers who produce these goods a wage that is at least equal to the Federal minimum wage. From the amounts paid to these inmate workers, the Bureau of Prisons was authorized to take deductions for fines and restitution owed by the inmate, for the inmate's family support obligations, for an inmate savings accounts to be paid to the prisoner upon his release, and for room and board costs. The bill required that one-half of the amounts deducted be paid to the U.S. Treasury to offset the costs of housing Federal prisoners.

H.R. 2558 also provided incentives for American businesses to use FPI labor to compete against foreign workers and bring back to the U.S. jobs that have been lost to those workers. Under the bill, FPI or private companies which have contracted to use FPI inmates labor would be authorized to pay less than the minimum wage to inmate workers if the products to be produced would otherwise be made by foreign workers outside of the United States. The determination as to whether the products to be produced fall into this category would be made by an Independent Review Panel comprised of representatives from organized labor, the business community, the Small Business Administration, the Commerce and Labor Departments and the International Trade Commission.

The bill required FPI to make it a priority to produce products that are currently made by foreign workers, in order to lessen the impact of this program on non-inmate American workers. As discussed above, the bill also required that FPI, or companies using FPI labor, pay at least minimum wage to the inmate employees if the products they produce might compete with ones produced by non-inmate American workers. Further, the bill prohibits American companies from laying off their non-inmate American employees in order to hire inmate workers. Under the bill, private companies who contract with FPI to use prison labor must agree to maintain their existing level of non-inmate American workers for at least 18 months after they contract with FPI or begin making products with FPI labor, whichever is later.

H.R. 2558 eliminated the mandatory source preference. It would have immediately prohibited FPI from expanding its sales using this authority. It also phased out FPI's use of the authority by requiring FPI to annually reduce the portion of the goods it sells each year using this authority. The bill would have then abolished the use of this authority completely after seven years by repealing the statute that allows for its use. As a result, the entire Federal market for goods and services will be completely open to all bidders.

The bill also allowed, but did not require, state prison industries to sell their products on the open market. To do so, however, states must pay the inmates who produce the products to be sold a wage that is not less than the Federal minimum wage. As with FPI, States may deduct from these wages amounts to be used to pay fines and restitution, family support obligations, and room and board. Also, states must eliminate any mandatory source preferences they impose on their state agencies and departments within 7 years of the date when they begin to sell goods on the open market.

On July 19, 1999, Representative Pete Hoekstra (R–MI) and several cosponsors, including Representative Howard Coble (R–NC) and Representative Barney Frank (R–MA), introduced H.R. 2551, Federal Prison Industries Competition in Contracting Act of 1999. This bill would have made a number of significant changes to the way in which FPI would be authorized to do business. It made no change in the existing laws affecting state prison industry programs.

H.R. 2551 would have immediately repealed the mandatory source preference provision requiring Executive Branch departments and agencies to buy a portion of their procurement needs from FPI. FPI would have been required to compete for all contracts to sell goods or provide services to the Federal Government. But the bill would have continued the existing prohibition on the sale of prison made goods or services to the open market. The bill specifically prohibited private sector companies from partnering with FPI, even if those companies ultimately sell their product to the Federal government.

H.R. 2551 would have required all federal agencies to solicit an offer from FPI, when making a purchase above a minimal threshold, for any product or service which the FPI has authorized UNICOR to sell. The bill contained a provision allowing FPI to require an agency to negotiate with it on a noncompetitive basis (i.e., a type of mandatory source preference) only if the Attorney General determines that FPI cannot reasonably expect to receive the contract award on a competitive basis and the contract award is necessary to maintain work opportunities in BOP facilities in order to prevent a situation which could "significantly endanger the safe and effective administration" of a BOP facility.

The bill would also have required that the FPI board consider several new factors regarding the impact of a proposed change in the FPI product or quantity limits before approving that proposal. These factors include: (1) an analysis of the proportion of the federal government market for a specific product or service currently furnished by small businesses during the previous three fiscal years; (2) whether the industry producing the product in the private sector has unemployment rates higher than the national average; (3) whether that industry has an unemployment rate that has been increasing over the prior five years; (4) whether the industry has certain import to domestic production ratios; (5) the total volume of domestic production for the five previous years in the industry making the specific product in question; and (6) the projected growth or decline in demand for the specific product.

On August 5, 1999, the Subcommittee on Crime held a legislative hearing on H.R. 2558, the "Prison Industries Reform Act of 1999" and H.R. 2551, the "Federal Prison Industries Competition in Contracting Act of 1999." The following witnesses testified: Representative Peter Hoekstra (R–MI); Kathleen M. Hawk Sawyer, Director, Federal Bureau of Prisons; accompanied by Steve Schwalb, Assistant Director, Bureau of Prisons; Fred P. Braun, Jr., President, The Workman Fund, Leavenworth, Kansas; John H. Felt, Manager of Government Accounts, HON Industries, Muscatine, Iowa; Phillip L. Glover, President, Council of Prison Locals, Johnstown, Pennsylvania; Andrew S. Linder, President, Power Connector, Incorporated, Bohemia, New York; Larry K. Martin, President, American Apparel Manufacturers Association, Arlington, Virginia; Thomas Petersik, Citizens United for the Rehabilitation of Errants, Washington, D.C.; and Reginald A. Wilkinson, Director, Ohio Department of Rehabilitation and Correction, Columbus, Ohio.

On September 23, 1999, the Subcommittee held a mark up and ordered H.R. 2558 reported favorably to the full Committee. No further action was taken on the bill during the 106th Congress.

PROTECTING AND SUPPORTING POLICE

Financial assistance for higher education for the dependents of public safety officers killed in the line of duty

On June 6, 1999, Representative Peter King (R–NY) introduced H.R. 2059, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. H.R. 2059 would amend the Federal Law Enforcement Dependents Assistance Act of 1996 (42 U.S.C. 3796d 5(a)) to extend the retroactive eligibility dates for financial assistance for higher education to the spouses and dependent children of Federal, State, and local law enforcement officers killed in the line of duty. Current law provides that the dependents of Federal law enforcement officers killed in the line of duty after May 1, 1992, are eligible for this assistance. Dependents of State and local public safety officers killed in the line of duty after October 1, 1997, are also eligible. This legislation would move the eligibility dates farther back in time to make more dependents eligible. For Federal law enforcement officers and State and local public safety officers, the dates would be changed to January 1, 1978.

In 1996, Congress amended Part L of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.) by passing the Federal Law Enforcement Dependents Assistance Act. The Act was in response to several fatal shootings of Federal law enforcement officers in the early 1990's, which left surviving spouses and children in difficult financial circumstances, without the means to pursue higher education. It provided that the Attorney General could extend benefits to pursue higher education to the dependents of Federal law enforcement officers killed or permanently disabled in the line of duty. The act included a "special rule" of retroactive eligibility to receive educational benefits for the dependents of Federal law enforcement officers killed in the line of duty on or after May 1, 1992. By its terms, the retroactive eligibility clause did not cover the dependents of Federal law enforcement officers permanently disabled in the line of duty. The act was amended in 1998 to offer educational benefits to the dependents of State and local public safety officers killed or permanently disabled in the line of duty, and that amendment included retroactive eligibility for the dependents of public safety officers killed in the line of duty on or after October 1, 1997.

Unfortunately, the somewhat arbitrary choice of dates to qualify for benefits has excluded deserving dependents from participating in the program. H.R. 2059 would correct this inequity by (1) making the retroactive eligibility dates to receive benefits for higher education the same for both Federal law enforcement officers and public safety officers, and (2) by moving the eligibility dates farther back in time to make it possible for more young people to pursue higher education. To date, the cost of providing educational benefits to dependents of officers killed in the line of duty has been surprisingly modest. For example, the Department of Justice reports that for fiscal year 1999, only eight survivors of Federal agents were paid a total of $44,036 in benefits, which no State and local survivors received benefits. The Congressional Budget Office estimates that extending retroactive eligibility will cost the Government an additional $14 million over fiscal years 2000 through 2005 and about $24 million over the next 10 years.

On July 6, 2000, the Subcommittee on Crime was discharged from further consideration of H.R. 2059. On July 11, 2000, the full Committee ordered the bill reported favorably to the House, and the bill was reported on July 27 (H. Rept. 106–800). No further action was taken on the bill during the 106th Congress. On September 19, 2000, the House passed S. 1638, a bill substantially similar to H.R. 2059, by voice vote. The president approved that bill on October 2, 2000 and it became Public Law 106–276.

Protecting public safety officers

H.R. 4423, the “Probation Officers’ Protection Act of 2000,” was introduced by Representative Bob Barr (R–GA). It would authorize probation and pretrial services officers to carry firearms.

Probation officers and pretrial services officers are employees of the Judicial Branch. They perform a number of functions, including preparing reports to the court concerning whether release on bail is appropriate for a defendant, monitoring compliance with bail orders by all defendants, and monitoring the activities of persons who are on parole or on supervised release. Congress determines, by statute, the extent of the authority given these officers. Under current law, they are authorized to carry firearms if “approved by the district court.” In practice, the chief judge of the district court in each of the 94 Federal judicial districts decides whether probation and pretrial services officers may carry firearms. As a result, officers in 84 judicial districts may carry them, while officers in the remaining 10 districts may not.

H.R. 4423 would make this practice uniform by amending current law to authorize all probation officers and pretrial services officers to carry firearms. The bill would require all such officers to first complete any safety and proficiency training or testing proscribed by the Director of the Administrative Office of the United States Courts.

On July 13, 2000, the Subcommittee held a hearing on the bill. The following persons testified at the hearing: The Honorable Emmet G. Sullivan, United States District Judge, District of Columbia, Judith M. De Santis, Executive Vice President, Federal Law Enforcement Officers Association; Robert Ryan, Chief Probation Officer, District of Massachusetts, Boston, Massachusetts. No further action was taken on the bill during the 106th Congress.

Bulletproof Vests Partnership Grants Act

On March 20, 2000 Representative Frank LoBiondo (R–NJ) and Representative Peter Visclosky (D–IN) introduced H.R. 4033, the "Bulletproof Vest Partnership Grant Act of 2000", to reauthorize the Bulletproof Vest Partnership Grant Program administered by the Department of Justice Office of Justice Programs to help State and local jurisdictions purchase armor vests for use by law enforcement departments through FY 2004. The bill would reauthorize the program, increase the authorization level to $50 million, and guarantee that smaller jurisdictions receive full funding available under the program.

On June 15, 2000, the Subcommittee held a mark up and ordered H.R. 4033 reported favorably to the full Committee. On July 11, the full Committee ordered the bill reported favorably to the House, and the bill was reported on July 20 (H. Rept. 106–776). The House passed by the bill on July 26, 2000 by a recorded vote of 413 yeas to 3 nays. No further action was taken on the bill during the 106th Congress. On October 26, 2000, the House passed S. 2413, the Bulletproof Vest Partnership Grant Act of 2000, a bill substantially similar to H.R. 4033, by unanimous consent. The president approved that bill on November 13, and it became Public Law 106–517.

Public Safety Officer Medal of Valor Act of 1999

On January 6, 1999, Representative Bill McCollum (R–FL) introduced H.R. 46, the "Public Safety Officer Medal of Valor Act of 1999." H.R. 46 would establish a national medal for public safety officers who exhibit extraordinary valor above and beyond the call of duty. While law enforcement agencies at all levels present their own awards and medals to those who demonstrate bravery, the United States Government has no medal in recognition of acts of courage and valor demonstrated by public safety officers. The medal would be given by the President in the name of the United States Congress to public safety officers who are recognized by the Attorney General for extraordinary valor. The Attorney General would be limited to naming not more than six medal recipients in a given year. The legislation would create a Medal of Valor Review Board composed of eleven members appointed by Congress and the President. The members of the Review Board, who would serve four year terms, would be persons with knowledge or experience in the field of public safety, including firefighter, law enforcement and emergency services expertise. Each year, the Board would 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 would be staffed by a new office within the Department of Justice, known as the National Medal Office.

On March 23, 1999, the Subcommittee on Crime was discharged from further consideration of H.R. 46. On March 24, 1999, the full Committee ordered the bill reported favorably to the House, and the bill was reported on April 12, 1999 (H. Rept. 106–83). On April 13, 1999, the House passed H.R. 46 by a recorded vote of 412 yeas to 2 nays. On December 15, the Senate passed the bill by voice vote with an amendment that added additional sections to the bill. These sections were similar to H.R. 2816, a bill that passed the House and Senate by unanimous consent on December 15 and was signed into law by the president on December 28, 2000 as Public Law 106–572, and S. 2448 and H.R. 5393, bills on which the House took no action during the 106th Congress. No further action was taken on the bill H.R. 46 during the 106th Congress.

Training for railroad police officers

On June 17, 1999, Senator Leahy introduced S. 1235, a bill that amends part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the Federal Bureau of Investigation National Academy for law enforcement training. The FBI was authorized to offer the superior training available at the FBI's National Academy only to law enforcement personnel employed by state or local units of government. Police officers employed by railroads are not allowed to attend this Academy despite the fact that they work closely in numerous cases with Federal law enforcement agencies as well as State and local law enforcement. Providing railroad police with the opportunity to obtain the training offered at Quantico, Virginia, will improve inter-agency cooperation and prepare them to deal with the ever increasing sophistication of criminals who conduct their illegal acts either using the railroad or directed at the railroad or its passengers.

S. 1235 was introduced by Senator Partick Leahy (D–VT) on June 17, 1999. The Senate passed the bill by unanimous consent on October 26, 1999. On October 27, 1999 the bill was referred to the Committee on the Judiciary and on November 2, the bill was referred to the Subcommittee on Crime. On November 17, 1999, the Committee was discharged from further consideration of the bill, and on that day the House passed the bill under suspension of the rules. On November 24, 1999, the President approved the bill and it became Public Law 106–110.

The Community Protection Act of 1999

H.R. 218 was introduced by Representative Randy (Duke) Cunningham (R–CA) on January 6, 1999. H.R. 218 would amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

On July 1, 1999, the Subcommittee held a mark up and ordered H.R. 218 reported favorably to the full Committee. No further action was taken on H.R. 218 during the 106th Congress.

CRIMINAL JURISDICTION OVER CIVILIANS ACCOMPANYING THE ARMED FORCES ABROAD

Civilians have served with or accompanied American forces in the field or onboard ship since the founding of the United States, but not in significant numbers until the Civil War. During Operations Desert Shield and Desert Storm, however, thousands of Defense Department (DoD) civilian and contract employees were present in the host nations. And with the rapid growth of contingency operations following Operation Desert Storm, significant numbers of civilian and contract employees have been deployed to places such as Somalia, Haiti, Kuwait, Rwanda, and the Balkans. In 1999, there were more than 58,600 civilian employees of the Department of Defense working overseas.

Since the end of World War II, family members of American service personnel and civilian employees have represented the largest large segment of the civilians who accompany United States forces overseas. In 1999, there were more than 193,000 dependent family members of military personnel living with them abroad. More than 14,000 dependents of DoD civilian employees also were living overseas that year.

Civilians accompanying the Armed Forces “in the field” have been subject to court-martial jurisdiction since the Revolutionary War. In World Wars I and II, civilians accompanying the force in the field were tried by court-martial. The UCMJ, enacted in 1950, contains two provisions that authorize courts martial to try civilians accompanying the military for acts that violate the UCMJ. Beginning in 1957, a series of court decisions severely limited the application of those provisions, effectively limiting UCMJ jurisdiction over civilians only to times of war declared by Congress.[2]

While some Federal criminal statutes are expressly extraterritorial, most make the acts described therein criminal only if they are committed within “the special maritime and territorial jurisdiction of the United States” or if they affect interstate or foreign commerce. Therefore, in most instances, Federal criminal jurisdiction ends at the nation’s borders. State criminal jurisdiction, likewise, ends at the boundaries of each state. Because of these limitations, acts committed by civilians accompanying the Armed Forces in foreign countries, which would be crimes if committed in the United States, often do not violate either Federal or state criminal law. And, as discussed above, they also are not violations of the UCMJ unless a “time of war” had been declared by Congress when the acts were committed. As a result, these acts are crimes, and therefore punishable, only under the law of the country in which they occurred.

Suprisingly, host countries often do not choose to assert their jurisdiction to try American civilians who commit crimes in their countries. This is most often the case when the crime was com-

[2] *Reid* v. *Covert,* 354 U.S. 1 (1957); *McElroy* v. *United States ex rel. Guagliardo,* 361 U.S. 281 (1960); *U.S.* v. *Averette,* 41 C.M.R. 363 (C.M.A. 1970).

mitted against another American or against property owned by an American. When this happens, however, the perpetrator goes unpunished for his crime. Each year, numerous incidents of rape, sexual abuse, aggravated assault, robbery, drug distribution, and a variety of fraud and property crimes committed by American civilians abroad go unpunished because the host nation chooses to waive jurisdiction over these crimes. This problem is compounded by the increased involvement of the military in areas of the world where no functioning government exists to prosecute these crimes (e.g., Somalia and Haiti) or where the U.S. has the right to exercise exclusive jurisdiction over its personnel. Because United States law does not apply to crimes committed by American civilians in these situations, such crimes go unpunished.

Over the past 43 years, many efforts have been made to fill this jurisdictional void. Numerous bills designed to address the problem have been introduced in Congress but have failed to be passed by both Houses.[3] In 1979, the General Accounting Office issued a report on the problem (General Accounting Office, Some Criminal Offense Committed Overseas by DoD Civilians Are Not Being Prosecuted: Legislation is Needed, Report No. FPCD 79–45 (1979)). It found that in 1977, 343,000 civilians had accompanied the forces abroad in a 12 month period. During that year, while host countries exercised their jurisdiction in 200 serious cases, they had waived their right of prosecution in 59 serious cases (involving rape, manslaughter, arsons, robbery, and burglary) and in 54 less serious cases (involving simple assault, drug abuse, drunkenness), In the report, the GAO recommended that Congress enact legislation to extend criminal jurisdiction over U.S. citizens accompanying the forces overseas.

In 1995, Congress passed the National defense Authorization Act for Fiscal Year 1996 (Public Law 104–106 (1996)). Section 1151 of that act directed the Departments of Defense and Justice to jointly establish an advisory committee to "review and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces in the field outside the United States in time of armed conflict." The advisory committee's report was submitted to Congress in April, 1997. It recommended two changes in the law. First, it recommended that court-martial jurisdiction be extended to civilians accompanying the Armed Forces during "contingency operations" as designated by the Secretary of Defense. The advisory committee also recommended that the jurisdiction of Federal courts be extended to reach offenses committed by civilians accompanying the force abroad. The Departments of Defense and Justice support only the extension of Federal criminal jurisdiction to persons accompanying the Armed Forces outside the United States.

H.R. 3380, the Military Extraterritorial Jurisdiction Act of 2000" was introduced by Representative Saxby Chambliss (R–GA) together with Representative Bill McCollum (R–FL). It establishes a new Federal crime involving conduct by military personnel and civilians accompanying the Armed Forces outside the United States

[3] *See e.g.*, S. 207, 90th Cong. (1967); S. 1, 94th Cong. (1975); H.R. 763, 95th Cong. (1977); H.R. 255, 99th Cong. (1985); S. 147, 101st Cong. (1989); H.R. 5808, 102d Cong. (1992); S. 2083, 104th Cong. (1996).

that would have been a felony under Federal law, had the conduct occurred within the United States. The punishment for the new crime is that which could have been imposed under Federal law had the crime been committed in the United States.

The new crime applies to two groups of people: persons employed by or who are accompanying the Armed Forces outside of the United States and persons who are members of the Armed Forces. It includes both civilian employees of the Department of Defense, contractor employees, and dependants of military members. It brings within its scope both American citizens and nationals, as well as persons who are nationals of other countries. The bill also allows for the prosecution of military members, under certain conditions. For example, military personnel who commit acts that fall within the scope of the new crime enacted by the act but who are not tried for their crime sunder the UCMJ and who later cease to be subject to the UCMJ (e.g., because the case was not solved before they were discharged from the military, or because the person is no longer on active duty may be prosecuted under the Act. And military personnel still on active duty could also be prosecuted under the act if they are indicted or otherwise charged with committing the offense together with one or more non-military co-defendants.

The act prohibits a prosecution under the new statute if a foreign government has prosecuted or is prosecuting such person for the conduct constituting the offense in accordance with jurisdiction recognized by the United States, but allows the Attorney General or the Deputy Attorney General to waive this provision in appropriate cases. The act also contains a provision that requires most of the initial proceedings in any case under the act to be conducted before the defendant is brought to the United States—in most cases by telephone. In order to enforce this provision, the act prohibits the forced return of a defendant to the United States prior to these proceedings being held, except certain situations.

The Subcommittee on Crime, held a hearing on that bill on March 30, 2000. The following witnesses testified on the bill: The Honorable Robert Reed, Office of the General Counsel, Office of the Secretary of Defense, United States Department of Defense; Brigadier General Joseph R. Barnes, Assistant Judge Advocate General, United States Army; Brigadier General James B. Smith, Commander, 18th Fighter Wing, Kadena Air Force Base, Naha, Japan; Roger Pauley, Esq., Director of Legislation, Office of Policy and Legislation, United States Department of Justice; and Jan Mohr, President, Federal Education Association, Washington, D.C.

On May 11, 2000, the Subcommittee held a mark up and ordered H.R. 3380 reported favorably to the full Committee. On July 27, the full Committee ordered the bill reported favorably to the House, and the bill was reported on July 20 (H. Rept. 106–778, Part I). The House passed the bill on H.R. 3380 was passed by the House by voice vote on July 25, 2000. No further action was taken on the bill during the 106th Congress. Also on July 25, 2000, the House took up consideration of S. 768, a bill similar in purpose to H.R. 3380 and which passed the Senate by unanimous consent on July 1, 1999. The House struck out all of the text of the Senate bill, and substituted for it the text of H.R. 3380 as passed by the House.

The House then passed the Senate bill by unanimous consent. The Senate passed S. 768, as amendment in the House, by unanimous consent on October 25, 2000. The President approved the bill on November 22, and it became Public Law 106–523.

AUTHORITY OF FEDERAL LAW ENFORCEMENT AGENCIES

Authority of the United States Secret Service

On June 24, 1999, the Subcommittee on Crime held an oversight hearing of the Secret Service during which various issues concerning the work of the Service were discussed. The following witnesses testified: Brian Stafford, Director, United States Secret Service; Kevin T. Foley, Assistant Director, Office of Investigations, United States Secret Service; Barbara S. Riggs, Assistant Director, Office of Protective Research, United States Secret Service; and Carlton Danny Spriggs, Assistant Director, Office of Protective Operations, United States Secret Service.

During the hearing several areas were identified as to which legislative changes would be appropriate. In order to address this need, Representative Bill McCollum (R–FL) introduced H.R. 3048, the "Presidential Threat Protection Act of 1999."

The principal change made by the bill is with respect to the jurisdiction of the Secret Service to investigate threats made against former Presidents or their families, or against the immediate families of the major candidates for the office of President or Vice President. Under current law, in order for the Service to have jurisdiction to investigate a threat made against any person, that person must currently be receiving Secret Service protection. However, the immediate family of the major candidates for the office of President and Vice President do not receive Secret Service protection and so, threats made against them are not Federal crimes and may not be investigated by the Service. Obviously, threats made against children of candidates for President or Vice President are often related to their candidacy, and should be investigated by the Federal law enforcement agency charged with protecting the candidate during the pendency of their campaign. Similarly, should a former President decline Secret Service protection, as has occurred in the past, threats made against him would not be a Federal crime and may not be investigated by the Secret Service. This potential problem will be exacerbated by a change made to title 18 in 1994 which requires that Secret Service protection for former Presidents and their spouses terminate ten years after the President leaves office.

To remedy this problem, H.R. 3048 will amend current law to make it clear that it is a Federal crime, which the Secret Service is authorized to investigate, for any person to threaten any current or former President or Vice President, major candidates for the office of President or Vice President, or the immediate family of such person, notwithstanding the fact that the Secret Service may not be protecting the person at the time the threat is made.

H.R. 3048 will also clarify the authority of the Secret Service to coordinate the design, planning, and implementation of security operations at special events of national significance, as determined by the President or his designee. Under the authorizing statute for the Secret Service, the Service is authorized to protect a number of persons, including: the President, Vice President, former Presidents and their spouse and certain of their children, visiting heads of foreign states or governments, other distinguished visitors to the United States, major candidates for the office of President and Vice President, and certain other persons as to whom the President directs receive such protection. Recently, the President has directed the Secret Service to coordinate the design, planning, and implementation of security operations at special events of national significance. In some cases, however, none of the persons specified in section 3056 may be present at these events and, therefore, the Secret Service's authority to coordinate the security for these events is unclear. H.R. 3048 clarifies the authority of the Secret Service to do this by specifically authorizing it to coordinate the design, planning, and implementation of security operations at these events.

H.R. 3048 also authorizes the Secretary of the Treasury to issue administrative subpoenas in limited situations. Administrative subpoenas are subpoenas issued by a law enforcement agency rather than a United States Court. Under current law the authority to issue administrative subpoenas is given to the Attorney General, but limited to cases involving violations of Title 21 (i.e., drug cases), investigations concerning a Federal Health Care Offense, or investigations involving child abuse and child sexual exploitation. During the oversight hearing of the Service held by the Subcommittee on Crime, the Service asked the Committee to consider granting it administrative subpoena authority for investigations under sections 871 and 879 of Title 18 (involving threats against the President, former Presidents, and other persons protected by the Service.). The bill grants the Secretary of the Treasury this authority but limits its use by the Secretary only to cases where the Director of the Service determines that the threat being investigated is imminent. The authority is further limited to requesting only the production of records and other things relevant to an investigation (but not the testimony of persons) in cases involving violations of those two statutes.

The statute also consolidates the two administrative subpoena statutes that exist in title 18 today, together with the new authority granted to the Secretary of the Treasury under this bill, into one comprehensive statute. The re-draft also contains new provisions designed to give citizens added protections against misuse of these subpoenas, including provisions that give citizens the right to move a court to quash an administrative subpoena and which describe the process by which that may be accomplished.

On March 16, 2000, the Subcommittee held a mark up and ordered H.R. 3048 reported favorably to the full Committee. On May 24, the full Committee ordered the bill reported favorably to the House, and the bill was reported on June 12, (H. Rept. 106–669). The House passed the bill on June 26 by a voice vote. On October 13, the Senate amended the bill and passed it by voice vote. On October 25, the House disagreed with two of the five amendments made by the Senate, agreed to two of the Senate amendments, and agreed to a third with an amendment. The House then passed the bill, as amended, by unanimous consent.

United States Marshals Service Improvement Act of 1999

On June 24, 1999, Representative Bill McCollum (R–FL) introduced the "United States Marshals Service Improvement Act of 1999", to provide for the appointment of U.S. Marshals for each judicial district of the United States and for the Superior Court of the District of Columbia by the Attorney General of the United States, subject to Federal law governing appointments in the competitive civil service. Currently, those appointments are made by the President.

On July 1, 1999, the Subcommittee ordered the bill favorably reported to the full Committee, where it was considered on July 20, 1999 and ordered reported favorably. On November 8, 1999, H.R. 2336 was considered under suspension of the rules and then again considered (as unfinished business) on November 16, 1999, where it failed by a vote of 183 yeas to 231 nays. No further action on this legislation was taken in the 106th Congress.

On July 1, 1999, the Subcommittee held a mark up and ordered H.R. 2336 reported favorably to the full Committee. On July 20, 1999, the full Committee ordered the bill reported favorably to the House, and the bill was reported on November 8, 1999 (H. Rept. 106–459). The House considered the bill under suspension of the rule on November 16, 1999 and the bill failed by a recorded vote of 183 to 231. No further action was taken on the bill during the 106th Congress.

Fugitive Apprehension Act of 2000

On July 26, 2000, S. 2516, the "Fugitive Apprehension Act of 2000" passed the Senate by unanimous consent and was received in the House. This legislation, introduced by Senator Strom Thurmond (R–SC), would authorize funding for fugitive apprehension task forces to be administered by the USMS and would also provide administrative subpoena authority for the Attorney General in certain cases related to fugitive apprehension, but only under specific conditions relating to protection of the privacy of involved individuals. On August 3, 2000 this legislation was referred to the Subcommittee on Crime. Subsequently, the administrative subpoena provisions proved to be controversial and no further action was taken on this legislation in the 106th Congress. Similar provisions to those within S. 2516 were added as an amendment to unrelated legislation, H.R. 3048, the "Presidential Threat Protection Act of 2000" in the Senate before that legislation was passed in the Senate on October 13, 2000. Those provisions relating to administrative subpoena authority for the Attorney General were subsequently stripped from the amended version of H.R. 3048 before it was again considered and approved by unanimous consent by the House on October 25, 2000.

Oversight Hearing on the United States Marshals Service

The U.S. Marshals Service is the nation's oldest Federal law enforcement agency. Since 1789, U.S. Marshals have served the nation through a variety of vital law enforcement activities. The Marshals Service occupies a uniquely central position in the Federal justice system. It is involved in virtually every Federal law enforcement initiative. Approximately 4,000 Deputy Marshals and USMS career employees perform the following nationwide, day-to-day missions: protecting the Federal judicial process through judicial security, witness security, and prisoner security; fugitive investigation and apprehension; asset seizure, management, and forfeiture; and special operations responding to high-threat or emergency situations. Today, Marshals Service Director John Marshall and 94 U.S. Marshals appointed by the President direct the activities of 95 district offices and personnel stationed at more than 350 locations throughout the 50 states, Guam, Northern Mariana Isands, Puerto Rico and the Virgin Islands. Each district is headed by a U.S. Marshal.

On July 13, 2000, the subcommittee on Crime held an oversight hearing on the Marshals Service. Testimony was heard from: John W. Marshall, Director, United States Marshals Service; Donald S. Donovan, Acting Assistant Director, Judicial Security Division; Robert J. Finan, Assistant Director, Investigative Services Division; Kenneth Pekarek, Acting Assistant Director, Justice Prisoner and Alien Transportation System; and George K. McKinney, United States Marshal, District of Maryland.

United States Supreme Court Police Protective Authority

On September 7, 2000, Representative Bill McCollum (R–FL) introduced H.R. 5136, a bill to make permanent the current temporary statutory authority of the Marshal of the Supreme Court and the Supreme Court Police to provide security beyond the Supreme Court building and its grounds to Supreme Court Justices, Court personnel, and official guests of the Court. The current authority to provide this security will terminate on December 29, 2000. H.R. 5136 would also eliminate the Court's annual reporting requirement to Congress detailing the administrative cost associated with providing off-grounds security. This cost has been very modest in the past and is fully detailed each year in the Court's annual budget request to Congress. Finally, H.R. 5136 would repeal the ministerial requirement that the Chief Justice authorize in writing armed protection for official guests of the Supreme Court when they are traveling in the United States outside the Washington, D.C. metropolitan area.

The Supreme Court Police is charged with enforcing the law at the Supreme Court building and its grounds as well as protecting Justices and other Court employees on and off its grounds.[4] Since 1982, Congress has provided statutory authority for the Supreme Court Police to provide security beyond the Court building and grounds for Justices, Court employees, and official visitors of the Court. This same authority requires that the Supreme Court annually report to Congress on the cost of such security. Since 1986, Congress has extended this off-grounds authority to provide security four times, but the current authority will sunset on December 29, 2000. The current authority and jurisdiction of the Supreme Court Police are essential to the force's performance of its everyday duties. Supreme Court Police regularly provide security to Justices by transporting and accompanying them to official functions in the Washington, D.C., metropolitan area, and occasionally outside it

[4] 40 U.S.C. 13 et. seq.

when they, or official guests of the Court, are traveling on Court business. Some Justices, because of threats to their personal safety, are driven by the police to and from their homes and the Court every day. Additionally, the police protect Court employees going to and from its parking lot, which is located one-half block east of the Supreme Court building and off the grounds of the Court. The committee believes that the Supreme Court Police should continue to provide off-ground security to protect the Justices, other Court personnel and the Court's official guests. Given the fact that the Court's police force is well trained and has an excellent performance record, it is appropriate that this authority be made permanent at this time.

On September 14, 2000, the Subcommittee on Crime was discharged from further consideration of H.R. 5136. On September 20, 2000, the full Committee ordered the bill reported favorably to the house, and the bill was reported on October 4, (H. Rept. 106–931). On October 10, 2000, the House passed the bill by voice vote. A provision similar to H.R. 5136 was included in S. 2915, a bill to make improvements in the operation and administration of the Federal courts, and for other purposes. On November 13, 2000, S. 2915 was signed by the President and became Public Law 106–518.

PROTECTING ANIMALS

Federal Law Enforcement Animal Protection Act of 1999

H.R. 1791, the "Federal Law Enforcement Animal Protection Act of 1999" was introduced by Representative Jerry Weller (R–IL). The bill added new section 1368 to title 18 in order to make it a crime to willfully harm any police animal, or attempt to do so. The maximum punishment is one year imprisonment, unless the offense disabled or disfigured the animal, or resulted in the death of the animal, in which case the maximum punishment would increase to 10 years imprisonment. The bill defines "police animal" to mean a dog or horse employed by federal agency for the principal purpose of detecting criminal activity, enforcing the laws, or apprehending criminal offenders.

Prior to the enactment of H.R. 1791, damage to an animal used by the Federal government could be punished under 18 U.S.C. § 1361. Under that statute, the maximum punishment is determined by the amount of damage caused. If the damage is less than $1,000 the maximum punishment is one year in prison. If it is over that amount, the maximum punishment is 10 years in prison.

The government spends a considerable amount of time and money to train these animals, and their handlers often form a close bond with them. In many cases, these animals have prevented harm or even saved the lives of their handlers. In some cases, the financial value of the animal might not adequately reflect the training given the animal or the cost of disrupting the bond between the law enforcement officer and his animal if the animal were harmed. H.R. 1791 more accurately reflects that harm.

On July 1, 1999, the Subcommittee held a mark up and ordered H.R 1791 reported favorably to the full Committee. On September 22, 1999, the full Committee ordered the bill reported favorably to the House, and the bill was reported on October 12, 1999 (H. Rept.

106–372). The House passed the bill on October 12 by voice vote. On July 19, 2000, the Senate passed the bill by unanimous consent. The president approved the bill on August 2, 2000 and it became Public Law 106–254.

Punishing depictions of animal cruelty

Representative Elton Gallegly (R–CA) introduced H.R. 1887, a bill to punish the depiction of animal cruelty. On September 30, 1999, the Subcommittee held a hearing on the bill. The following witnesses testified: Loretta Swit, Actors and Others for Animals, North Hollywood, California; Tom Connors, Deputy District Attorney, Ventura County District Attorney Office, Ventura, California; Susan Creede, Investigator, Ventura County District Attorney Office, Ventura, California.

At the hearing law enforcement officials testified that about a growing market in videotapes and still photographs depicting insects and small animals being slowly crushed to death. While most of this material featured torture to mice, hamsters, and other small animals, their investigation did find depictions of cats, dogs, and even monkeys being tortured. Much of the material featured women inflicting the torture with their bare feet or while wearing high heeled shoes. In some video depictions, the woman's voice can be heard talking to the animals in a kind of dominatrix patter. The cries and squeals of the animals, obviously in great pain, can also be heard in the videos.

The witnesses testified that because the faces of the women inflicting the torture in the material often were not shown, nor could the location of the place where the cruelty was being inflicted or the date of the activity be ascertained from the depiction, defendants arrested for violating state cruelty to animals statutes in connection with the sale of these materials in that state often were able to successfully assert as a defense that the state could not prove its jurisdiction over the place where the act occurred or that the actions depicted took place within the time specified in the state statute of limitations. While all have some form of a cruelty to animal statues, few have a statute that prohibits the sale of the depictions of such cruelty.

H.R. 1887 prohibits the creation, sale, or possession of depictions of such cruelty with the intent to placing them into instate or foreign commerce for commercial gain. The statute is intended to augment, not supplant, state animal cruelty laws by addressing behavior that may be outside the jurisdiction of the states, as a matter of law, and appears often beyond the reach of their law enforcement officials, as a practical matter.

On October 7, 1999, the Subcommittee held a mark up and ordered H.R. 1887 reported favorably to the full Committee. On October 13, 1999, the full Committee ordered the bill reported favorably to the House, and the bill was reported on October 19, 1999 (H. Rept. 106–397). The House passed the bill on October 19, 1999 by a recorded vote of 372 to 42. On November 19, 1999, the Senate passed the bill by unanimous consent. The president approved the bill on December 9, 1999 and it became Public Law 106–152.

The Captive Elephant Accident Prevention Act of 1999

On September 23, 2000, Representative Sam Farr (R–CA) introduced H.R. 2929, the "Captive Elephant Accident Prevention Act of 1999." The bill would amend Title 18 of the United States Code to prohibit anyone from knowingly making any elephant available for use in a traveling show or circus, or for the purpose of allowing individuals to ride an elephant. Any person violating the law would be subject to a fine and imprisonment for not more than one year. Repeat offenders could be imprisoned for not more than two years. The bill defines the term "traveling show or circus" as a show or circus that spends most of it working time each year away from its permanent facility.

On June 13, 2000, the Subcommittee on Crime held a one day legislative hearing to consider the merits of the legislation. The Subcommittee heard testimony from Bob Barker, entertainer and animal rights activist, Hollywood, California; Joel Parrott D.V.M., Executive Director, Oakland Zoo, Oakland, California; Tom Rider, formerly of Ringling Bros. and Barnum & Bailey Circus, West Boxford, Massachusetts; Blayne Doyle, Palm Bay Police Department, Palm Bay Florida; Pat Derby, President, Performing Animal Welfare Society, Galt, California; David Rawls, President, Kelly Miller Circus, Hugo, Oklahoma; Kari Johnson, Have Trunk Will Travel, Perris, California; David Blasko, Elephant Encounter, Six Flags, Marine World, Vallejo, California; Debbie Olson, Director of Conservation and Science Programs, Indianapolis Zoo, Azle, Texas; and Dennis Schmitt D.V.M., PhD, Associate Professor, Agriculture Department, Southwest Missouri State University, Springfield, Missouri.

No further action was taken on H.R. 2929 during the 106th Congress.

GENERAL LEGISLATION AND OVERSIGHT HEARINGS

Traffic Stops Statistics Act of 2000

Representative John Conyers (D–MI) introduced H.R. 1443 on April 15, 1999. H.R. 1443 would direct the Attorney General to conduct a nationwide study of stops for traffic violations by law enforcement officers. It would require the Attorney General to: (1) perform an initial analysis of existing data, including complaints alleging, and other information concerning, traffic stops motivated by race and other bias; (2) gather specified data on traffic stops from a nationwide sample of jurisdiction, including data on the alleged infractions, identifying characteristics of the drivers, immigration status questions and inquiries, searches instituted and alleged criminal behavior that justified the searches, items seized, and citations or arrests resulting from stops; and (3) report the results to Congress and make such report available to the public.

On February 3, 2000, the Subcommitte on Crime discharged from further consideration of the bill H.R. 1443. On March 1, 2000, the full Committee ordered the bill reported favorably to the House, and the bill was reported on March 13, 2000 (H. Rept. 106–517). No further action was taken on H.R. 1443 during the 106th Congress.

Hearing on the Shoot Down of the Brothers to the Rescue Planes

On July 15, 1999, the Crime Subcommittee held an oversight hearing on the "Shoot Down of the Brothers to the Rescue Planes." A number of legal and factual questions were considered at this hearing, including the basis for an indictment of the Cuban leader Fidel Castro. The following witness testified: Jeffrey Houlihan, Senior Detection Systems Specialist, United States Customs Service, Domestic Air Interdiction Coordination Center, George Fowler, General Counsel of the Cuban American National Foundation; Jose Basulto, President, Brothers to the Rescue; Arnoldo Iglesias, Vice President, Brothers to the Rescue; Sylvia G. Iriondo, Co-Owner & President, Tarafa & Iriondo Corporation, Realtors; Jorge Mas, Chairman & Chief Executive Officer, MasTec, Incorporated; Incorporated; and Lazaro Betancourt Morin, a recent Cuban defector.

Expressing the sense of the House of Representative condemning the act of arson at Three Sacramento, California, Area Synagogues

H. Res. 226 was introduced by Representative Doug Ose (R–CA) on June 29, 1999. H. Res. 226 expresses that the House of Representatives: (1) condemns the crimes that occurred in Sacramento, California, at Congregation B'Nai Israel, Congregation Beth Shalom, and Kenesset Israel Torah Center on June 18, 1999; (2) interprets such attacks as an attack on all Americans; (3) is committed to using Federal law enforcement personnel and resources to bring the persons who committed these attacks to justice; (4) recognizes the residents of the Sacramento, California, area who have so quickly joined together to lend support and assistance to the victims and who remain committed to preserving the freedom of religion of all members of the community; and (5) calls upon all Americans to categorically reject similar crimes of hate and intolerance.

On June 29, 1999, H. Res 226 was agreed to under suspension of the rules by the Yeas and Nays (425–0, 1 Present). No further action was taken on this resolution during the 106th Congress.

Hearing on The Office of Justice Programs, U.S. Department of Justice

On July 22, 1999, the Crime Subcommittee held an oversight hearing on the Office of Justice Programs, the grant-making arm of the U.S. Department of Justice. The witnesses who testified were: Laurie Robinson, Assistant Attorney General, Office of Justice Programs, United States Department of Justice; Lawrence Sherman, Director & Albert M. Greenfield Professor of Human Relations, Fels Center of Government, University of Pennsylvania; The Honorable Michael J. Anderegg, Judge, Marquette County Circuit Court, Michigan; Joseph Myers, Executive Director, American Indian Justice Center & Board Member, National Organization for Victims Assistance; Mark Soler, President, Youth Law Center, Washington, D.C.; Donna Edwards, Executive Director, National Network to End Domestic Violence; and Terence Thornberry, Director, Hindelang Criminal Justice Research Center, School of Criminal Justice, State University of New York at Albany.

Prisoner Health Care Co-Payment

H.R. 1349, the "Federal Prisoner Health Care Copayment Act of 2000" was introduced by Representative Matt Salmon (R–AZ). The bill authorizes the Federal Bureau of Prisons to collect a fee from any person who has been charged with or convicted of a Federal crime each time that person visits a health care professional at his or her request and receives health care services. The amount of the fee is to be determined by the Director of the Bureau of Prisons through regulation, but would be at least $1 per visit. The fee would be assessed and deducted from any account maintained on behalf of the prisoner receiving the services. The fee would not be assessed or collected for preventative health care services, emergency services, prenatal care, diagnosis or treatment for chronic infectious diseases, mental health care, or substance abuse treatment. The bill further provides that when a Federal prisoner is housed in a non-Federal facility (e.g., pursuant to an agreement between the Federal government and a state or local government) the state or local facility may assess a fee for health care services, provided that such a fee is authorized under the law of the state where the Federal prisoner is housed and that state prisoners are charged no greater a fee.

Currently, inmates incarcerated in the Federal prison system and persons who are detained pending trial receive free medical care from BOP employees (physicians, physician assistants, and nurses) and Public Health Service (PHS) personnel (generally physician assistants, dentists, and pharmacists) assigned to each institution. Additionally, the BOP maintains contracts with medical specialists in private practice who provide care that cannot be provided by the BOP employees and PHS personnel. For the most seriously ill inmates, the BOP operates seven Federal Medical Centers at which are located fully accredited hospitals and facilities to care for long-term chronically and terminally ill inmates. In fiscal year 1999, the BOP spent $372.1 million in health care costs.

All inmates in the BOP system are required to work if medically able, and all who work are paid for their labor. Persons detained while awaiting trial are not required to work. Wages paid to inmates are retained in an inmate account, which inmates can use to pay for telephone calls and purchases from the prison commissary. A prisoner's family may deposit money into his or her account for his or her use as well.

The Subcommittee on Crime held a hearing on H.R. 1349 on September 30, 1999. The following witnesses testified at the hearing: Representative Matt Salmon (R–AZ); Phillip S. Wise, Assistant Director, Federal Bureau of Prisons; Jean Williams Auldridge; Vice Chairman, National Board of Directors; Citizens United for the Rehabilitation of Errants (CURE); and Robert L. Cohen, M.D., New York, New York.

At that hearing the Bureau of Prisons representative testified that some portion of the inmates who seek medical treatment at any given time do so for the purpose of avoiding work or other rehabilitative programming which is imposed on them. Inmates know that while they are waiting for treatment they are excused from all programming. Inmates who seek treatment without a legitimate medical complaint waste the time of medical staff and force truly sick inmates to wait to receive the care they need. The BOP supports imposing a nominal health care co-payment fee on all prisoners for the same reason that managed health care plans impose them on their customers, namely, it will help deter overuse of health care services (i.e., use of those services by people who do not really need them).

A recent General Accounting Office report (Federal Prisons: Containing Health Care Costs for an Increasing Inmate Population, No. GAO/T–GGD–00–112, (April 6, 2000)) found that co-payment fees for prison inmates have been adopted in 36 states. Among states and localities that have imposed these fees, reductions in sick call visits of from 16 to 50 percent have been realized. In its report, the GAO concluded that use of a health care co-payment fee system would reduce the number of unnecessary medical visits in the Federal prison system, perhaps reducing overall visits by as much as 25 percent.

On March 16, 2000, the Subcommittee held a mark up and ordered H.R. 1349 reported favorably to the full Committee. On July 19, the full Committee ordered the bill reported favorably to the House, and the bill was reported on September 14 (H. Rept. 106–851). The House passed the bill on September 19 by voice vote. No further action was taken on the bill during the 106th Congress. However, on September 19, the House took up consideration of S. 704, a bill substantially similar to H.R. 1349 and which passed the Senate by unanimous consent on May 27, 1999. The House struck out all of the text of the Senate bill, and substituted for it the text of H.R. 1349 as passed by the House. The House then passed the Senate bill by unanimous consent. The Senate passed S. 704, as amended in the House, by unanimous consent on September 28, 2000. The President approved the bill on October 12, and it became Public Law 106–294.

Hearing on COPS ("Community Oriented Policing Services") Program

On October 28, 1999, the Crime Subcommittee held an oversight hearing of the COPS Program. The following witness testified: Thomas C. Frazier, Director, Office of Community Oriented Policing Services (COPS), United States Department of Justice; Robert L. Ashbaugh, Acting Inspector General, United States Department of Justice; Richard Stana; Associate Director, Administration of Justice Issues, United States General Accounting Office; Joseph M. Newport, Chief of Police, Terre Haute (Indiana) Police Department; Lawrence W. Sherman, Albert M. Greenfield Professor of Human Relations, University of Pennsylvania; Edward F. Davis, III, Police Superintendent, Lowell, Massachusetts; and Martin L. Pfeifer, Sergeant, Washington, D.C. Metropolitan Police Department, and Secretary, Fraternal Order of Police.

Internet Gambling Prohibition Act of 2000

Internet gambling has been characterized by gambling addiction experts as the "crack cocaine" of gambling. Legislation to ban Internet gambling was first introduced in the House early in the 105th Congress, at which time there were approximately a total of thirty (30) Internet gambling websites in existence. Since that time, three years later, more than seven-hundred (700) new gambling sites have been established, and Internet gambling is now a billion-plus dollar-a-year illegal industry, growing every day.

In the 106th Congress, legislation to prohibit Internet gambling was introduced by Representative Bob Goodlatte (R–VA). H.R. 3125, the "Internet Gambling Prohibition Act," would prohibit gambling businesses from using the Internet to place, receive, or otherwise make bets or wagers by providing criminal penalties for violations, authorize civil enforcement proceedings by Federal and State authorities, and establish a mechanism for requiring Internet service providers (ISP's) to terminate access to material on their facilities that violates this section. The legislation would not apply to certain lawful, regulated gaming activities.

On November 3, 1999, the Subcommittee on Crime favorably reported H.R. 3125 to the full Judiciary Committee. The Subcommittee held a hearing on this bill on March 9, 2000, the third held on this matter since legislation was introduced to ban Internet gambling in the 105th Congress. The Subcommittee heard testimony from the following witnesses: "John Doe," Internet Gambling Addict, San Diego, California; Representative Robert W. Goodlatte (R–VA); Senator John Kyl (R–AZ); The Honorable Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice; and The Honorable James E. Doyle, Attorney General, State of Wisconsin, Madison, Wisconsin; Robert Minnix, Associate Athletics Director, Florida State University, Tallahassee, Florida; Stephen Walters, Chairman, Oregon Racing Commission, Portland, Oregon; Keith Whyte, Executive Director, National Council on Problem Gambling, Washington, D.C.; and Bartlett Cleland, Esquire, Policy Director, Center for Technology and Freedom, Louisville, Texas.

On November 3, 1999, the Subcommittee held a mark up and ordered H.R. 3125 reported favorably to the Full Committee. On April 6, 2000 the full Committee ordered the bill reported favorably to the House, and the bill was reported on June 7, (H. Rept. 106–655). On June 7, the bill was referred sequentially to the House Committee on Commerce, and on June 23, the Committee on Commerce was discharged from further consideration of the bill. On July 17, the House considered the bill under suspension of the rules and the bill failed to pass by a recorded vote of 245 to 159 (270 ayes votes being required for passage). No further action was taken on the bill during the 106th Congress.

On November 19, 1999, S. 692, the "Internet Gambling Prohibition Act of 1999" passed the Senate by unanimous consent and was subsequently referred to the Subcommittee on Crime on February 3, 2000. This legislation is a nearly identical companion to H.R. 3125 as introduced, and no further action was taken on it in the 106th Congress.

Internet Gambling Funding Prohibition Act

H.R. 4419, the "Internet Gambling Funding Prohibition Act" was introduced by Representative Jim Leach (R–IA) on May 10, 2000 and referred to the Committees on Banking and Financial Services and Judiciary. The bill prohibits any person engaged in a gambling business from knowingly accepting, in connection with the participation of another person in Internet gambling credit, an electronic fund transfer, or any financial instrument and provide that if an appropriate Federal banking agency determines that an insured depository institution is engaged in prohibited activities, it may issue an injunction against the person in violation of this Act. It would also encourage that the Federal Government, in deliberations with a foreign government on money laundering, corruption, and crime issues, should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes.

On May 30, 2000 the bill was referred to the Subcommittee on Crime. On July 20, the Committee on Banking and Financial Services reported the bill to the House (H. Rept. 106–771, Part I). The Subcommittee took no action on this bill, and the Committee was discharged from further consideration of it on September 29, 2000. No further action was taken on this bill during the 106th Congress.

Enforcing Firearms Laws: Project Exile

On March 22, 2000, Representative Bill McCollum (R–FL) introduced H.R. 4051, "Project Exile: The Safe Streets and Neighborhoods Act of 2000." The bill's intent is to help make our communities and neighborhoods safer by addressing gun violence through the common sense approach of ensuring vigorous prosecution of gun criminals. This approach simply involves enforcing the laws already on the books, and ensuring a minimum prison sentence of at least five years for convicted violators. In states and communities around the country where aggressive prosecution of gun crimes has been coupled with tough prison sentences, violent crime has gone down.

In the last two years a handful of states, including Virginia, have dramatically reduced the level of gun crime in their states by implementing programs that ensure tough prison time for criminals who use guns. The example of the impact of Virginia Exile is noteworthy. Prior to Project Exile, Richmond, Virginia had one of the highest murder rates in the world and an exploding violent crime problem. Since 1997, when Project Exile was begun in Richmond: homicides have dropped 46 percent (the lowest level since 1987); crimes involving guns have dropped by 65 percent; aggravated assaults have dropped by 39 percent; and the overall number of violent crimes have dropped by 35 percent.

The Project Exile Act provides resources to states that ensure a mandatory minimum sentence of five years (without parole) for any person who uses or carries a firearm during and in relation to a violent crime (murder, rape, robbery, and aggravated assault) or serious drug trafficking offense (an offense under state law involving manufacturing or distributing a controlled substance, for which a maximum term of imprisonment of ten years or more is prescribed by law). Importantly, the Act requires that the mandatory minimum sentence must be in addition to the punishment provided for the underlying crime. Alternatively, a state can qualify for the Exile funds if it ensures that person convicted of possessing a firearm and who has a prior conviction for a violent crime serves a mandatory minimum sentence of five years. The Act will give states the option to prosecute offenders in either Federal or state court, so long as the states ensure that the mandatory minimum sentence of five years is served.

The Project Exile Act will provide a total of $100 million in federal resources over five years as an incentive for states to implement such programs and to help defray costs associated with tougher enforcement against gun criminals. Funds received under the Act will be for strengthening state criminal justice systems in a wide variety of ways, including: hiring and training more judges, prosecutors and probation officers; increasing prison capacity; and developing information-sharing case management systems that ensure that all segments of the criminal justice system are contributing to and using the same case files for serious offenders.

The Act is an incentive grant program similar to the Trust-in-Sentencing program that Congress has funded over the last five years. The Trust-in-Sentencing program created an incentive for states to require convicted violent offenders to serve as least 85 percent of their sentences, and helped states defray costs associated with the resulting longer prison terms. This program has helped move the national average time served for violent offenders from 35 percent in 1994 to close to 50 percent in 1998. It has been a key factor in lowering the crime rate over the last 7 years.

Based on preliminary reviews, it appears that at least six states may already qualify: They include Virginia, Texas, Florida, Louisiana, South Carolina, and Colorado. Additionally, a number of cities have initiated Exile (including Rochester, New York, and Philadelphia, Pennsylvania), and there appears to be considerable momentum that may carry over from these cities to their states.

In calender years 1998 and 1999 the Administration has significantly increased federal gun crime prosecutions (under 18 U.S.C. sections 922 or 924). It is important to note, however, that the number of gun crime prosecutions dropped substantially during the five year period before then, from 7,059 in 1992 to 5,150 in 1997. (The comparable prosecution numbers for 1998 and 1999 were 5,876 and 7,057, respectively.)

The Crime Subcommittee held a hearing on April 6, 2000, on H.R. 4051, “Project Exile: The Safe Streets and Neighborhoods Act 2000.” The following witnesses testified: The Honorable Jim Gilmore, Governor of Virginia, Richmond, Virginia; The Honorable Walter C. Holton, Jr., United States Attorney for the Middle District of North Carolina, United States Department of Justice; Rick Costaldo, Columbine, Colorado; Mary Leigh Blek, President, The Bell Campaign, Los Angeles, California; The Honorable Mark L. Earley, Attorney General, Richmond, Virginia; Michael T. McCaul, Special Assistant to the Attorney General, Austin, Texas; George J. Terwilliger, III, Esq., Partner, McGuire Woods, Battle & Boothe, Washington, D.C.; Kenneth W. Sukhia, Esq., Fowler, White, Gillen, Boggs, Villareal and Banker, P.A.; Tallahasee, Florida; The Reverend William Fails, Highpoint, North Carolina; Garen Wintemute, Director, Violence Prevention Research Program, University of California, Davis; and Kristen Rand, Violence Policy Center, Washington, D.C.

National Police Athletic League Youth Enrichment Act of 2000

Representative Thomas Barrett (D–WI) introduced H.R. 3235, the "National Policy Athletic League Youth Enrichment Act of 1999." H.R. 3235 directs the Office of Justice Programs of the Department of Justice to award a grant to the Police Athletic League (PAL) for the purposes of establishing PAL chapters to serve public housing projects and other distressed areas and expanding existing chapters to serve additional youth. PAL was founded by police officers in New York City in 1914, and its goal is to offer an alternative to crime, drugs and violence for our nation's most at-risk youth. Since 1914, PAL has grown into one of the largest youth-crime prevention programs in the nation, with a network of 320 local chapters and 1,700 facilities that serve more than 3,000 communities and 1.5 million children. Local chapters are volunteer driven and receive most of their funding from private sources. In partnership with local law enforcement agencies, PAL chapters help to narrow the gap in trust between children and the police, especially in low-income and high-crime neighborhoods. PAL offers after school athletic, recreational, and educational programs designed to give children an alternative to gangs, drugs and crime, and to reinforce the values of responsibility, hard work and community.

H.R. 3235 authorizes the appropriation of $16 million a year for five years beginning with this fiscal year. The money will be used to enhance the services provided by the 320 established PAL chapters and provide seed money for the establishment of 250 (50 per year over a 5-year period) additional PAL chapters in public housing projects and other distressed areas, including distressed areas with a majority population of Native Americans.

On July 20, 2000, the Subcommittee held a mark up and ordered H.R. 3235 reported favorably to the full Committee. On July 25, the full Committee ordered the bill reported favorably to the House, and the bill was reported on September 18 (H. Rept. 106–859). The House passed the bill on October 2 by a voice vote. On October 13, the Senate passed the bill by unanimous consent. The President approved the bill on October 27 and it became Public Law 106–367.

Expressing the sense of the House of Representatives that the President should focus appropriate attention on the issue of neighborhood crime prevention, community policing, and reduction in school crime

H. Res. 561 was introduced by Representative Bart Stupak (D–MI) on July 20, 2000. H. Res. 561 urges the President to focus appropriate attention on the issue of neighborhood crime prevention, community policing, and reduction of school crime by delivering speeches, convening meetings, and directing his Administration to make reducing crime an important priority.

On July 27, 2000, the Committee discharged from further consideration H. Res. 561, and it was agreed to without objection under unanimous consent on the same day. No further action was taken on this resolution during the 106th Congress.

Death in Custody Reporting Act of 2000

Representative Asa Hutchinson (R–AR) introduced H.R. 1800, the "Death in Custody Reporting Act of 2000." The bill amended the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) to ensure that certain information regarding prisoners is reported to the Attorney General. On May 13, 1999, the bill was referred to the House Committee on the Judiciary. On May 21, 1999, the bill was referred to the Subcommittee on Crime. No hearings were held and no report was filed.

On May, 19, 2000, the full Committee adopted the substance of the bill as an amendment to H.R. 1659, the "National Police Training Commission Act of 1999" a bill introduced by Representative Jose Serrano (D–NY). H.R. 1659 is described in the full Committee section of this report.

On July 24, 2000, the Committee was discharged from further consideration of the bill H.R. 1800. On July 24, 2000, the House passed the bill by voice vote. On October 3, 2000, the Senate passed the bill by unanimous consent On October 13, 2000, the President approved the bill and it became Public Law 106–297.

Enhanced Federal Security Act of 2000

On May 25, 2000, the Subcommittee on Crime held an oversight hearing entitled "Breaches of Security at Federal Agencies and Airports." The hearing was the culmination of an undercover investigation conducted by the Office of Special Investigations of the United States General Accounting Office (GAO) at the request of Representative Bill McCollum (R–FL). The hearing examined the security threat posed by individuals using fake law enforcement badges and credentials to enter Federal buildings, sensitive installations, and airports. The Subcommittee heard testimony from three special agents from the Office of Special Investigations (OSI) of the GAO: Robert Hast, Assistant Controller General for Special Investigations, GAO Patrick Sullivan, Assistant Director, Office of Special Investigations, GAO, and Ronald Malfi, Assistant Director, Office of Special Investigations, GAO.

The witnesses testified that during the investigation, undercover OSI Special Agents targeted 19 secure Federal buildings and two major airports posing as plain-clothed law enforcement officers. In every case, the agents were able to enter agency buildings while claiming to be armed and carrying briefcases, which were never searched and were big enough to be packed with large quantities of explosives, chemical or biological agents. The agencies penetrated included the CIA, the Pentagon, the FBI, the Justice Department, the State Department, and the Department of Energy. The agents were simply waived around the metal detectors. In many cases, they had the run of the buildings once they were inside, including the offices of department secretaries. In one case, agents drove a rental van into the courtyard of the building at Federal Triangle without the van being inspected or searched. The van was parked in the courtyard, and the agents left it while they went inside the building.

For the two airports whose security was compromised, agents obtained boarding passes and firearm permits to carry weapons onboard the flights for which they had purchased tickets. Like the

Federal buildings they entered, they carried briefcases that were never x-rayed. They walked right up to the door that led down the gangway to the airplane. Nothing stood between them and the aircraft.

Representative Steven Horn (R–CA) introduced H.R. 4827, the "Enhanced Federal Security Act of 2000," in response to the undercover investigation and hearing. The purpose of H.R. 4827 is twofold. First, it is to reduce the threat to security in Federal buildings, Federal vessels and aircraft, and airports that is posed by criminals, terrorists, and foreign agents seeking to gain unauthorized access to these places to commit criminal acts. Second, it is to prohibit the sale and distribution of genuine and counterfeit police badges to individuals who might use them for criminal purposes. Specifically, H.R. 4827 would make it a Federal crime to enter, or attempt to enter, Federal property or the secure area of an airport under false pretenses. A person entering such property under false pretenses would be subject to a fine and up to six months in prison. Additionally, a person entering such property under false pretenses with the intent to commit a felony would be subject to a fine and up to five years in prison. H.R. 4827 would also prohibit trafficking in genuine and counterfeit police badges in interstate or foreign commerce. A person trafficking in police badges would be subject to a fine and up to six months in prison. The bill creates a defense to prosecution to protect those who possess a badge as a memento, in a collection or exhibit, for decorative purposes, for a dramatic presentation, or for recreational purposes.

On July 20, 2000, the Subcommittee favorably reported H.R. 4827 to the full Committee. On September 20, the full Committee ordered the bill reported favorably to the House, and the bill was reported on September 28 (H. Rept. 106–913). The House passed the bill on October 2 by voice vote. The Senate passed the bill by unanimous consent on December 7, 2000. On December 19, 2000, the President approved the bill and it became Public Law 106–547.

Local Government Law Enforcement Block Grants Act of 2000

H.R. 4999 was introduced by Representative Bill McCollum (R–FL) on July 27, 2000. H.R. 4999 would require the Director of the Bureau of Justice Assistance to pay to qualifying local governments specified sums for reducing crime and improving public safety, including for: (1) hiring, training, and employing on a continuing basis new, additional law enforcement officers and support personnel; (2) paying overtime to increase the number of hours worked by presently employed officers and support personnel; (3) procuring equipment, technology, and other material directly related to basic law enforcement functions; (4) enhancing security measures in and around schools and any other facility or location which is considered by the unit of local government to have a special risk for incidents of crime; (5) establishing crime prevention programs that may involve, though not exclusively, law enforcement officials and that are intended to discourage, disrupt, or interfere with the commission of criminal activity; (6) establishing or supporting drug courts; (7) establishing early intervention and prevention programs for juveniles to reduce or eliminate crime; (8) enhancing the adjudication process of cases involving violent offenders, including the adjudication process of cases involving violent juvenile offenders; (9) enhancing programs under the Omnibus Crime Control and Safe Streets Act of 1968 drug control and system improvement grant program; (10) establishing cooperative task forces between adjoining local governments to work cooperatively to prevent and combat criminal activity, particularly criminal activity that is exacerbated by drug- or gang-related involvement; and (11) establishing a multijurisdictional task force, particularly in rural areas, composed of law enforcement officials representing local governments, that works with Federal law enforcement officials to prevent and control crime.

On September 19, 2000, H.R. 4999 was agreed to, as amended, under suspension of the rules by voice vote. No further action was taken on H.R. 4999 during the 106th Congress.

Jeanne's Act

Every year thousands of violent felons are moved from prison to prison on our nation's highways. Many of these criminals are transported by the U.S. Marshals Service and the Federal Bureau of Prisons. However, as the number of criminals in state prisons continues to rise, many states rely on private prisoner transportation companies to move prisoners from state to state. There is no uniform set of standards and procedures for these prisoner transport companies to follow, which may lead to situations where prisoners may escape and commit more crime before they are apprehended. A major reason for escapes from prisoner transport companies is the lack of approved standards for the private transport of dangerous prisoners. S. 1898, the "Interstate Transportation of Dangerous Criminals Act of 2000" or "Jeanna's Act," seeks to increase public safety by requiring the Attorney General to establish minimum standards and requirements for companies engaging in the business of transporting violent offenders. S. 1898 also provides that any person who violates the regulations to be promulgated by the Attorney General shall be liable for a civil penalty in an amount not to exceed $10,000 for each violation, and shall make restitution to any government agency for the money expended to apprehend any prisoner who escapes.

S. 1898 was introduced by Senator Byron Dorgan (R–ND). The Senate passed the bill by unanimous consent on October 25, 2000. On October 27, the bill was referred to the Subcommittee on Crime. On December 7, the Committee was discharged from further consideration of the bill, and on that day the House passed the bill by unanimous consent. On December 21, 2000, the President signed the bill and it became Public Law 106–560.

Mentally ill offenders

A recent Bureau of Justice Statistics study ("Mental Health and Treatment of Inmates and Probationers," July 1999), estimated that there are over 283,000 mentally ill offenders incarcerated Federal, state, and local prisons and jails. BJS estimated that 16% of state inmates, 7% of Federal offenders, and 16% of those held in local jails are mentally ill. A similar percentage of persons on probation, approximately 547,000 people, also have a history of mental illness. According to the report, mentally ill offenders were more likely than other offenders to have committed a violent offense. These offenders also reported a higher rate of prior physical and sexual abuse than other inmates. They reported higher incidents of alcohol and drug abuse by parents and guardians while they were children. Half of these offenders also reported that a parent, brother, or sister had been in prison or jail. And mentally ill offenders were more likely than other offenders to have been unemployed and homeless prior to their arrest.

Mentally ill offenders serve, on average, 15% longer prison terms than other offenders. And while incarcerated, they are more likely then other offenders to be involved in fights with other inmates and to be charged with breaking prison rules.

Law enforcement and corrections officials, prosecutors, judges, and mental health officials wrote the Subcommittee on Crime to urge the Subcommittee to hold a hearing on the unique problems that these type of offenders pose to the criminal justice community. They urged that special procedures should be developed to deal with these offenders, ones which would address their underlying mental problems as part of the punishment for their crimes, rather than simply placing them in custody with other offenders. On September 21, 2000, the Subcommittee on Crime held an oversight hearing on the impact of mentally ill offenders in the criminal justice system.

On October 24, 2000, the House passed S. 1865, "America's Law Enforcement and Mental Health Project," a bill introduced by Senator Mike Dewine (R–OH), by voice vote. The Senate passed the bill by unanimous consent on September 26, 2000. The President approved the bill on November 13, and it became Public Law 106–515.

The bill amends the Omnibus Crime Control and Safe Streets Act of 1968 to authorize the appropriation of $10 million over a four year period for the Attorney General to use to make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or nonprofit entities, for up to 125 programs that involve: (1) continuing judicial supervision, including periodic review, over preliminarily qualified offenders with mental illness, mental retardation, or co-occurring mental illness and substance abuse disorders who are charged with non-violent offenses; and (2) the coordinated delivery of services, which includes specialized training of law enforcement and judicial personnel to identify and address the unique needs of a mentally ill or mentally retarded offender, voluntary outpatient or inpatient mental health treatment that carries with it the possibility of dismissal of charges or reduced sentencing upon successful completion of treatment, and centralized case management involving the consolidation of all of a mentally ill or mentally retarded defendant's cases (including violations of probation) and the coordination of all mental health treatment plans and social services, including life skills training.

Hearing on preventing and fighting crime: What works?

On October 2, 2000, the Crime Subcommittee held a hearing on the subject of what works to prevent and reduce crime. The following witnesses testified: The Honorable Lynne Abraham, District

Attorney, City of Philadelphia, Pennsylvania; Patrick J. Coleman, Deputy Director of Policy and Management, Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice; John W. Wilson, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice; Bruce C. Fry, Social Science Analyst, Center for Substance Abuse Treatment, U.S. Department of Health and Human Services; Chuck Wexler, Executive Director, Police Executive Research Forum; Edmund F. McGarrell, Director, Crime Control Policy Center, the Hudson Institute, Indianapolis, Indiana; Morgan Reynolds, Director, Criminal Justice Center, National Center for Policy Analysis, Washington, D.C.; John Holton, Director, National Center for Child Abuse Prevention Research, Chicago, Illinois; James Fox, Lipman Family Professor of Criminal Justice, Northeastern University, College of Criminal Justice, Boston, Massachusetts; Byron R. Johnson, Director, Office for the Study and Prevention of Domestic Violence, University of Pennsylvania; Mr. Mark Mauer, Assistant Director, The Sentencing Project, Washington, D.C.; and Patrick Tolan, Director, Institute for Juvenile Research, University of Illinois-Chicago, Chicago, Illinois.

Hearing on the convergence of organized crime, drug trafficking, and terrorism

On December 13, 2000, the Subcommittee on Crime held a hearing on the threat posed by the convergence of organized crime, terrorism, and drug trafficking. The witnesses who testified at the hearing were: The Honorable Donnie Marshall, Administrator, Drug Enforcement Administration; The Honorable Michael Sheehan, United States Ambassador at Large for Counterterrorism; Frank Cilluffo, Senior Policy Analyst and Deputy Director, Center for Strategic and International Studies; Ralf Mutschke, Assistant Director, Sub-Directorate for Crimes Against Persons and Property, Interpol General Secretariat; Steven C. McCraw, Deputy Assistant Director, Information, Analysis, and Assessments Branch, Investigative Division, Federal Bureau of Investigation; and Raphael F. Perl, Specialist in International Affairs, Congressional Research Service, Library of Congress.

Deterring the use of false identification documents

Senator Susan Collins (R–ME) introduced S. 2924, a bill designed to strengthen the enforcement of Federal statutes relating to false identification documents. S. 2924 makes it clear that it is a crime to transfer false identification documents by electronic means, and that the term false identification documents include documents that are in the form of computer files, discs, or templates. S. 2924 closes a loophole in current law that permits manufacturers of false identification documents to escape liability by displaying the disclaimer: “Not a Government Document,” disclaimers that can be removed easily. The bill also directs the Attorney General and the Secretary of the Treasury to coordinate efforts to investigate and prosecute the distribution of false identification documents on the Internet.

On October 31, 2000, the Senate passed the bill by unanimous consent. The bill was referred to the Judiciary Committee on that same day and to the Subcommittee on Crime on November 3. On December 15, the Committee was discharged from further consideration of the bill. The House then passed the bill by unanimous consent, with an amendment. Later that same day, the Senate agreed to the House amendment by unanimous consent. The president approved the bill on December 28, 2000 and the bill became Public Law 106–578.

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

GEORGE W. GEKAS, Pennsylvania, *Chairman*

ED BRYANT, Tennessee [1]	JERROLD NADLER, New York
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SPENCER BACHUS, Alabama	
MARY BONO, California [3]	
JOE SCARBOROUGH, Florida [4]	
DAVID VITTER, Louisiana [5]	

[1] Ed Bryant, Tennessee, resigned from the Committee June 25, 1999.

[2] Stephen Buyer, Indiana, resigned from the Committee effective the afternoon of March 4, 1999.

[3] Mary Bono, California, assigned to the subcommittee March 24, 1999.

[4] Joe Scarborough, Florida, assigned to the subcommittee March 24, 1999.

[5] David Vitter, Louisiana, assigned to the subcommittee July 20, 1999.

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	79
Legislation reported favorably to the full Committee	14
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	3
Legislation ordered tabled in the Subcommittee	1
Legislation pending before the full Committee	2
Legislation reported to the House	15
Legislation discharged from the Committee	9
Legislation pending in the House	2
Legislation passed by the House	20
Legislation pending in the Senate	9
Legislation vetoed by the President	0
Legislation enacted into public law	7
Legislation enacted into public law as part of another bill	2
Legislation on which hearings were held	22
Days of hearings (legislative and oversight)	28

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Commercial and Administrative Law has legislative and oversight responsibility for the Independent Counsel Act, the Legal Services Corporation, the Office of Solicitor General, the United States Bankruptcy Courts, the Executive Office for the United States 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 AND REGULATORY REFORM

H.R. 1924, the Federal Agency Compliance Act

On October 27, 1999, the Subcommittee held a hearing on H.R. 1924, the "Federal Agency Compliance Act," introduced by Subcommittee Chairman Gekas. The legislation, simlar to H.R. 1544 which passed the House on February 25, 1998 by a vote of 241–176, generally prevented agencies from refusing to follow 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 non-acquiescence: intracircuit non-acquiescence—refusal to follow controlling appellate precedent within a specific federal judicial circuit; and intercircuit non-acquiescence—relitigating in other judicial circuits issues on which precedents have already been established in multiple circuits.

Regarding intracircuit non-acquiescence, the bill generally required an agency in its administration of 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 non-acquiescence, the bill provided that the Department of Justice and other agency officials shall seek to ensure that federal litigation under their control is initiated, defended, and continued so as to avoid unnecessarily repetitive litigation on questions of law already consistently resolved against the government in three or more circuit courts of appeals. The provision relating to intercircuit non-acquiescence was not subject to judicial review or enforcement.

Witnesses testifying at the hearing were: Senator Ben Nighthorse Campbell (R–CO); Honorable Walter K. Stapleton, United States Court of Appeals for the Third Circuit, representing the Judicial Conference of the United States; William Schultz, Deputy Assistant Attorney General, Civil Division, United States Department of Justice; Arthur J. Fried, General Counsel, Social Security Administration; John Pickering, Chair, Senior Lawyers Division of the American Bar Association, Wilmer, Cutler & Pickering; Honorable Ronald Bernoski, Social Security Administration, Office of Hearings and Appeals, President of the Association of Administrative Law Judges, Incorporated; Sheldon Cohen, Morgan, Lewis & Bockius LLP.

On June 20, 2000 the Subcommittee reported the bill favorably by a voice vote. On September 20, 2000 the Judiciary Committee ordered reported the bill favorably by a voice vote. The report (H. Rept. No. 106–976) was filed on October 12, 2000. The House took no action on H.R. 1924.

H.R. 881, the Regulatory Fair Warning Act

H.R. 881, the "Regulatory Fair Warning Act," was introduced by Subcommittee Chairman Gekas on March 1, 1999. Mr. Gekas first introduced fair warning legislation (H.R. 3307) in the 104th Congress. During the 105th Congress, Mr. Gekas introduced a revised regulatory fair warning bill (H.R. 4049) and held a hearing on the measure on July 23, 1998.

H.R. 881 would have prohibited a federal agency or federal court from imposing a sanction for a violation of an agency rule if: (1) the rule was not printed in the Code of Federal Regulations or in the Federal Register, was not known to the person, or was not knowable to a person who has engaged in a reasonable, good faith investigation of the rules applicable to the conduct that allegedly violated the rule; (2) the rule failed to give the person fair warning of the conduct that it prohibits or requires, or (3) with respect only to a retrospective sanction, the person acted in reasonable reliance upon written representations about what the rule prohibits or requires which were issued by the agency or an official with actual or apparent authority to interpret, administer, or enforce the rule.

The Subcommittee held a hearing on H.R. 881 on June 29, 1999. The following witnesses testified: June Bolstridge, President, GAIA Corporation; Ernest Gelhorn, Professor of Law, George Mason University School of Law; Steve Goodman, JSG Trading Corporation; Robert Hahn, Director, AEI-Brookings, Joint Center for Regulatory Studies, Barbara C. Somson, Deputy Legislative Director, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW; David Sparks, Senior Vice President of Finance, Providence Hospital, Representing the American Hospital Association.

On September 29, 2000, the Subcommittee ordered the bill reported as amended, with a single amendment in the nature of a substitute offered by Representative Delahunt (D–MA). No further action was taken on the bill.

EXECUTIVE ORDERS

The executive order is a well known instrument employed by Presidents to manage the affairs of the executive branch. While most executive orders are routine and unremarkable, others raise questions concerning the separation of powers between the branches. A number of bills addressing this perceived problem were considered by the Subcommittee during the 106th Congress.

H. Con. Res. 30

H. Con. Res. 30 was introduced by Representative Metcalfe (R–WA) on February 10, 1999. The resolution have expressed the sense of Congress that any executive order that infringes on the constitutional powers and duties of Congress or requires the expenditure of federal funds not specifically appropriated to carry out the order is advisory only and has no legal effect unless enacted as law.

H.R. 2655, the Separation of Powers Restoration Act

Introduced by Representative Paul (R–TX) on July 30, 1999, H.R. 2655, the "Separation of Powers Restoration Act," would have broadly defined a "presidential order" as any executive order or action that has "normative effect outside the executive branch." The bill would have directed the President to include with each presidential order a statement of the specific statutory or constitutional authority for its issuance. The bill would have also divested the power to declare a national emergency solely to Congress and would have limited the application of presidential orders to the executive branch. Finally, H.R. 2655 would have liberalized standing requirements to allow lawmakers or aggrieved citizens to challenge executive orders that are constitutionally or statutorily suspect, and repealed the War Powers Resolution (50 U.S.C. §§ 1541 (1998)).

H.R. 3131, the Presidential Order Limitation Act of 1999

H.R. 3131, the "Presidential Order Limitation Act of 1999," was introduced by Representative Barr (R–GA) on October 21, 1999. The bill would have broadly defined a "presidential order" as any executive action "purporting to have prescriptive effect." The bill would have required the President to transmit a copy of each presidential order to: (1) the Speaker of the House of Representatives; (2) the president pro tempore of the Senate; and (3) the chairperson and ranking member of each standing and select committee of the House and the Senate H.R. 3131 would have also prohibited any presidential order from taking effect earlier than 30 days after submission and review by Congress. The bill would have exempted presidential orders from congressional review if they describe an emergency which requires the order to take effect at an earlier time to: (1) protect national security; (2) prevent physical injury; (3) provide disaster relief; or (4) safeguard an American foreign policy interest.

On October 28, 1999, the Subcommittee held a hearing on H.R. 2655, H.R. 3131, and H. Con. Res. 30. Witnesses who testified included: Representative Jack Metcalf (R–WA); Representative Ron Paul (R–TX); Representative Bob Barr (R–GA); Professor Phillip Cooper, University of Vermont; Thomas Fielding, Esq, Wiley, Reign & Fielding, and Eliot Mincberg, Vice President and Legal Counsel, People for the American Way. The witnesses examined constitutional and legal issues surrounding executive orders and considered the impact of the proposed legislation. None of the measures received further Subcommittee consideration.

BANKRUPTCY

H.R. 833, the Bankruptcy Reform Act of 1999

Subcommittee Chairman Gekas (for himself and 36 original cosponsors) introduced H.R. 833, the Bankruptcy Reform Act of 1999, on February 24, 1999. As introduced, H.R. 833 was virtually identical to the conference report on H.R. 3150, the Bankruptcy Reform Act of 1998, which Mr. Gekas introduced in the 105th Congress. Like H.R. 3150, which received overwhelming bipartisan support in the House as evidenced by a vote of 300 to 125, H.R. 833 also attracted extensive bipartisan support and eventually obtained 106 cosponsors.

H.R. 833 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. The bill 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. 833, 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. 833 instituted a panoply of consumer bankruptcy reforms designed to increase the protections afforded to debtors and creditors.

H.R. 833 was introduced in response to several developments affecting bankruptcy law and practice. Based on data released by the Administrative Office of the United States Courts, bankruptcy filings increased by more than 72 percent between 1994 and 1998. In 1998, bankruptcy filings, according to the Administrative Office, set an "all-time high of 1,436,964." Paradoxically, however, this dramatic increase in bankruptcy filing rates occurred during a period when the economy continued to be robust, with relatively low unemployment and high consumer confidence. (The most recent data reported by the Administrative Office indicate that case filings for fiscal year 2000 decreased by 6.8 percent from the prior fiscal year.)

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 three years, the American economy would have to absorb a cumulative cost of more than $220 billion.

The consumer bankruptcy provisions of H.R. 833 were intended to enhance recoveries for creditors and include protections for consumer debtors. With respect to creditors, H.R. 833'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 heightened 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 in debt repayment programs for consumers before they may be debtors in bankruptcy, and the institution of a pilot program to study the effectiveness of consumer financial education for debtors.

The heart of H.R. 833's consumer bankruptcy reforms was the implementation of a mechanism to ensure that consumer debtors repay their creditors the maximum that they can afford. The needs-based formula under H.R. 833, as introduced, articulated objective criteria so that debtors and their counsel could self-evaluate their eligibility for relief under chapter 7 (a form of bankruptcy relief where the debtor generally receives a discharge of his or her personal liability for most unsecured debts). 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. 833 to move for dismissal of chapter 7 cases where debtors were ineligible. These reforms were intended to not affect consumer debtors lacking the ability to repay their debts and deserving of an expeditious fresh start.

With regard to business bankruptcy reform, H.R. 833 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. 833 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. 833 were largely derived from consensus recommendations of the National Bankruptcy Review Commission. Many of these recommendations received broad support from those in the bankruptcy community, including various bankruptcy judges, creditor groups, and the Executive Office for United States Trustees. It also included provisions concerning the treatment of certain financial contracts under the banking laws as well as under the Bankruptcy Code. H.R. 833 responded to the special needs of family farmers by making chapter 12 of the Bankruptcy Code, a form of bankruptcy relief available only to eligible family farmers, permanent. With regard to single asset real estate debtors, H.R. 833 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. 833, in addition, contained several provisions having general impact with respect to bankruptcy law and practice. Under H.R. 833, 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. 833 required the Executive Office for United States Trustees to compile various statistics regarding chapter 7, 11 and 13 cases, 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 Judiciary Committee 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 would be the first of 13 hearings that the Subcommittee held on the subject of bankruptcy reform over the ensuing two years. Eight of these hearings were devoted solely to consideration of H.R. 833 and its predecessor, H.R. 3150, the Bankruptcy Reform Act of 1998. Over the course of these hearings, more than 120 witnesses, representing nearly every major constituency in the bankruptcy community, testified. With regard to H.R. 833 alone, testimony was received from 69 witnesses, representing 23 organizations, with additional material submitted by other individuals and groups.

The Subcommittee on Commercial and Administrative Law held four hearings on H.R. 833, the first of which was held jointly with the Senate Subcommittee on Administrative Oversight and the Courts on March 11, 1999. This marked the first time in more than 60 years that a bicameral hearing was held on the subject of bankruptcy reform. Witnesses who testified at the March 11, 1999 hearing included: United States Senators Charles Grassley (R–IA), Joseph R. Biden (D–DE), and Christopher J. Dodd (D–CT). House Members included: Representatives James P. Moran (D–VA), Pete Sessions (R–TX) and Nick Smith (R–MI). Other witnesses included: Dean Sheaffer, Vice President and Director of Credit at Boscov's Department Store, Inc., representing the National Retail Federation; Bruce L. Hammonds, Senior Vice Chairman and Chief Operating Officer, MBNA America Bank, N.A.; the Honorable Carol J. Kenner, United States Bankruptcy Judge for the District of Massachusetts; Larry Nuss, Chief Executive Officer, Cedar Falls Community Credit Union, representing Credit Union National Association, Inc.; Gary Klein, Senior Attorney with the National Consumer Law Center; the Honorable Edith Hollan Jones, Judge, Untied States Court of Appeals for the Fifth Circuit, and former member of the National Bankruptcy Review Commission; Judith Greenstone Miller, Clark Hill, PLC, representing the Commercial Law League of America; Professor Todd Zywicki, George Mason University School of Law; and Professor Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard Law School.

Witnesses at the March 16, 1999 hearing included the following: Representatives James P. Moran (D–VA), Bill McCollum (R–FL), Nick Smith (R–MI), Rick Boucher (D–VA), Steven Rothman (D–NJ), Sheila Jackson Lee (D–TX), Louise McIntosh Slaughter (D–NY), and John LaFalce (D–NY). Other witnesses included: James I. Shepard, a bankruptcy tax consultant and former member of the National Bankruptcy Review Commission; Professor Eric Posner of the University of Chicago Law School; Professor David Skeel of the University of Pennsylvania Law School; Professor Lawrence P. King, Charles Seligson Professor of Law at New York University School of Law; Ralph R. Mabey, a practitioner and former United States Bankruptcy Judge; the Honorable Joe Lee, United States Bankruptcy Judge for the Eastern District of Kentucky; Leon Forman, a practitioner; James E. Smith, President and Chief Executive Officer, Union State Bank and Trust, representing the American Bankers Association; Janet Kubica, President and Chief Executive Officer, Postmark Credit Union, representing the Credit Union National Association; and Frank Torres, Legislative Counsel for Consumers Union.

Witnesses at the March 17, 1999 hearing included the following: George J. Wallace of Eckert, Seamans, Cherin & Mellott, LLC, representing the Consumer Bankruptcy Reform Coalition; the Honorable William Brown, United States Bankruptcy Judge for the Western District of Tennessee, representing the American Bankruptcy Institute; Professor Todd Zywicki of George Mason University School of Law; Professor Kenneth Klee of the University of California—Los Angeles School of Law, representing the National Bankruptcy Conference; Jeffrey A. Tassey, Senior Vice President of Governmental and Legal Affairs for the American Financial Services Association; Michael Moore, President of Badcock Home Furnishing Centers, representing the National Retail Federation; Wayne Sigmon, a partner with the law firm of Gray, Layton, Kersh, Solomon, Sigmon, Furr and Smith, representing the National Association of Consumer Bankruptcy Attorneys; the Honorable Thomas R. Carper, Governor of the State of Delaware, representing the National Governors' Association; the Honorable Randall J. Newsome, United States Bankruptcy Judge for the Northern District of California, representing the National Conference of Bankruptcy Judges; Robert Waldschmidt, a chapter 7 trustee, representing the National Association of Bankruptcy Trustees; Henry E. Hildebrand, III, a chapter 13 trustee, representing the National Association of Chapter 13 Trustees; Prof. Michael E. Staten, Director of the Credit Research Center, at the McDonough School of Business, Georgetown University; Professor Marianne B. Culhane, Creighton University School of Law; Lisa H. Ryu, Staff Economist at the National Association of Federal Credit Unions; Dr. Thomas S. Neubig, Ernst & Young LLP; and Richard M. Stana, Associate Director Administration of Justice Issues, General Government Division at the General Accounting Office.

Witnesses at the fourth and final hearing held on March 18, 1999 included the following: Representatives Robert E. Andrews (D–NJ), James A. Leach (R–IA) and Marge Roukema (R–NJ); Philip L. Strauss, Assistant District Attorney, Family Support Bureau of the Office of the District Attorney in San Francisco, California; Joan Entmacher, Vice President and Director of the Family Economic Center, National Women's Law Center; Stephanie M. Saperstein, Assistant Attorney General, Office of the Utah Attorney General, representing the National Association of Attorneys General; Professor Karen Gross, New York Law School; the Honorable Thomas Carlson, United States Bankruptcy Judge for the Northern District of California; H. Elizabeth Baird, Assistant General Counsel for the Bank of America Corporation; William H. Schorling, Klett, Lieber, Rooney & Schorling, representing the American Bar Association—Business Bankruptcy Section; Charles M. Tatelbaum, a partner with the law firm of Cummings & Lockwood, representing the National Association of Credit Managers; Judith Greenstone Miller, a partner with the law firm of Clark Hill, PLC, representing the Commercial Law League of America; Damon Silvers, Associate General Counsel for the American Federation of Labor and Congress of Industrial Organizations; Jere W. Glover, Chief Counsel for the Office of Advocacy, United States Small Business Administration; Ray Valdes, Tax Collector for Seminole County in Florida, on behalf of the National Association of County Treasurers and Finance Officers, the National Association of County Officials, and the National League of Cities; Don Harris, Special Assistant to the Attorney General, State of New Mexico, representing the States' Association of Bankruptcy Attorneys; Paul H. Asofsky, a partner at the law firm of Weil, Gotshal & Manges, LLP, representing the American Bar Association—Section of Taxation; the Honorable Tina Brozman, Chief United States Bankruptcy Judge for the Southern District of New York; Oliver Ireland, Associate General Counsel for the Board of Governors of the Federal Reserve System; Professor Randal C. Picker, Leffmann Professor of Commercial Law at University of Chicago Law School, representing the National Bankruptcy Conference; Seth Grosshandler, a partner at the New York office of Cleary, Gottlieb, Steen & Hamilton; Joseph Peiffer, Peiffer Law Office; and Harley D. Bergmeyer, Chairman, President and Chief Executive Officer of the Saline State Bank, representing the American Bankers Association.

On March 24 and 25, 1999, the Subcommittee met in open session and on March 25, 1999 ordered favorably reported the bill H.R. 833, with a single amendment in the nature of a substitute, by a record vote of five to three, a quorum being present. Thereafter, the Judiciary Committee met in open session on April 20, 21, 22, 27, and 28, 1999, and on April 28, 1999 ordered favorably reported the bill H.R. 833 with amendment in the nature of a substitute by a recorded vote of 22 ayes to 13 nays with one Member voting present, a quorum being present. The legislation, as reported, incorporated Chairman Hyde's proposals (1) establishing a safe harbor for below median income chapter 7 debtors from motions to dismiss alleging ability to repay, and (2) requiring certain minimum payments to general unsecured creditors as a precondition to dismissal of a chapter 7 case under the needs-based test. On April 29, 1999, the Committee filed its report on H.R. 833 (H. Rpt. 106–123 pt. 1).

The House, under a rule making certain amendments in order, thereafter passed H.R. 833, as amended, on May 5, 1999 by a vote of 313 to 108. Among the principal changes to the bill occurring as the result of floor action was the inclusion of a provision permitting states to opt out of the homestead exemption limitation and a provision modifying the Truth in Lending Act with respect to credit card disclosures regarding interest rates, minimum monthly payments, and late fees. An amendment by Chairman Hyde that would have substituted a reasonably necessary standard in determining permissible living expenses of debtors and their families in place of the bill's usage of Internal Revenue Service expense allowances failed by a recorded vote of 184 to 238.

The following day, the bill was received in the Senate. On February 2, 2000, H.R. 833 was laid before the Senate by unanimous consent. The Senate struck all of H.R. 833's language after its enacting clause and substituted the text of S. 625, as amended. H.R. 833, as amended, was then passed by the Senate in lieu of S. 625 by a recorded vote of 83 to 14. The Senate then insisted on its amendment and requested a conference.

Owing to a constitutional impediment presented by the Senate-passed version of this legislation, the Senate did not send its bill to the House for its consideration. Instead, an informal conference ensued which produced a compromise package of bankruptcy reform measures, which was introduced as S. 3186, the Bankruptcy Reform Act of 2000, on October 11, 2000. On that same date, the House agreed to a conference by voice vote on H.R. 2415 (an unrelated bill authorizing certain State Department appropriations, among other purposes) that was chosen as a legislative vehicle for bankruptcy reform because of certain procedural matters. The House also passed a motion inter alia requiring the conference committee meeting be open to the public and available to the print and electronic media. Chairman Henry Hyde, Ranking Member John Conyers, Majority Leader Dick Armey, Subcommittee Chairman George Gekas, and Subcommittee Ranking Member Jerrold Nadler were appointed as House conferees.

The conference report accompanying H.R. 2415 (H. Rpt. 106–970) was filed on October 11, 2000. It replaced the text of H.R. 2415 with that of S. 3186. On October 12, 2000, the House agreed to the conference report on H.R. 2415 by voice vote and, on unanimous consent, directed the enrolling clerk to amend the bill's short title to "The Gekas-Grassley Bankruptcy Reform Act of 2000".

The conference report differed from the House passed version of H.R. 833 in various respects. The House bill and its Senate counterpart had distinctive versions of "needs-based" bankruptcy relief. Although both bills required a mandatory presumption of abuse if a chapter 7 debtor's "current monthly income" (a defined term) less specified expenses exceeded certain monetary thresholds, the bill differed with respect to the amount and calculation of these thresholds. The conference report provided that the presumption of abuse is established if the debtor's current monthly income (when multiplied by 60) was not less than the lesser of (a) 25% of the debtor's nonpriority unsecured claims or $6,000 (whichever is greater); or (b) $10,000.

The House and Senate bills also had differing standards for rebutting the presumption of abuse. Whereas the House bill permitted a debtor to rebut the presumption of abuse only by demonstrating extraordinary circumstances that require adjustment of expenses or income, the Senate bill allowed the debtor to rebut the presumption by special circumstances that justify the adjustment of income. Under the conference report, the presumption of abuse could only be rebutted by demonstrating special circumstances that justify additional expenses or adjustment to the debtor's income.

In addition, both the House and Senate bills took into consideration differing expenses with respect to their needs-based tests. The House bill, for example, allowed a debtor to claim certain education expenses for a child under the age of 18 years as well as estimated administrative expenses and attorneys' fees associated with a chapter 13 case. The House bill also authorized a five percent enhancement for food and clothing expenses, under certain circumstances. The Senate bill, on the other hand, permitted a debtor to claim expenses for the care of an elderly, chronically ill or disabled member of the debtor's household or immediate family. In addition, the Senate bill allowed the debtor to claim reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from domestic violence. In addition to the debtor's applicable monthly expenses specified under the IRS National and Local Standards, the conference report permitted a debtor to claim the following expenses: (1) the debtor's actual monthly expenses for the categories specified by the IRS as Other Necessary Expenses; (2) reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from domestic violence; (3) an additional allowance of up to five percent of the IRS National Standards for food and clothing expenses if demonstrated to be reasonable and necessary; (4) continued actual expenses that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled member of the debtor's household or immediate family; (5) the actual administrative expenses of administering a chapter 13 case—up to 10% of projected plan payments—as determined under schedules issued by the Executive Office for United States Trustees; (6) actual expenses of up to $1,500 per year per child of the debtor to attend a private elementary or secondary school, under certain circumstances; and (7) payments made to secured creditors, including any additional payments necessary to enable the debtor to retain possession of a primary residence, motor vehicle or other property that collateralizes a secured obligation and is necessary for the support of the debtor and the debtor's dependents.

The House and Senate bills had divergent "safe harbor" provisions for chapter 7 debtors with incomes below certain monetary thresholds. The conference report incorporated two safe harbors as follows: (1) only the judge, United States Trustee, or bankruptcy administrator could seek dismissal of chapter 7 case for abuse if the debtor's income equals or is less than the applicable state median income; and (2) no one (including the judge, United States Trustee, bankruptcy administrator, trustee or party in interest) could seek dismissal of a chapter 7 case based on the bill's formula for determining a debtor's ability to repay debts if the debtor's income equals or is less than the applicable state median income.

The House and Senate bills had significant differences with regard to how they implemented their respective needs-based tests. The House bill primarily relied upon the chapter 7 trustee to analyze a debtor's ability to repay under the test and to seek dismissal of abusive cases. The Senate bill required the Office of the United States Trustee, a component of the Department of Justice, to conduct this review and to file the requisite dismissal motion, if appropriate. Under the conference report, the Office of the United States Trustee was required to conduct the requisite review and file the dismissal motion, if appropriate. This requirement was discretionary if the debtor's income was between 100% and 150% of the applicable state median income and the debtor's current monthly income (reduced by certain expenses) did not exceed a specified monetary threshold. The statement of review had to be filed not later than 10 days after the first meeting of creditors.

On October 19, 2000, the Senate, by a vote of 89 to 0, agreed to a motion to proceed to consideration of the conference report. A further motion to proceed was agreed to in the Senate on October 27, 2000 by a vote of 87 to 1. After a cloture motion failed by a vote of 53 to 30 on November 1, 2000, Senate Majority Leader Trent Lott moved to reconsider the vote. On December 5, 2000, the Senate passed a cloture motion by a vote of 67 to 31. The Senate thereafter passed the conference report on December 7, 2000 by a vote of 70 to 28. On December 19, 2000, the conference report was pocket vetoed by the President.

H.R. 1161, the Financial Contract Netting Improvement Act

H.R. 1161, the "Financial Contract Netting Improvement Act of 1999," was introduced by Banking Committee Chair James Leach (R–IA) (for himself and Representatives John LaFalce (D–NY) and Marge Roukema (R–NJ) on March 17, 1999. The Committee on the Judiciary was named as an additional committee of jurisdiction upon the introduction of H.R. 1161 pursuant to its jurisdiction over bankruptcy law under Rule X of the Rules of the House. The Judiciary Committee had jurisdictional interests in sections 8, 11, 13 and 15 of this bill.

The Judiciary Committee had no substantive objection to H.R. 1161 as ordered to be reported by the Banking Committee on July 27, 2000 as it was substantively similar to Title X of H.R. 833, the Bankruptcy Reform Act of 1999, which the House had passed, as amended, on May 5, 1999. In view of the substantively similar language and in the interest of expeditiously moving H.R. 1161 forward, the Judiciary Committee agreed to be discharged from further consideration of H.R. 1161 on September 7, 2000.

The House passed H.R. 1161, as amended, on October 24, 2000 by voice vote. The Senate did not act on the bill prior to the conclusion of the 106th Congress.

H.R. 2942, H.R. 4718, and H.R. 5540, bills extending the period of time for which chapter 12 of title 11 of the United States Code is reenacted

During the 106th Congress, there were several bills introduced to extend chapter 12, a specialized form of bankruptcy relief available to a "family farmer with regular annual income" as defined in the Bankruptcy Code. For a discussion of the significance of chapter 12, refer to the text accompanying H.R. 808, which appears in that portion of the report pertaining to the activities of the full Committee.

On September 24, 1999, Representative Nick Smith (R–MI) (for himself and Representatives Tammy Baldwin (D–WI), Doug Bereuter (R–NE), Saxby Chambliss (R–GA), and Charles Pickering (R–MS) introduced H.R. 2942, to extend chapter 12 for six additional months. Given the imminent expiration date of chapter 12, the bill was considered under suspension of the rules and agreed to by the House by voice vote on September 27, 1999, as amended. As passed by the House, the bill extended chapter 12 for three additional months until January 1, 2000. H.R. 2942 was received in the Senate on the following day.

In lieu of considering H.R. 2942, the Senate passed S. 1606, to extend chapter 12 for nine additional months until July 1, 2000. The House, thereafter, passed S. 1606 on October 4, 1999. The bill was subsequently signed into law on October 9, 1999 (Public Law 106–70).

Thereafter, Representative Nick Smith (R–MI) (for himself and Mr. Gekas) introduced H.R. 4718 on June 22, 2000 to extend chapter 12 for an additional three months until October 1, 2000. In light of the imminent expiration date of July 1, 2000, the bill was considered and passed by the House on June 26, 2000 under suspension of the rules. As the Senate failed to act on this bill, chapter 12 expired as of July 1, 2000.

H.R. 5540, a further bill to extend chapter 12, was introduced by Representative Nick Smith (R–MI) (for himself and Representative Tammy Baldwin (D–WI)) on October 25, 2000. The bill, which would have reenacted and extended chapter 12 for eleven months until June 1, 2002, was subsequently amended to include provisions authorizing the creation of certain temporary bankruptcy judgeships and extending five presently authorized temporary bankruptcy judgeships. This provision of the bill was added in response to the need in certain areas in the nation for additional bankruptcy judgeships. The bill, as amended, was passed by the House under suspension of the rules on October 31, 2000 and received by the Senate on the following day. The Senate did not act on this bill prior to the conclusion of the 106th Congress.

STATE TAXATION AFFECTING INTERSTATE COMMERCE

The right of States to tax economic activities within their borders is a key aspect of federalism rooted in the Constitution and long recognized by Congress. At the same time, the authority of State to lay and collect taxes is subject to a number of constitutional limitations. First, the Commerce Clause prohibits States from assessing taxes which unduly burden interstate commerce. Second, the Due Process clause prohibits State from taxing those who lack a "substantial nexus" with the taxing State. Finally, the Privileges and Immunities clause prevents states from assessing taxes which discriminate against nonresidents. During the 106th Congress, the Subcommittee considered a number of bills that bear directly on state taxes affecting interstate commerce.

H.R. 462, a bill clarifying that governmental pension plans of the possessions of the United States shall be treated in the same manner as State pension plans for purposes of the limitation on the State income taxation of pension income

On February 2, 1999, Subcommittee Chairman Gekas (for himself and Representatives Bill McCollum (R–FL), John Mica (R–FL), and Carlos Romero-Barceló (D–RC–PR)), introduced H.R. 462.

H.R. 462 made technical corrections to section 114 of title 4 of the United States Code, which was enacted in 1996 to restrict the ability of States to tax certain types of pension income received by their former residents. Although section 114 was intended to apply to "possessions of the United States," the provision's incorporation of the Internal Revenue Code's definition of "governmental plan" (which neither includes possessions of the United States nor Puerto Rico) created an anomaly that effectively excluded retirement plans established by possessions of the United States. In addition to remedying this technical error, H.R. 462 also corrected a typographical error concerning the designation of a subsection. H.R. 462 is virtually identical to H.R. 4572, a bill that was introduced by Mr. Gekas in the last session and which passed the House, under suspension of the rules, by voice vote on October 15, 1998. The Senate did not consider H.R. 4572 prior to the end of the 105th Congress.

No hearings were held on H.R. 462. It was ordered favorably reported by the Subcommittee on Commercial and Administrative Law without amendment by voice vote on March 24, 1999. The Judiciary Committee ordered the bill without amendment favorably reported to the House by voice vote on May 19, 1999. The report (H. Rept. No. 106–302) was filed on September 8, 1999. The bill was passed by the House under suspension of the rules by voice vote on October 18, 1999 and received in the Senate on the following day. The Senate did not consider this bill prior to the conclusion of the 106th Congress.

H.R. 4391, the Mobile Telecommunications Sourcing Act

On May 11, 2000, the Subcommittee reported H.R. 4391 favorably by voice vote, H.R. 4391, the "Mobile Telecommunications Sourcing Act." The bill, introduced by Chairman Hyde, amended federal provisions concerning tax authority to deem mobile telecommunications services provided in a taxing jurisdiction as provided by the customer's home service provider. It subjected charges for such services to taxation by the taxing jurisdiction whose territorial limits encompass the customer's place of primary use, regardless of where the services originate, terminate, or pass through. It prohibited any other taxing jurisdiction from imposing any tax, charge or fee for such services.

H.R. 4391 also authorized a state or designated database provider to provide an electronic database to a home service provider which would designate for each street address the appropriate taxing jurisdiction as identified by a nationwide standard numeric code. It required the database provider to provide notice of the availability of such database, as well as subsequent revisions thereto. It held harmless from any fee liability a home service provider that uses such database if the provider employees an enhanced zip code to assign each street address to a specific taxing jurisdiction and exercises due diligence to ensure that each address is assigned to the correct taxing jurisdiction. It required one specific taxing jurisdiction to be assigned when an enhanced zip code overlaps boundaries of different taxing jurisdictions. It terminated the authority to use the enhanced zip code on the later of: (1) 18 months after the nationwide standard numeric code has been approved, or (2) six months after a state or designated database provider provides such database.

The bill authorized a taxing jurisdiction, or a state acting on behalf of such jurisdiction, to: (1) determine the place of primary use for the purposes of appropriate taxing authority; and (2) if necessary, notify a home service provider to change the assignment of a taxing authority to reflect the appropriate place of primary use. It required the home service provider to obtain and maintain the customer's place of primary use for taxing purposes. It additionally provided transition provisions and special rules.

The Subcommittee had held a hearing on H.R. 3489, legislation addressing similar subject matter, on May 4, 2000. Testimony was received from: Representative Chip Pickering (R–MS); Ray Scheppach, on behalf of the National Governors Association; Thomas Wheeler, President and CEO of the Cellular Telecommunications Industry Association; Harley Duncan, on behalf of the Federation of Tax Administrators; and Joseph Brooks, representing the National League of Cities. (H. Rept. 106–725, part two, filed on July 11, 2000)

On May 24, 2000, the Judiciary Committee ordered reported both H.R. 3489 and H.R. 4391 by voice vote. The report of H.R. 3489 (H. Rept. No. 106–725) was filed on July 11, 2000; the report to H.R. 4391 (H. Rept. No. 106–719), was filed on July 10, 2000. H.R. 3489 was amended by deleting subject matter within the jurisdiction of the Judiciary Committee. The House passed the bill by voice vote on July 11, 2000. The Senate passed the bill by unanimous consent on July 14, 2000 and it was signed by the President as Public Law 106–252 on July 28, 2000.

ELECTRONIC COMMERCE

The Internet and information technology (IT) industries continue to drive U.S. economic expansion, presently accounting for 35 percent of real U.S. economic growth. Conservative forecasts estimate that electronic retail sales will reach $300 billion over the next three years. The sharp rise in e-commerce has not gone unnoticed by state governments, which continue to derive a substantial portion of their revenue from taxes on retail sales. The rise of electronic commerce has brought heightened taxing complexity to consumers and businesses alike. Current case law limits the power of states to require remote vendors without a substantial in-state taxing nexus to collect and remit state sales and use taxes. Moreover, inconsistent state taxing policies threaten to impede interstate commerce and impair the commercial development of the Internet.

In 1998, Congress passed the Internet Tax Freedom Act (47 U.S.C. § 151 (1998)) to help address the emerging challenges associated with Internet commerce. The ITFA imposed a three year moratorium on both Internet access taxes and multiple and discriminatory taxes on electronic commerce. The bill also created a nineteen member Advisory Commission on Electronic Commerce to examine, among other things, the effect of state and local taxes on Internet commerce. While a majority of Commissioners recognized the need to move toward national uniform treatment of electronic commerce, no consensus on this matter was achieved. However, legislation representing the majority and minority findings of the Commission was subsequently introduced and considered by the Subcommittee. To advance the goals set out by the ITFA, the Subcommittee conducted a series of hearings on bills intended to simplify the taxing complexities that inhere in electronic commerce. To foster bipartisan consideration of these bills, the Chairmen and ranking members of the Committee and Subcommittee cosponsored these measures.

H.R. 4267, the Internet Tax Reform and Reduction Act

H.R. 4267, the "Internet Tax Reform and Reduction Act," was introduced by Committee Chairman Hyde, Committee ranking member Conyers, Subcommittee Chairman Gekas, and Subcommittee ranking member Nadler on April 13, 2000. H.R. 4267, represented the majority findings of the Advisory Commission.

The bill would have placed a permanent moratorium on state and local taxes on Internet access fees and extended tax moratoria on multiple or discriminatory taxes on electronic commerce and taxes on sales of digitized goods and products until 2006. H.R. 4267 also would have clarified the taxing status of electronic merchants by listing geographic, Internet and telecommunications-related factors not sufficient to create a jurisdictional tax nexus respecting a seller and purchaser not present in the same state. Finally, the bill would have expressed the sense of the Congress that states should work together a draft draft a Uniform Sales and Use Tax Act by 2006. H.R. 4267 also would also have clarified the jurisdictional nexus criteria for taxing electronic merchants, expressed congressional support for states to develop a uniform sales and use tax act by 2004, and established an advisory commission to assess whether the states have met the tax simplification goals contemplated by the bill.

H.R. 4460, the "Internet Tax Simplication Act of 2000"

H.R. 4460, the "Internet Tax Simplification Act of 2000," was introduced by Judiciary Committee Chairman Hyde, Judiciary Committee Chairman Gekas and Subcommittee ranking member Nadler on May 16, 2000. The bill would have extended the tax moratorium on Internet access fees until 2006 and continued the prohibition on multiple and discriminatory taxation of Internet commerce until 2003. The bill would have authorized states to enter into a sales and use tax compact to foster a uniform Internet sales and use tax system and would have given states who enter into the compact authority to levy and collect taxes on remote sellers who lack a physical presence in the taxing state. Finally, H.R. 4460 would have expressed the sense of Congress that state and private industry continue to work toward common definition and sourcing rules for taxing electronic commerce.

On May 17, 2000, the Subcommittee held a hearing on H.R. 4267 and 4460. The following witnesses testified at the hearing: the Honorable Ron Kirk, Mayor of Dallas, Texas; the Paul Harris, Sr. of the Virginia State Legislature; Gene Lebrun representing the National Conference of Commissioners on Uniform State Laws; Grover Norquist, President of Americans for Tax Reform and Stanley S. Sokul, Independent Consultant, Association for Interactive Media. While no clear consensus emerged from the hearing, the participants agreed that the current taxing system imposes unnecessary burdens on state and local governments, Internet retailers, and traditional "brick and mortar" sales outlets.

On July 29, 2000, the Subcommittee held further hearings on H.R. 4267 and H.R. 4460. In addition, the Subcommittee considered H.R. 4462, the "Fair and Equitable Interstate Tax Compact Simplification Act of 2000." Introduced by Representative Bachus (R–AL), the bill would have: extended the moratoria on Internet access and multiple and discriminatory taxes on Internet commerce until 2006; authorized states to enter into an interstate taxing compact to develop uniform taxing standards for Internet commerce: permitted states that have entered into a taxing compact to collect sales and use taxes on remote sellers who lack physical presence in the taxing state; and recognized the importance of consumer privacy. Finally, H.R. 4462 would have delineated a number of uniform benchmarks that a streamlined taxing system should reflect.

Testimony from a broad range of witnesses was received from the following witnesses at the July 29 hearing: the Honorable Ray Haynes of the California State Senate, the Honorable Stephen Saland of the New York State Senate; R. Michael Southcombe, Idaho State Tax Commissioner, representing the Multistate Tax Commissioner; Gary Viken, Secretary of Revenue for the state of South Dakota, representing National Federation of Tax Administrators; Rodney Strain, Jr., Sheriff and Ex-officio Tax Collector of St. Tammany Parish in Covington, LA; Tom Stemberg, CEO, Staples, Inc.; Gary Rappaport, President and CEO, The Rapport Companies representing the International Council of Shopping Centers; Robert Benham, Owner and President, Balliet's, L.L.C.; Katrina Doerfler, Senior Manager of Planning and External Affairs, Cisco Systems, Inc.; David Friedensohn, CEO of Bigstar Entertainment, Inc.; Frank Julian, Operational Vice President and Tax Counsel of Federated Department Stores, Inc.; Peter Lowy, Co-President of Westfield America, Inc.; James Hunt, President and CEO, Ernst and Young Technologies; Arthur Rosen, Esquire, McDermott, Will & Emery; Mark Nebergall, President, Software Finance and Tax Executives Council; Larry Good, Senior Vice President, Electronic Commerce Association and Scott H. Walters, Vice President of Research and Development of TAXWARE, International.

The three bills considered by the Subcommittee at the July 29, 2000 hearing did not receive further consideration.

H.R. 3709, the Internet Nondiscrimination Act of 2000

H.R. 3709, the "Internet Nondiscrimination Act of 2000," was introduced by Representative Cox on February 29, 2000. The bill would amend the Internet Tax Freedom Act (47 U.S.C. § 141 (1998)) to extend the moratorium on multiple and discriminatory taxation of Internet commerce and the ban on Internet access taxes until October 21, 2006. It also would express the sense of the Congress that a uniform Internet taxing policy should include, among other things: (1) a centralized, one-stop, multi-State registration system for sellers; (2) uniform definitions for goods or services that might be included in the tax base; (3) uniform and simple rules for attributing transactions to particular taxing jurisdictions; (4) uniform procedures for the certification of software that sellers rely on to determine non-multiple and non-discriminatory taxes and taxability; and (5) consistent electronic filing and remittance methods.

No Subcommittee hearings were held on H.R. 3709. However, during the 105th Congress, the Subcommittee held a hearing on H.R. 1054, the "Internet Tax Freedom Act," which included a provision creating the tax moratorium which is the subject of H.R. 3709. The Subcommittee was discharged of the bill on May 2, 2000. On May 4, the Judiciary Committee favorably ordered reported H.R. 3709, as amended, by a recorded vote of 29–8. The minority expressed concerns about the expedited manner in which the bill was considered and objected to the absence of language clarifying jurisdictional criteria for states and local taxation of electronic commerce. The report (H. Rept. No. 106–609) was filed on May 8, 2000. On May 10, 2000, H.R. 3709 passed the House by a recorded vote of 352–75. It was received by the Senate the next day. Although the bill was placed on the Senate calendar for further consideration, it was not scheduled for a vote prior to the conclusion of the 106th Congress.

FEDERAL ARBITRATION ACT

H.R. 534, Fairness and Voluntary Arbitration Act of 1999

H.R. 534, the "Fairness and Voluntary Arbitration Act of 1999," was introduced by Representative Mary Bono (R–CA) on February 3, 1999. H.R. 534 would have amended the Federal Arbitration Act (9 U.S.C. §§ 1–14 (1998)) to make arbitration clauses in sales and service contracts enforceable only if parties to the contract consent in writing to arbitrate the dispute after the controversy in question arises. A bill similar to H.R. 543 (H.R. 3122) was introduced in the 102nd Congress and received a hearing before the House Subcommittee on Economic and Commercial Law. In 1996, the "Fairness and Voluntary Arbitration Act of 1996" was introduced by Representative Sonny Bono, but it did not receive a committee hearing.

On June 8, 2000, Subcommittee Chairman Gekas held a hearing on the bill. The following witnesses testified at the hearing: Senator Russell Feingold (D–WI); James Wootton, President of the U.S. Chamber Institute for Legal Reform; James Hebe, Chairman, President and CEO of Freightliner, LLC; Florence Peterson, General Counsel for the American Arbitration Association; Gene N. Fondren, President, Texas Automobile Dealers Association; Richard Holcomb, Commissioner of the Department of Motor Vehicles for the state of Virginia; Mark K. Stine, Director of Legislative Affairs, Pennsylvania Automobile Association; G.C. Jerry Turnauer, President, Bayshore Sterling Truck and Jason P. Isralowitz, Kirkpatrick & Lockhart, LLP.

The Subcommittee held a mark up on H.R. 534 on July 13, 2000. At the mark up, Representative Bono offered an amendment in the nature of a substitute limiting the application of the bill to motor vehicle franchise contracts. The amendment also renamed H.R. 534 the "Motor Vehicle Franchise Contract Arbitration Fairness Act of 2000." While some members expressed interest in preserving the original language of the bill, the Subcommittee reported H.R. 534 by voice vote with a single amendment in the nature of a substitute.

On September 13, 2000, the Judiciary Committee met in open session and ordered reported the amended version of H.R. 534 by voice vote. The bill obtained broad bipartisan support, obtaining the cosponsorship of 252 members. On October 3, 2000, H.R. 534 passed the House, as amended, on suspension of the rules. It was received in the Senate on October 4, 2000, but did not receive a vote in the Senate.

H.R. 916, a bill making technical amendments to Section 10, Title 9, United States Code

Subcommittee Chair Gekas introduced H.R. 916, making technical corrections to subsection 10(a) of title 9, United States Code, on March 3, 1999. H.R. 916 is identical to H.R. 2440, which Mr. Gekas introduced during the 105th Congress.

Title 9, which pertains to domestic and international arbitration law, enumerates the grounds for which a federal district court may vacate an arbitration award and/or order a rehearing. Subsection 10(a) of title 9 consists of five paragraphs. The fifth paragraph, however, is clearly intended to be a separate provision as it specifies the basis of the court's authority to direct a rehearing by the arbitrator. H.R. 916 corrected this drafting error—which has existed from the legislation's original enactment in 1925—by simply converting the fifth paragraph into a separate subsection of section 10 and making certain conforming grammatical and technical revisions.

On March 24, 1999, the Subcommittee by voice vote reported H.R. 916. The Judiciary Committee thereafter ordered reported the bill on May 4, 1999 by voice vote. The report (H. Rept. No. 106–181) was filed on June 10, 1999. As amended on the House floor, H.R. 916 also revised compliance dates and related provisions in the Communications Assistance to Law Enforcement Act of 1994, which was enacted 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 transmissions) and services (such as call forwarding, speed dialing, and conference calling). H.R. 916, as amended, passed the House by voice vote on July 13, 1999. The Senate did not act on the bill before the conclusion of the 106th Congress.

INTERSTATE COMPACTS

Article I, section 10, clause 3 of the United States Constitution provides, "No State shall, without the Consent of Congress * * * enter in any Agreement or Compact with another State, or with a foreign power. * * *" Congressional consent is required for such agreements and compacts to ensure that they do not work to the detriment of another State and that they do not conflict with Federal law or Federal interests. The Subcommittee considered a number of interstate compacts which under the Constitution the Congress must approve.

H.R. 744, a bill to rescind the consent of Congress to the Northeast Interstate Dairy Compact, and H.R. 1604, the Dairy Consumers and Producers Protection Act

H.R. 744 was introduced by Representative James Sensenbrenner (R–WI) on February 11, 1999 and thereafter was referred to this Subcommittee on February 25, 1999. The bill would rescind Congress' consent to the Northeast Interstate Dairy Compact by repealing Section 147 of the Federal Agricultural Improvement and Reform Act of 1996, which codifies Congress' consent to the Compact. If enacted, H.R. 744 would simply execute Congress' reserved rescission power.

H.R. 1604 was introduced by Representative Asa Hutchinson (R–AR) on April 28, 1999 and thereafter was referred to this Subcommittee on May 11, 1999. The bill would, with respect to the Northeast Interstate Dairy Compact, grant consent to the inclusion of Maryland, New Jersey, and New York in the Compact, delete the requirement that the Secretary of Agriculture find a compelling public interest to authorize the Compact, eliminate any sunset provisions concerning the Compact's existence, remove certain prohibitions limiting imports from other regions and creating barriers to entry of milk into the Compact region, and substitute Ohio for Virginia in the list of potential Compact states. The bill would also authorize the Southern Dairy Compact for Alabama, Arkansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia with potential membership for Florida, Georgia, Missouri, Oklahoma, Kansas, and Texas. Any states withdrawing from the Compact would be required to give a year's notice.

On June 17, 1999, the Subcommittee held a hearing on H.R. 744 and 1604. Witnesses who testified at this hearing included: Honorable Russell D. Feingold, United States Senator of the State of Wisconsin; Honorable Mary L. Landrieu, United States Senator of the State of Louisiana; Honorable Charles E. Schumer, United States Senator of the State of New York; Honorable Tommy G. Thompson, Governor of the State of Wisconsin; Leon C. Graves, Commissioner of the Vermont Department of Agriculture, Food and Markets; Jay Kopp; David Krug on behalf of the Family Dairies USA; Albert Simmons on behalf of the National Family Farm Coalition; Wayne Bok, President, Associated Milk Products, Inc., representing the Upper Mid-West Dairy Coalition; Gary A. Corbett, Vice President of Governmental and Dairy Industry Relations, Dean Foods Company; James Green, Vice President and General Manager of Maola Milk & Ice Cream Company; Scott Charlton, Vice President of Manufacturing at Publix Supermarkets, Incorporated, on behalf of the Food Marketing Institute; Charles Parker, General Manager and Chief Operating Officer at Gold Star Dairy; Mae S. Schmidle, Chair of the Northeast Interstate Dairy Compact Commission; John Frydenlund, Director of the Center for International Food & Agriculture Policy/Citizens Against Government Waste; Kathy Lawrence, Executive Director of Just Food; Arthur S. Jaeger, Assistant Director of the Consumer Federation of America; Gregg Engles, Chairman and Chief Executive Officer of Suiza Foods Corporation; Daniel Smith, former Executive Director of the Northeast Interstate Dairy Compact Commission; Steven J. Rosenbaum of Covington & Burling; Professor Bill Thomas, University of Georgia; Professor Robert M. Dunn, Jr., George Washington University; Geoffrey Covert, Senior Vice President and President of Manufacturing at The Kroger Company, on behalf of the Food Marketing Institute.

The Subcommittee favorably reported H.R. 1604, as amended, on July 29, 1999. There was no further consideration of the bill.

H.R. 1293, The Transportation Employee Fair Taxation Act of 2000

The Constitution permits States to levy income taxes both on the basis of taxpayer residence and on the basis of where the income is derived. In some cases, taxpayers are required to pay income taxes both in their state of residence and in states in which they earn income in the course of regularly assigned professional duties.

Representative Baird (D–WA) introduced H.R. 1293, the "Transportation Employee Fair Taxation Act of 2000," on March 25, 1999.

The bill was introduced to address the concerns of interstate waterway workers who work along the Columbia River, which serves as part of the state border between Washington and Oregon in the Pacific Northwest. Oregon assesses a broad based state income tax, Washington does not. Washington residents who worked along the Columbia River were presented with sometimes staggering tax assessments by Oregon officials who claimed that income earned along the Columbia River was taxable by Oregon.

H.R. 1293 equalized the taxing status of interstate waterway workers vis-a-vis other interstate transportation workers by prohibiting states from levying taxes on the income of nonresident interstate waterway workers. Over the last few decades, Congress has provided earlier relief to interstate motor, rail and airway workers. Interstate waterway workers were not accorded similar treatment. On July 18, 2000, the Subcommittee held a hearing on the bill. Representative Baird, Chris D. Eckhardt, Captain, Shaver Transportation, and Mike Simonsen, Representative, International Organization of Masters, Mates and Pilots testified at the hearing. On the same day, the Subcommittee ordered the bill reported by voice vote. The Judiciary Committee favorably reported H.R. 1293 by voice vote on September 20, 2000, and the committee report was filed on October 3, 2000 (H. Rept. No. 106–927, part 1, filed on October 3, 2000). To facilitate consideration of the bill, the House passed the Senate version of the bill (S. 893) introduced by Senator Gorton (R–WA) under suspension of the rules on October 24, 2000. The bill had passed the Senate on September 28, 2000. S. 893 was signed by the President on November 9, 2000 to become Public Law 106–489.

H.R. 4700, granting the consent of Congress to the Kansas and Missouri Metropolitan Culture Compact

On July 18, 2000, the Subcommittee held a hearing on and reported favorably by voice vote H.R. 4700, granting the consent of Congress to the Kansas and Missouri Metropolitan Culture Compact Representative Karen McCarthy (D–MO) and Audrey Langworthy (Kan. State Senate) testified at the hearing. The Compact, entered into by the two states in 1999, permanently extended the Kansas and Missouri Metropolitan Culture Compact, to which Congress consented in 1994. The 1994 Compact created a bi-state taxing district spanning five counties in western Missouri and eastern Kansas. The Compact permitted residents of the region to jointly approve district-wide sales taxes to support cultural activities in the bi-state region. The revised Culture Compact expands the definition of "cultural facilities" to permit voters to approve sales taxes to support the construction or renovation of sports-related facilities. The Judiciary Committee ordered the bill favorably reported by voice vote on July 18, 2000. The report (H. Rept. No. 106–769) was filed on July 20, 2000. The bill passed the House on July 24, 2000. The Senate passed H.R. 4700 on September 26, 2000, and it was signed by the President on October 10, 2000 to become Public Law 106–287.

H.J. Res. 72, granting the consent of the Congress to the Red River Boundary Compact

On October 26, 1999, the Subcommittee held a hearing on H.J. Res. 72 (Representative Thornberry (R–TX)), a joint resolution granting the consent of the Congress to the Red River Boundary Compact, establishing a new boundary between Oklahoma and Texas. The boundary between Texas and Oklahoma had historically been the south bank of the Red River, which was the southern boundary of the Louisiana Purchase, later clarified by the Transcontinental Treaty of 1819. That treaty, negotiated with Spain by Secretary of State John Quincy Adams, extended the western boundary of the Louisiana purchase to the Pacific Ocean (encompassing an area already explored by Lewis and Clark) and set the Purchase's southern boundary with Texas (then a Spanish possession) at the Red River. At that time the United States renounced its claim to Texas. After an armed struggle for Independence. Texas became a republic in 1836 and following approval by Texas. After an armed struggle for Inpendence, Texas became a republic in 1836 and following approval by Texas of a Congressional Resolution of Annexation, it was eventually admitted into the Union on December 22, 1843. Oklahoma was admitted to the Union on November 16, 1907. The Red River boundary extends for a distance of approximately 517 miles.

However, the Red River has a tendency to run dry, particularly in the area where it marks its western boundary with Oklahoma extending eastward to Lake Texoma south of Ardmore, Oklahoma. Because of this, the boundary is blurred by deposits of dry alluvial sand which makes the demarcation of the "south bank" difficult. Cut banks that could be useful in demarcating the boundary are often relocated by transitory floods. As a result, the precise boundary represented by the south bank of the Red River has been a source of dispute and litigation involving the two states.

H.J. Res. 72 resulted from the efforts of a two-state commission which met to discuss and ultimately determine the boundary question. The commission's proposed boundary was adopted by the legislatures of both states. The boundary established under the compact becomes the "vegetation line" on the south bank of the Red River (except for the Lake Texoma area where the boundary is to established pursuant to the compact by an agreement between the states). The vegetation line was chosen because it was the simplest discernible method for demarcating the boundary for ordinary citizens and officials. Witnesses testifying at the October 26, 1999 hearing were: Representative Max Sandlin (D–TX); Representative Mac Thornberry (R–TX), David B. Braddock of the Oklahoma House of Representatives; Eric Sigsbey, General Counsel of the Texas General Land Office.

The subcommittee reported the resolution favorably by voice vote on October 26, 1999. Subsequently to the subcommittee markup, concerns were expressed by representatives of several Indian tribes and nations bordering the Red River about how the compact might effect their interests. Negotiations continued for several months between the Subcommittee Congressional sponsors of the legislation, representatives of the relevant tribes and nations, and the Bureau of Indian Affairs. On March 3, 2000, Subcommittee majority and minority counsel, met in Austin, Texas with representatives of Texas and Oklahoma, as well as those from the Kiowa, Comanche and Apache tribes (KCA) and the Choctaw and Chickasaw Nations. As a result of these negotiations and additional consultations with the Bureau of Indian Affairs, an amendment was adopted by the full Judiciary Committee clarifying that Congressional approval of the Compact does not alter the boundaries, the rights or the jurisdiction of the KCA tribes or those of the Chickasaw or Choctaw Nations which are, or in the future may be, established under Federal law. The Judiciary Committee ordered reported H.J. Res. 72 with an amendment on July 19, 2000. The report (H. Rept. No. 106–770) was filed on July 20, 2000 and the House passed the resolution on July 24, 2000. The Senate passed H.J. Res. 72 on September 26, 2000. The President signed H.J. Res. 72 on October 10, 2000 as Public Law 106–288.

H.J. Res. 54, granting the consent of Congress to the Missouri-Nebraska Boundary Compact

On July 29, 1999 the subcommittee held a hearing and reported H.J. Res. 54 by voice vote. The bill granted the consent of Congress to the Missouri-Nebraska Boundary Compact settling a portion of the boundary between those two states that had been in dispute for many decades. When Missouri and Nebraska were admitted into the Union in 1820 and 1867, respectively, the boundary between them was set at the middle of the Missouri River. However, less than six months after Nebraska's admission, on July 4, 1867, the Missouri River flooded and carved out a new path to the west. In the process, a 5,000 acre piece of land—known as McKissick's Island—which was west of the river, suddenly became east of the river. While in 1914 the U.S. Supreme Court held that McKissick's Island was part of Nebraska, in 1934 the Army Corps of Engineers began construction of dikes, revetments, ripraps and dredging which resulted in the river's further movement along the border. Despite a 1982 decision by a United States District Court in Nebraska that the boundary remained at its pre-1934 location, the states were unable to agree on the precise location of the 1934 centerline. Consequently, farmers whose land was in the disputed area faced taxation and threats of foreclosure from both states.

After many years of negotiations and the appointment of an interstate commission, the boundary dispute was resolved and the states passed legislation embodying the commission's recommendations and incorporating the Supreme court's decision. The final agreement shifted more than 10,000 acres of land on both sides of a 50 mile section of the river and provided a mechanism to govern future boundary disputes. The Judiciary Committee ordered reported H.J. Res. 54 on August 3, 1999. The report (H. Rept. No. 106–303) was filed on September 8, 1999 and the House passed the bill on September 21, 1999. The Senate passed H.J. Res. 54 on November 5, 1999 by unanimous consent. The President signed it as Public Law 106–101 on November 12, 1999.

Testimony for the July 29, 1999 hearing on H.J. Res. 54 was received from: Representative Doug Bereuter (R–NE), Representative Pat Danner (D–MO) and David Duncan, a member of the Missouri Boundary Commission.

H.J. Res. 62, granting the consent of Congress to a compact concerning a change in the boundary between Georgia and South Carolina

On July 29, 1999, the Subcommittee held a hearing and ordered reported H.J. Res. 62, granting the consent of Congress to a compact concerning a change in the boundary between Georgia and South Carolina which resolved a centuries-old dispute over the border which is shared by the two states in the Savannah River. Testimony for the hearing was received from Representative Jack Kingston and Charles Challstrom, Acting Director of the National Geodetic Survey, and agency of the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce. While Georgia and South Carolina had agreed in the Beaufort Convention of 1787 that the boundary between them should be at the centerline of the Savannah River except where there were islands in the river, in which case it should be the centerline between the islands. However, over time they disagreed on whether the centerline should be measured from the high water or the low water mark. Despite a 1922 Supreme Court decision holding that the proper measurement was at the ordinary water level, the boundary continued to be the subject of protracted debate as new islands emerged in the river, the Army Corps of Engineers dredged certain parts of the river, South Carolina claimed adverse possession over a set of islands in the river, and the states disputed the boundary at the mouth of the river on the Atlantic Ocean. The issue gained prominence as the disputed land became critical to expanding the Port of Savannah and as the potential of offshore oil reserves arose.

Finally, in *Georgia* v. *South Carolina,* 497 U.S. 376 (1990), the Supreme Court directed the two states to draw a boundary in accordance with its opinion and to submit it for approval. Enlisting the help of the National Oceanic and Atmospheric Administration (NOAA) to update and make usable the 1855 map used by the Supreme Court in its decision, the states subsequently realized that the course of the Savannah River had so changed since 1855 that they would have to negotiate a different line. The two states worked together, pursuant to the Supreme Court's direction, to arrive at a mutually agreeable solution that ultimately covered about 3,000 acres of land. However, in translating that new boundary into law, Georgia used a legal description that was less technically precise and accurate than that used by South Carolina, and thus the versions passed by the states and referenced in H.J. Res. 62 were not identical. Nonetheless, Georgia's law provided that its textual description could be superseded by a map to be prepared by NOAA and paid for by the two states. If such a map is produced and is identical to South Carolina's textual description, then the two states will have an identical agreement and, pursuant to H.J. Res. 62, Congress will have consented to the boundary. If, however, NOAA does not produce such a map or the map is not sufficiently clear or identical to bind the states, the joint resolution gives consent in advance to adopt each other's language or come up with new language to settle their dispute within five years of enactment. Under H.J. Res. 62, the compact will not legally bind the states until NOAA produces the requisite map or the states adopt identical language.

The Judiciary Committee ordered reported H.J. Res. 62 by voice vote on August 3, 1999 and the report (H. Rept. No. 106–304) was filed on September 8, 1999. The House passed the bill on September 21, 1999 and the Senate concurred on October 26, 1999. It was signed by the President as Public Law 106–90 on November 8, 1999.

MISCELLANEOUS

H.R. 3312, the Merit Systems Board Administrative Dispute Resolution Act of 2000

H.R. 3312 was introduced by Subcommittee Chairman Gekas on November 10, 1999. The bill would have amended the Administrative Dispute Resolution Act (5 U.S.C. §§ 501–583 (1998)) to authorize a three-year, early intervention alternative dispute resolution program at the Merit Systems Protection Board (MSPB). The pilot program is designed to assist MSPB judges in managing an increasing caseload while facilitating the settlement of disputes between federal agencies and employees before they escalate into costly litigation before the Board. The bill would also require the MSPB to submit an annual report to Congress detailing the efficacy of various ADR techniques and requires the Board to submit to Congress a report summarizing the merits of the pilot program before its conclusion. The Subcommittee held a public briefing on H.R. 3312 on February 29, 2000. Testimony was received from Ben Erdreich, MSPB Chairman; Jeffrey Senger, Deputy Senior Counsel, Department of Justice; and Richard Vitaris, President of the MSPB Professional Association.

On June 20, 2000, the Subcommittee held a markup on the bill. An amendment in the nature of a substitute was offered by Mr. Gekas and ranking member, Mr. Nadler. Reflecting suggestions made by MSPB and the Department of Justice, the amendment stressed the voluntary nature of the program. H.R. 3312, as amended, was reported favorably by voice vote by the Subcommittee. On September 20, 2000, the Judiciary Committee held a markup on and ordered favorably reported H.R. 3312, as amended, by voice vote. After being ordered reported by the Judiciary Committee on October 23, 2000 (H. Rept. No. 106–994, pt. 1), Mr. Gekas proposed an amended version for floor action that restored conditional pay equity to MSPB judges. House Committee on Government Reform and Oversight Chairman Burton waived jurisdiction on the measure and did not object to the amended version of H.R. 3312 with the pay provision. On October 24, 2000, the House passed H.R. 3312 with the amendment by voice vote on suspension of the rules. It was received in the Senate on October 25, 2000, but did not receive further consideration prior to the conclusion of the 106th Congress.

H.R. 436, Government Waste, Fraud, and Error Reduction Act of 1999

On February 2, 1999, Representative Stephen Horn (R–CA) (for himself and Representatives Judy Biggert (R–IL), Jim Davis (D–FL), Thomas Davis (R–VA), and Pete Sessions (R–TX)), introduced

H.R. 436, the “Government Waste, Fraud, and Error Reduction Act of 1999”.

H.R. 436 was intended to improve federal debt collection practices, among other matters. With respect to the bill’s provisions concerning private collection contractors and delinquent federal debtors, H.R. 436 included clarifying language that the amendments effectuated by such provisions were not to be construed as altering or superseding the Bankruptcy Code.

The Judiciary Committee was discharged from further consideration of the bill on February 5, 1999 and the House passed the bill, as amended, on February 24, 1999. The bill was received in the Senate on February 25, 1999, but was not acted upon prior to the conclusion of the 106th Congress.

H.R. 915, authorizing a cost of living adjustment (COLA) in the pay of administrative law judges

On May 27, 1999 the Subcommittee held a hearing on and reported H.R. 915 by voice vote. Witnesses at the hearing were: Ronald Bernoski, President, Social Security Administration, Office of Hearings and Appeals appearing on behalf of the Association of Administrative Law Judges, Inc.; Judith Dowd, President, Federal Administrative Law Judges Conference and Henry Romero, Associate Director, Workforce Compensation and Performance Service, Office of Personnel Management. The bill authorized the President to adjust the pay of administrative law judges (ALJ) by an amount that he determines to be appropriate (within basic pay parameters set out in 5 U.S.C. 5372(b)), as he is authorized to do for members of the Senior Executive Service. The bill also modified the language in 5 U.S.C. 5372(b)(1) by adding new paragraphs (A) through (C) describing the levels at which ALJ’s are paid to facilitate the President’s ability to so adjust that pay. As a result of this modification there will continue to be six levels of basic pay for AL–3 and one each for AL–2 and –1 (which retains the current minimum and maximum parameters, i.e. 65 to 90 percent of level IV of the Executive Schedule for AL–3, 95 percent for AL–2 and 100 percent for AL–1). Prior to 1990, ALJs were paid under the General Schedule as GS–15 and 16’s. While the intent of Federal Employee Pay Comparability Act of 1990, which put ALJs under the Executive Schedule, was to serve as a pay increase for ALJs, it had in fact worked to substantially undermine their pay comparability with their former colleagues on the General Schedule who continued to receive COLAs.

Subsequent to the Subcommittee’s action, the Judiciary Committee was discharged from further consideration of H.R. 915 on June 10, 1999 and it was referred to the Committee on Government Reform which reported the Subcommittee’s version to the House on September 30, 1999, which filed its report (H. Rept. 106–387) on October 18, 1999. The House passed the bill on October 25, 1999 by voice vote and the Senate passed it on November 8, 1999 by unanimous consent. The President signed H.R. 915 as Public Law 106–97 on November 12, 1999.

H.R. 4105, the Fair Justice Act

H.R. 4105, the "Fair Justice Act," was introduced by Representative James Traficant (D–OH) on March 28, 2000. The bill would have established an independent agency to investigate and prosecute alleged misconduct, criminal activity, corruption and fraud by an officer or employee of the Justice Department. H.R. 4105 authorized the agency to be appropriated $10 million for fiscal year 2001, $15 million for fiscal year 2002, and $20 million for the following fiscal year. The agency would have been headed by a director, appointed by the President with the advice and consent of the Senate, for a ten-year term. The bill specifies various administrative aspects of the position, including pay rate, eligibility to receive travel expenses, and grounds for dismissal. In addition, H.R. 4105 empowered the director to appoint officers and employees as well as to retain the temporary and intermittent services of experts and consultants.

The Subcommittee held a hearing on H.R. 4105 on July 27, 2000. Witnesses who testified at the hearing included the following: Representative James Traficant (D–OH); Joseph Occhipinti, Executive Director of the National Police Defense Foundation; John Culbertson, Director of The Center for Reform; David Margolis, Associate Deputy Attorney General, U.S. Department of Justice; John C. Keeney, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; Marshall Jarrett, Counsel, Office of Professional Responsibility, U.S. Department of Justice; Howard Sribnick, General Counsel, Office of Inspector General, U.S. Department of Justice; Michael Shaheen, former Counsel, Office of Professional Responsibility, U.S. Department of Justice; and Professor Bennett Gershman, Pace University School of Law.

H.R. 1219, the Construction Industry Payment Protection Act of 1999

During the Second Session of the 105th Congress, the Subcommittee held a joint hearing with the Committee on Government Reform on legislation similar to H.R. 1219, introduced by Representative Maloney, amending the Miller Act to: (1) require the amount of a payment bond required for any contract for the construction, alteration, or repair of any public building or public work of the United States to be equal to the total amount payable by the terms of the contract unless the constructing officers determines that such amount is impractical, in which case such officer shall set a different amount that cannot be less than the amount of the required performance bond; (2) permit notice of an action on a payment bond by a subcontractor to be served by any means which provides written, third-party verification of delivery; (3) provides that any waiver of the right to sue on a required payment bond shall be void unless it is in writing, signed, and executed after the covered labor or material has been furnished. The bill also required that proposed revisions to the Government-wide Federal Acquisition Regulation to implement the bill be published within 120 days after enactment and final regulations to be published within 180 days of enactment.

The Subcommittee agreed to the waiver of Judiciary Committee jurisdiction in order to facilitate House passage of H.R. 1219 which occurred by a vote of 416–0 on August 2, 1999. It passed the Senate on August 8, 1999 by unanimous consent and was signed by the President as Public Law 106–49 on August 17, 1999.

Oversight Activities

Reauthorization of the Independent Counsel Act

On March 2, 1999 the Subcommittee began a series of oversight hearings to consider the operation of the Independent Counsel Act (originally enacted as title VI of the Ethics In Government Act of 1978 (Public Law 95–521)). After its original enactment, the act was reauthorized for five-year periods in 1983, 1988 and again in 1994. The law was developed in response to the so-called "Saturday Night Massacre" that occurred during the investigation of the Watergate scandal in 1973. In that instance, Watergate Special Prosecutor Archibald Cox was fired because of disagreements with President Richard Nixon over the conduct of the investigation. In the course of one evening, not only was Cox discharged but also Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus resigned rather than carry out the President's direction to fire Cox. Public outcry led not only to the subsequent appointment of another Watergate Special Prosecutor, Leon Jaworski, but ultimately resulted in the adoption of legislation that created a structured approach to investigation of alleged executive branch wrongdoing that would ensure the complete independence of special prosecutors. The intent of the law was to provide a mechanism to avoid potential conflicts of interest, or the appearance thereof, that might arise if the Attorney General were to investigate wrongdoing by either himself or other high Administration officials.

Although upheld by the Supreme Court in *Morrison* v. *Olson,* 487 U.S. 654, the law became increasingly controversial during the tenure of Independent Counsel Lawrence Walsh and his investigation of the Iran-Contra matter during the 1980's. While during the Clinton Administration numerous counsel were appointed pursuant to the act, the most controversial became Kenneth Starr and his investigations growing out of, or added to, the so-called Whitewater matter. Mr. Starr's efforts ultimately lead to the impeachment of President Clinton in 1998 and his trial the following year.

Testifying at the Subcommittee's March 2, 1999 hearing was Deputy Attorney General Eric J. Holder. Subsequent hearings were held on: March 10, 1999, with the following witnesses testifying: Representatives Jay Dickey (R–AR), Alcee L. Hastings (D–FL) and Bennie G. Thompson (D–MS); William B. Parr, Former Attorney General; Benjamin R. Civiletti, Former Attorney General; Timothy E. Flanigan, former Assistant Attorney General; Philip S. Anderson, President of the American Bar Association and Professor Julie Rose O'Sullivan of Georgetown University Law Center; June 11, 1999, with following witnesses testifying: former Senators George Mitchell and Robert Dole; Professor Drew Days, former Solicitor General and John Roberts, former Deputy Solicitor General. On September 23, 1999, the following witnesses testified before the subcommittee: Michael Espy, Former Secretary, U.S. Department of Agriculture; Susan McDougal; Julie Hiatt Steele; Robert Bennett, attorney for Caspar Weinberger; Lyn Nofziger, Political Consultant and Robert Plotkin, attorney for Paul, Hastings, Janofsky & Walke.

On June 9, 1999 Subcommittee Chairman Gekas introduced H.R. 2083, similar to the proposal offered by former Senators Mitchell and Dole at the June 11, 1999 hearing. The Dole-Mitchell recommendation, the result of a joint study by the American Enterprise Institute and The Brookings Institution, was that: (1) legislation be adopted authorizing the Attorney General to appoint a special counsel to investigate or prosecute violations of federal criminal law that would result in "personal, financial, or political" conflicts of interest if conducted by the Department of Justice, if it be in the pubic interest to do so, and (2) legislation be adopted requiring the Attorney General to issue regulations governing the conduct of investigations or prosecutions by such counsel. H.R. 2083 additionally provided that such regulations should provide for removal of a special counsel by the Attorney General only for good cause.

The Independent Counsel Act expired on June 30, 1999 and was replaced by regulations issued by Attorney General Janet Reno governing the appointment of special prosecutors (28 C.F.R. § 591–99 (1999)). No action was taken on H.R. 2083.

Oversight hearing on reinvented taxation and the Taxpayer's Defense Act

Federal agencies are routinely empowered by Congress to impose user fees, an appropriate method of compensating the government for specific benefits it provides. However, such fees may escalate into taxes when they go beyond covering the cost of services, or exceed the value of services provided to identifiable beneficiaries. Taxation has been a governmental function reserved to the legislative branch since before the founding of our country. In The Second Treatise of Government, John Locke wrote "[I]f any one shall claim a power to lay any levy taxes on the people, * * * without * * * consent of the people, he thereby * * * subverts the end of government." John Locke, *The Second Treatise of Government* ¶140 (Thomas P. Peardon, ed., Macmillan 1989). Consent, according to Locke, could only be given by a majority of the people, "either by themselves or their representatives chosen by them." *Id.* Furthermore, first among the powers that the Constitution gave to the Congress, the government's most representative branch, was the power to levy taxes. U.S. Const., art. I, § 8, cl. 1. And, notably, bills to raise revenue must originate in the most representative chamber, the House. *Id.* at art. I, § 7, cl. 1. The modern rise of the regulatory state threatens to erode the essential principle that Congress has plenary power to raise taxes.

On July 29, 1999, the Subcommittee held an oversight hearing to examine the proliferation of agency-promulgated tax measures. The witnesses at the hearing were: Representative Lee Terry (R–NE); Representative J.D. Hayworth (R–AZ); James C. Miller, III, Counselor, Citizens for a Sound Economy; Rick Joyce, Esquire, Joyce & Jacobs, representing Celpage, Inc.; Matthew C. Ames, Esquire, Miller & Eaton, P.L.L.C., representing EDLING, the Education and Library Networks Coalition; Theodore J. Garrish, Vice

President, Nuclear Energy Institute; Dan Gerawan, President, Gerawan Farms, Inc.; Thomas A. Schatz, President, Citizens Against Government Waste.

Immediately following the oversight hearing, Subcommittee Chairman Gekas introduced H.R. 2636, the "Taxpayer's Defense Act." The bill would have limited executive taxing authority by prohibiting federal agencies from promulgating rules that establish or increase taxes without the consent of Congress. The Act would have created an expedited congressional review procedure and required any agency promulgating a rule that would establish or increase a tax (however denominated) to submit the rule to Congress for its approval before such a rule can take effect. This would essentially prohibit agencies from increasing taxes and allow them instead to propose, under existing authority, a new or increased tax. The Taxpayer's Defense Act would not affect existing programs, interpretations of the Internal Revenue Code, tax decreases, or taxes whose amounts are set by law.

The Subcommittee did not conduct a legislative hearing on the "Taxpayer's Defense Act." However, the Judiciary Committee held a legislative hearing on H.R. 2636 on November 3, 1999. The hearing also examined H.R. 2533, the "Fairness in Telecommunications License Transfers Act of 1999" and H.R. 2701, the "Justice for MAS Applicants Act of 1999." Witnesses at the Judiciary Committee hearing included: Representative McIntosh (R–IN); Representative Hayworth (R–AZ); William Kennard, Chairman, Federal Communications Commission; Roy Neel, President, United States Telecom Association; Richard Weening, Executive Chairman, Cumulus Media, Inc., Ronald Binz, President, Competition Policy Institute; Kent Lassman, Deputy Director for Technology and Communications Policy; and Robert Ryan, Multiple Address System Applicant, Glen Ellyn, Illinois.

Oversight hearing on Know Your Customer Rules; Privacy in the Hands of Federal Regulators

In response to a perceived increase in illegal financial activities such as money laundering and fraud, four federal bank regulators proposed rules that would require banks and other financial institutions to develop profiles of their customers to facilitate financial crime law enforcement. The "Know Your Customer" regulations were proposed by the Board of Governors of the Federal Reserve System (Federal Reserve), the Treasury Department's Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Treasury Department's Office of Thrift Supervision (OTS) on December 7, 1998.

Among other things, the proposed rules required financial institutions to set up programs that would monitor customer accounts, establish a profile of the customer's "regular and expected" transactions, determine the source of customer funds, and report "suspicious" activities to relevant enforcement authorities. The Treasury Department claimed authority to issue "Know Your Customer" rules under the Bank Secrecy Act (12 U.S.C. § 1818 1994)). The FDIC predicated its "Know Your Customer" rulemaking authority on the Federal Deposition Insurance Act (12 U.S.C. §§ 1881–1835a (1994)).

On March 3, 1999, Subcommittee Chairman Gekas held an oversight hearing into "Know Your Customer" regulations. The hearing focused on procedural, administrative, and policy aspects of the proposed regulations. Testimony from the following witnesses was received at the hearing: Representative Barr (R–GA); John D. Hawke, Jr., Comptroller, Office of the Comptroller of the Currency; Richard A. Small, Assistant Director, Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System; Christie A. Sciacca, Associate Director, Division of Supervision, Federal Deposit Insurance Corporation; Timothy Burniston, Managing Director, Compliance Policy and Specialty Examinations, Office of Thrift Supervision; David Medine, Associate Director, Financial Practices Division, Federal Trade Commission; Jere W. Glover, Chief Counsel, Office of Advocacy, Small Business Administration; Professor Robert A. Anthony, George Mason University; James McLaughlin, Director, Regulatory Affairs, American Bankers Association; Solveig Singleton, Director of Information Studies, CATO Institute; and Gregory T. Nojeim, Legislative Counsel, American Civil Liberties Union.

The "Know Your Customer" proposals engendered widespread criticism from a variety of quarters. Financial institutions and regulators claimed that the proposed rules would pose a grave threat to customer privacy. In addition, a number of bills were introduced in both the House (*see e.g.* H.R. 516, H.R. 530, H.R. 575, H.R. 621) and Senate (*see e.g.* S. 403 and S. 406) to overturn these proposed rules in the event that they became final. In response to overwhelming public and congressional opposition to the "Know Your Customer" rules during the proposed regulations' notice and comment period, all four of the regulating agencies that noticed the proposed regulations withdrew them in March of 1999.

Oversight hearing on novel procedures in FCC license transfer proceedings

On May 25, 1999, the Subcommittee held an oversight hearing on administrative aspects of the Federal Communication Commission's (FCC) license transfer authority under the Communications Act (47 U.S.C. § 310 (Supp. 1994)). Under the law, the FCC has authority to determine whether "public interest" and "convenience" is served by allowing telecommunications companies to freely transfer operating licenses for specific services between and among communications firms. The impetus for the hearing was perceived FCC regulatory mishandling of license transfer request between Southwestern Bell Communications (SBC) and Ameritech after the companies announced plans to merge in May of 1998.

FCC review of license transfers raises important administrative practice and procedure issues. The determination of "public interest" and "convenience" may not be identifiable legal standards by which the FCC can determine whether or not to approve such requests. Furthermore, the absence of regularized procedures to examine license transfer applications might also lead to arbitrary and discriminatory treatment of regulated entities while undermining public confidence in the fairness and predictability of agency adjudication. The following witnesses testified at the May 25, 1999 hearing: Harold Furchtgott-Roth, Commissioner, Federal Communications Commission; professor Lars Noah, University of Florida College of Law; and Brian More, Esq. Moir & Hardman representing the International Communications Association. While the Subcommittee did not have a legislative hearing on bills tailored to address this problem, the Judiciary Committee held a hearing on H.R. 2533, the "Fairness in Telecommunications License Transfer Act" and H.R. 2701, the "Justice for MAS (Multiple Address System) Applicants Act of 1999" on November 3, 1999. No further action was taken on these bills.

Oversight hearing on the franchising relationship

On June 24, 1999, the Subcommittee held an oversight hearing on the franchising relationship. The hearing was held in response to the important role franchising plays in the nation's economy, particularly in the retail and service industries. It is estimated that more than 40 percent of retail sales in the United States are generated by franchised businesses. The hearing was also intended to air the various issues associated with a federal regulatory role in this relationship suggested in the past several Congresses and most recently by H.R. 4841, the "Small Business Franchise Act of 1998," which was introduced in the 105th Congress by Representative Howard Coble (R–NC).

Witnesses who testified at this hearing included the following: Representatives Howard Coble (R–NC); John J. LaFalce (D–NY); and Jay Dickey, (R–AR); Susan Kezios, President of the American Franchise Association; Micahel F. Adler, Chairman, President & Chief Executive Officer of Moto-Photo, Incorporated, on behalf of the International Franchise Association; Patrick J. Leddy, Jr., Baskin-Robbins Franchisee; Arleen Goodman, Goodman & Company, on behalf of the KOA Franchisee Association; Darrell Dunafon, Dunafon Real Estate Development; Lawrence "Doc" Cohen, President and Chief Executive Officer of Doc & Associates; Professor Timothy Bates, College of Urban, Labor and Metropolitan Affairs at Wayne State University; Dennis E. Wieczorek, Rudnick & Wolf; Peter Singler, Jr., Law Offices of Peter Singler; and Larry I. Tate, Vice President of Franchising at Golden Corral Corporation.

Oversight hearing on Legal Services Corporation

On September 29, 1999, the Subcommittee held an oversight hearing on Legal Services Corporation, a private, non-profit, federally funded corporation established by legislation enacted in 1974. Witnesses who testified at the hearing included the following: Edouard R. Quatrevaux Inspector General for the Legal Services Corporation; Dr. Laurie E. Ekstrand, General Accounting Office; John McKay, President of the Legal Services Corporation; and John N. Erlenborn, Vice Chair of the Board of Directors of the Legal Services Corporation; Virginia L. Thomas, Senior Fellow in Government Studies at the Heritage Foundation; Kenneth F. Boehm, Chairman of the National Legal and Policy Center and; John Pickering of Wilmer Cutler and Pickering.

Since its inception, LSC has been controversial, particularly with regard to the types of activities that federally funded attorneys undertake. As a result, LSC has lacked authorizing legislation since

1980. The Subcommittee, in 1995, held an extensive series of hearings on the reauthorization of LSC, resulting in legislation recommended by the Judiciary Committee, but not considered by the full House. In the absence of reauthorization, LSC's continued operation has depended upon the appropriation process, which typically has included legislative provisions restricting the activities of LSC-funded grantees.

In early 1998, the LSC Office of Compliance and Enforcement identified certain case reporting problems with two grantees. Beginning in the spring of 1998, the Inspector General conducted field audits of three LSC grantees with regard to their 1997 case service reporting statistics. Based on the initial results of these audits, it became apparent by the summer of 1998 that there were serious problems with the case reporting statistics supplied by certain of the audited LSC grantees. Additional audits were thereafter conducted of three other grantees. The first official audit issued by the Inspector General, however, was not issued until October of 1998 and the final audit report was not submitted until August 2, 1999. Based on these reports, the Inspector General estimated that the six audited grantees erroneously reported 41,272 cases.

Among the matters examined over the course of the hearing were the reasons for and the impact of the extensive case statistics over-reporting by LSC grantees; the remedial efforts that LSC has undertaken since this problem was brought to its attention; and whether LSC and/or the Inspector General intentionally failed to timely bring information about the case over-reporting problem to the attention of the Congress.

Joint oversight hearing on bankruptcy judgeship needs

On November 2, 1999, the Subcommittee held a joint oversight hearing with the Senate Subcommittee on Administrative Oversight and the Courts on bankruptcy judgeship needs. Witnesses who testified included the following: Representatives Jack Kingston (R–GA); Michael N. Castle (R–DE); Steny H. Hoyer (D–MD); Ed Bryant (R–TN); Howard Coble (R–NC); the Honorable Michael J. Melloy, United States District Chief Judge for the Northern District of Iowa, on behalf of the Judicial Conference of the United States; the Honorable Mary Davies Scott, United States Bankruptcy Judge for the Eastern and Western Districts of Arkansas, on behalf of the National Conference of Bankruptcy Judges; Hugh M. Ray, Andrews & Kurth; and Ford Elsaesser on behalf of the American Bankruptcy Institute.

The hearing was held in response to a judicial resource assessment prepared by the Judicial Conference of the United States in March 1999. That report, based on a judgeship survey conducted in the fall of 1998, cited the need for six temporary bankruptcy judgeships in addition to the 18 previously requested. The Judicial Conference asserted that the need for the 24 additional judgeships was "critical."

SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY

HOWARD COBLE, North Carolina, Chairman

F. JAMES SENSENBRENNER, Jr., Wisconsin	HOWARD BERMAN, California
ELTON GALLEGLY, California	JOHN CONYERS, Jr., Michigan
BOB GOODLATTE, Virginia	RICK BOUCHER, Virginia
WILLIAM L. JENKINS, Tennessee	ZOE LOFGREN, California
EDWARD A. PEASE, Indiana	WILLIAM D. DELAHUNT, Massachusetts
CHRIS CANNON, Utah	ROBERT WEXLER, Florida
JAMES E. ROGAN, California	
MARY BONO, California	

Tabulation and disposition of bills referred to the subcommittee

Legislation referred to the Subcommittee	84
Legislation reported favorably to the full Committee	17
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	4
Legislation pending before the full Committee	2
Legislation reported to the House	18
Legislation discharged from the Committee	8
Legislation pending in the House	5
Legislation passed by the House	21
Legislation pending in the Senate	7
Legislation vetoed by the President (not overriden)	0
Legislation enacted into public law	4
Legislation enacted into public law as part of another measure	17
Legislation on which hearings were held	19
Days of hearings (legislative and oversight)	21
Private legislation referred to the Subcommittee	1
Private legislation pending in the Subcommittee	1

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

Quality Child Care for Federal Employees Act, H.R. 28

Introduced by Representative Benjamin A. Gilman, for himself, Ms. Kelly, Ms. Maloney, Ms. Morella, Mr. Romero-Barcelo, Mr.

Shays, and Mr. Waxman, H.R. 28 directs the Administrator of General Services to: (1) establish health, safety, and facility standards and compliance requirements for child care in executive branch facilities; (2) issue regulations requiring any entity sponsoring a child care center to comply with certain accreditation standards; and (3) establish an interagency council to facilitate cooperation and sharing of best practices. On September 15, 1999, the Committee on the Judiciary was discharged from further consideration of the bill.

To amend rule 30 of the Federal Rules of Civil Procedure to restore the stenographic preference for recording depositions, H.R. 771

Introduced by Subcommittee Chairman Howard Coble, for himself, Mr. Andrews, Mr. Barr, Mr. Berman, Mr. Blagojevich, Mr. Canady, Mr. Chabot, Mr. Frank, Mr. Gibbons, Mr. Hastings, Mr. Jenkins, Mr. Kind, Mr. McCollum, Mr. McGovern, Mr. Murtha, Mr. Rothman, and Mr. Sensenbrenner, H.R. 771 amends rule 30 of the Federal Rules of Civil Procedure to require that depositions be recorded by stenographic or stenomask means unless the court upon motion orders, or the parties stipulate in writing, to the contrary.

On March 11, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 771, by voice vote, a quorum being present. No further action was taken on the bill.

Multiparty, Multiform Jurisdiction Act of 1999, H.R. 967

Introduced by Representative James Sensenbrenner, Jr., for himself, and Mr. Coble, H.R. 967 amends the Federal judicial code to grant Federal district courts original jurisdiction over civil actions arising out of a single accident that results in the death or injury of 25 or more natural persons, provided the amount in controversy exceeds $75,000 per person and minimal diversity of citizenship exists. See H.R. 1852 and H.R. 2112 for further action.

To allow media coverage of court proceedings, H.R. 1281

Introduced by Representative Steve Chabot, for himself, Mr. Baker, Mr. Bartlett, Mr. Blagojevich, Mr. Boehner, Mr. Borski, Mr. Bryant, Ms. Chenoweth-Hage, Mr. Coble, Mr. Delahunt, Mr. DeLay, Mr. Dixon, Mr. English, Mr. Gekas, Mr. Gibbons, Mr. Gonzalez, Mr. Graham, Mr. Hastings, Ms. Hayes, Mr. Hefley, Mr. Hill, Mr. Hilleary, Mr. Hulshof, Mr. Jones of North Carolina, Mr. Lewis, Ms. McCarthy, Mr. McCollum, Mr. McIntosh, Mr. Meehan, Mr. Miller, Mrs. Morella, Mr. Norwood, Mr. Portman, Mr. Rahall, Mr. Riley, Mr. Rogan, Mr. Rothman, Mr. Salmon, Mr. Scarborough, Mr. Tierney, Mr. Traficant, Mr. Watkins, Mr. Wiener, and Mr. Wexler, H.R. 1281 authorizes the presiding judge of a U.S. appellate court or U.S. district court to permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides. It also authorizes the Judicial Conference of the United States to promulgate advisory guidelines to which a presiding judge may refer in making decisions regarding the management and administration of photographing, recording, broadcasting, or televising of court proceedings. H.R. 1281 was incorporated into H.R. 1752, the "Federal Courts Improvement Act of 1999."

Electronic Signatures in Global and National Commerce Act, H.R. 1714

Introduced by Representative Tom Bliley, Mr. Burr, Mr. Cannon, Mr. Davis, Mr. Dreier, Mr. Fossella, Mr. Oxley, Mr. Pickering, Mr. Shadegg, Mr. Tauzin, and Mr. Towns, H.R. 1714 facilitates the continued success of electronic commerce by enabling parties to agree to use electronic signatures and electronic records in commercial transactions affecting interstate commerce. This will provide uniformity among State and Federal laws and give parties engaged in electronic commerce certainty that electronic signatures and electronic contracts will have the same legal effect and enforceability as paper signatures and contracts.

The Subcommittee held a hearing on H.R. 1714 on September 30, 1999. Testimony was received from Andrew Pincus, General Counsel, Department of Commerce; Ivan K. Fong, Deputy Associate Attorney General, United States Department of Justice; Pamela Meade Sargent, National Conference of Commissioners on Uniform State Laws; Scott Cooper, Manager, Technology Policy, Hewlett Packard; David Peyton, Director, Technology Policy, National Association of Manufacturers; and Margot Freeman Saunders, Managing Attorney, National Consumer Law Center, Inc.

On October 7, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1714, amended, by a voice vote, a quorum being present. On October 13, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 1714, as amended with additional full Committee amendment, by a voice vote, a quorum being present. H.R. 1714 was reported, amended, by the Committee on the Judiciary on October 15, 1999 (H. Rept. 106–341, Part II). On November 9, 1999, the House passed H.R. 1714. The Senate counterpart, S. 761, passed in the Senate on November 19, 1999, by unanimous consent. On February 16, 2000, the House took S. 761 from the desk and struck all after the enacting clause and inserted the provisions of H.R. 1714 and passed it. On March 29, 2000, the Senate disagreed with the House amendments. Both bodies requested a conference. On June 14, 2000, the House agreed to the conference report, H. Rept. 106–661, by the Yeas and the Nays; 426–4. On June 16, 2000, the Senate agreed to the conference report by Yea-Nay vote, 87–0. On June 30, 2000, the President signed S. 761 and it is Public Law 106–229.

Federal Courts Improvement Act of 1999, H.R. 1752

Introduced by Subcommittee Chairman Coble, by request, H.R. 1752 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.

On June 16, 1999, the Subcommittee held a hearing on H.R. 1752. The Subcommittee received testimony from the following witnesses: The Honorable Joel B. Rosen, United States Magistrate Judge, Camden, New Jersey, President, Federal Magistrate Judges Association; The Honorable Robert B. Collings, United States Magistrate Judge, Boston, Massachusetts; and The Honorable Harvey F. Schlesinger, Judge, United States District Court for the Middle District of Florida.

On July 15, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1752, amended, by voice vote, a quorum being present. On July 27, 1999, the full Committee met in open session and ordered favorably reported the bill H.R. 1752, as amended with additional full Committee amendments, by voice vote, a quorum being present. H.R. 1752 was reported, amended, by the Committee on the Judiciary on September 9, 1999 (H. Rept. 106–312). H.R. 1752 was passed by the House under suspension of the rules on May 22, 2000. The Senate companion to H.R. 1752, S. 2915, was passed by the Senate on October 19, 2000. The House passed S. 2915, with amendments, by unanimous consent on October 25, 2000. The Senate agreed to the House amendments and passed S. 2915 by unanimous consent on October 27, 2000. The President signed S. 2915 on November 13, 2000, and it is Public Law 106–518.

Multidistrict Trial Jurisdiction Act of 1999, H.R. 1852

Introduced by Representative James Sensenbrenner, Jr., for himself, Mr. Berman, and Mr. Coble, H.R. 1852 amends the Federal judicial code to allow a civil action transferred for coordinated or consolidated pretrial proceedings to be transferred for trial purposes, by the judge or judges of the transferee district to whom the action was assigned, to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

On May 20, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1852, by voice vote, a quorum being present. H.R. 1852 and H.R. 967 were combined to form H.R. 2112, the “Multidistrict Jurisdiction Act of 1999.”

Twenty-First Amendment Enforcement Act, H.R. 2031

H.R. 2031 grants federal court jurisdiction to actions for injunctive relief brought by state attorneys’ general seeking to enforce their state liquor importation and transportation laws. The sole remedy available under the bill is injunctive relief—no damages, no civil fines or criminal penalties can be imposed by the federal courts under this legislation. The legislation requires prior notice to the adverse party or parties, applies traditional proof requirements for preliminary injunctions and requires that a hearing be held before the issuance of any preliminary or permanent injunction occurs. A State must prove by a preponderance of the evidence that a violation of State law has taken place or is taking place.

Under the authority of the Twenty-First Amendment and the Webb-Kenyon Act, states are permitted to regulate the distribution and sale of alcoholic beverages (i.e., distilled spirits, wine and beer) within their borders. Consequently, most states have passed legislation to either prohibit direct shipment of alcoholic beverages into their state or severely limit the amount of alcoholic beverages that may be shipped directly to any unlicensed individual in their state.

In recent years, several new players have entered the alcoholic beverage industry. These groups include small wineries and breweries. With the advent of the Internet, they have been able to advertise their product nationally and have been able to widely expand their market access. Because they do not typically produce a large amount of their product, they sometimes depend on direct shipment sales for economic survival. The proponents of H.R. 2031 point out that illegal direct shipping is a growing problem, including illegal sales to minors using the Internet to order alcohol. Over the last 2–3 years, several states, including Utah, Florida, and Missouri, have brought legal action against companies illegally shipping alcohol into their state. Neither the Twenty-First Amendment nor the Webb-Kenyon Act includes any criminal or civil penalties for violations of its provisions. Thus, states wanting to bring an action against violators in federal court have encountered difficulty to obtaining jurisdiction over the violators. Congress responded by passing this legislation to confer jurisdiction on federal courts to provide injunctive relief against persons or entities violating a state law regulating the importation or transportation of intoxicating liquor.

The bill reflects the respectful comity that exists between the federal government and the states. In this bill, Congress is granting to the states the privilege of using the forum of the federal courts for limited jurisdictional purposes—so, the legislation is procedural in nature. Congress is acting under its powers to establish the lower federal courts and to define their jurisdiction. Congress is not pre-judging or endorsing the validity of the various state liquor statutes and whether a particular state law on this subject is a valid exercise of state power is, and will continue to be, a matter for the courts to decide.

On July 15, 1999, the Subcommittee was discharged from further consideration of the bill. On July 20, 1999, the full Committee marked up the bill, H.R. 2031, the Twenty-First Amendment Enforcement Act. The Committee ordered the bill favorably reported, as amended, by voice vote, a quorum being present. H.R. 2031 was reported by the Committee on July 27, 1999 (H. Rept. 106–265). No hearing was held on H.R. 2031 prior to the July 20, 1999, Judiciary Committee markup session. The Twenty-First Amendment Enforcement Act passed the House, as amended, 325–99 on August 3, 1999. The Senate Judiciary Committee passed a similar version of H.R. 2031, S. 577, on March 3, 2000 (no report was filed). S. 577 was incorporated into the conference report for H.R. 3244, which became Public Law 106–386 on October 28, 2000.

Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 1999, H.R. 2112

Introduced by Representative James Sensenbrenner, Jr., for himself, Mr. Coble, and Mr. Hyde, H.R. 2112 would allow a designated U.S. district court (a so-called “transferee” court) under the multidistrict litigation statute to retain jurisdiction over referred cases arising from the same fact scenario for purposes of determining liability and punitive damages, or to send them back to the respective courts from which they were transferred. In addition, the legislation would streamline the process by which multidistrict litigation governing disasters are adjudicated. The bill would save litigants time and money, but would not interfere with jury verdicts or compensation rates for attorneys. The bill is comprised of H.R. 967 and H.R. 1852.

On June 16, 1999, the Subcommittee held a hearing on H.R. 2112. The Subcommittee received testimony from the following witnesses: The Honorable John F. Nangle, Chairman, Judicial Panel on Multidistrict Litigation and United States District Judge, Southern District for Georgia; Thomas J. McLaughlin, Attorney-at-law on behalf of the Boeing Company; and Brian Wolfman, Staff Attorney, Public Citizen Litigation Group.

On July 15, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 2112, by voice vote, a quorum being present. On July 27, 1999, the full Committee met in open session and ordered favorably reported the bill H.R. 2112, amended, by voice vote, a quorum being present. H.R. 2112 was reported, amended, by the Committee on the Judiciary on July 30, 1999 (H. Rept. 106–276). H.R. 2112 was passed by the House under suspension of the rules on September 13, 1999. On October 21, 1999, the Senate Committee on the Judiciary ordered to be reported H.R. 2112 with an amendment in the nature of a substitute favorably. On October 27, 1999, H.R. 2112 passed the Senate with an amendment by unanimous consent. The House disagreed with the Senate amendment and requested a conference. No further action was taken on the bill.

College Scholarship Fraud Prevention Act of 1999, H.R. 3210

Introducted by Representative Fred Upton, for himself, and Ms. McKinney, H.R. 3210 enhances protections against fraud in the offering of financial assistance for college education. No action was taken on the bill. A similar bill, S. 1455, passed the Senate with amendment by unanimous consent on November 4, 1999. On September 25, 2000, the House passed S. 1455 under suspension of the rules. S. 1455 was signed by the President on November 1, 2000, and it is Public Law 106–420.

Indian Tribal Justice Technical and Legal Assistance Act of 1999, H.R. 3333

Intorduced by Representative Tom Udall, for himself, and Mr. Miller, H.R. 3333 directs the Attorney General to provide technical and legal assistance to tribal justice systems and members of Indian tribes. No action was taken on the bill. A similar bill, S. 1508, was passed by the Senate with an amendment by unanimous consent on November 19, 2000. On September 6, 2000, the Committee on Judiciary was discharged from further consideration of the bill. On October 23, 2000, the House passed S. 1508, as amended, under suspension of the rules. On December 11, 2000, the Senate agreed to the House amendment by unanimous consent. S. 1508 is cleared for the White House.

Strengthening Abuse and Neglect Courts Act of 2000, H.R. 5369

Introduced by Representative Deborah Pryce, for herself, Mr. Camp, Mr. Ewing, Mr. Hyde, and Ms. Johnson, H.R. 5369 seeks to improve the administrative efficiency and effectiveness of the Nation's abuse and neglect courts. The Senate counterpart, S. 2272, passed the Senate with an amendment by unanimous consent on September 26, 2000. On October 3, 2000, S. 2272 was passed by the House under suspension of the rules. On October 17, 2000, S. 2272 was signed by the President and became Public Law 106–314.

Multidistrict Litigation Act of 2000, H.R. 5562

Introduced by Subcommittee Chairman Howard Coble, for himself, H.R. 5562 amends title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial. On December 15, 2000, the House passed H.R. 5565.

A bill to provide for the holding of court at Natchez, Mississippi in the same manner as court is held at Vicksburg, Mississippi, and for other purposes, S. 1418

Introduced by Senator Thad Cochran, S. 1418 amends the Federal judicial code to: (1) repeal a condition that court for the western division of the southern district of Mississippi be held at Natchez only if suitable quarters and accommodations are furnished at no cost to the United States; and (2) provide that court for the eastern division of the northern district of Illinois shall be held at Chicago and Wheaton.

On November 15, 1999, the Senate passed S. 1418 by unanimous consent. On November 17, 1999, the House passed S. 1418, amended, under suspension of the rules. On November 19, 1999, the Senate agreed to the House amendment by unanimous consent. On December 6, 1999, the President signed S. 1418, and it is Public Law 106–130.

INTELLECTUAL PROPERTY

COPYRIGHTS

Copyright Compulsory License Improvement Act, H.R. 768

Introduced by Subcommittee Chairman Howard Coble, for himself, and Mr. Cannon, H.R. 768 amends title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals. H.R. 768: (1) reauthorizes the satellite copyright compulsory license for five years; (2) allows new satellite customers who have received a network signal from a cable system within the three months prior to introduction to sign up immediately for satellite service for those signals; (3) provides a discount for the copyright fees paid by the satellite carriers; (4) allows satellite carriers to retransmit a local television station to households within that station's local market; and (5) allows satellite carriers to rebroadcast a national signal of the Public Broadcasting Service.

On February 25, 1999, the Subcommittee held a hearing on H.R. 768. The Subcommittee received testimony from the following witnesses: William J. ("Bill") Roberts, Jr., Senior Attorney, Office of the General Counsel, Copyright Office of the United States, The Library of Congress; Mr. Cullie M. Tarleton, General Manager, WCCB–TV, on behalf of the National Association of Broadcasters; David Moskowitz, Senior Vice President and General Counsel, Echostar Communications Corporation; John H. Hutchinson, Executive Vice President, Chief Operating Officer, Local TV on Satellite; Fritz E. Attaway, Senior Vice President for Congressional Affairs and General Counsel, Motion Picture Association of America; and Thomas J. Ostertag, General Counsel, Office of the Commissioner of Baseball. The provisions of H.R. 768 were later incorporated into H.R. 1027.

Save Our Satellites Act of 1999, H.R. 851

Introduced by Representative W.J. (Billy) Tauzin, for himself, Mr. Aderholt, Mr. Barcia, Mr. Barrett, Mr. Bass, Mr. Bereuter, Mr. Bilbray, Mr. Bliley, Mr. Blunt, Mr. Boehlert, Mr. Boucher, Mr. Burton, Mr. Calvert, Mr. Campbell, Ms. Capps, Mr. Castle, Mr. Collins, Ms. Cubin, Mr. Deal, Mr. DeFazio, Mr. Dickey, Mr. Dingell, Mr. Ehrlich, Ms. Emerson, Mr. Ewing, Mr. Gillmor, Mr. Gilman, Mr. Goss, Mr. Hill, Mr. Hilleary, Mr. Hinchey, Mr. Hutchinson, Mr. John, Ms. Kelley, Mr. Lampson, Mr. Largent, Mr. LaTourette, Mr. Lewis of California, Mr. Markey, Mr. McHugh, Mr. McInnis, Mr. Miller, Mr. Minge, Mr. Moore, Mr. Ney, Mr. Norwood, Mr. Oberstar, Mr. Olver, Mr. Oxley, Mr. Peterson of Pennsylvania, Mr. Petri, Mr. Pickering, Mr. Reyes, Mr. Rush, Mr. Sanders, Mr. Sandlin, Mr. Sawyer, Mr. Smith, Mr. Stearns, Mr. Sununu, Mr. Taylor, Mr. Thompson of Mississippi, Mr. Thompson of California, Mr. Tierney, Mr. Traficant, Mr. Turner, Mr. Upton, Mr. Walsh, Ms. Wilson, and Mr. Young, H.R. 851 promotes competition in the market for multichannel video programming distribution ("MVPD") through the availability of satellite-delivered local broadcast television programming. H.R. 851: (1) clarifies the scope of local broadcast station's rights in granting retransmission consent to satellite carriers; (2) delays implementation of satellite must-carry rules until January 1, 2002; (3) imposes network non-duplication, syndicated exclusivity, and sports blackout rules for satellite-delivered broadcast programming; (4) provides satellite carriers with a permanent compulsory copyright license to transmit both local and distant broadcast television programming; and (5) reduces the copyright royalty fees that satellite carriers pay for the out-of-market distribution of broadcast programming.

On April 16, 1999. the Committee on Judiciary was discharged from further consideration of the bill. No further action was taken on H.R. 851. The provisions of H.R. 851 were later incorporated into H.R. 1554.

Copyright Compulsory License Improvement Act, H.R. 1027

Introduced by Representative Howard Coble, for himself, H.R. 1027 extends and enhances the statutory framework for the retransmission of television broadcast signals by satellite carriers to their subscribers. H.R. 1027: (1) creates a new copyright statutory license for the retransmission of local television broadcast stations; (2) extends the expiration date of the section 119 copyright compulsory license for the retransmission of distant television broadcast stations, and reduces the royalty fee for that license; (3) creates full must-carry rights for all television broadcast stations in a local market once a satellite carrier begins local service in that market, and prohibits the importation of distant signals in that market that duplicate the network programming of a local station as conditions of the copyright license; and (4) protects local broadcaster programming exclusivity rights through imposition of network nonduplication, syndicated exclusivity and sports blackout modeled after the rules applicable to the cable industry, making the protection of such rights a condition of the copyright license.

On Thursday, February 25, 1999, the Committee held a legislative hearing on H.R. 768, the "Copyright Compulsory License Improvement Act." The provisions of H.R. 768 were incorporated by amendment into H.R. 1027 during consideration by the Subcommittee on Courts and Intellectual Property on March 11, 1999.

On March 11, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1027 with an amendment in the nature of a substitute, and one amendment to the amendment in the nature of a substitute, by a voice vote, a quorum being present. On March 24, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 1027 as amended with additional full Committee amendment, by a voice vote, a quorum being present. H.R. 1027 was reported, amended, by the Committee on Judiciary on April 12, 1999 (H. Rept. 106–86, Part I). The provisions of H.R. 1027 were later incorporated into H.R. 1554.

To make technical corrections to title 17, United States Code, and other laws, H.R. 1189

Introduced by Subcommittee Chairman Howard Coble, for himself, and Mr. Berman, H.R. 1189 makes purely technical amendments to the Copyright Act and other laws. It renumbers sections and paragraphs. It clarifies section titles and corrects clerical errors. H.R. 1189 does not make any substantive changes in the law.

On March 22, 1999, the Subcommittee was discharged from considering the bill. On March 24, 1999, the full Committee met in open session and ordered favorably reported the bill H.R. 1189, by voice vote, a quorum being present. H.R. 1189 was reported by the Committee on the Judiciary on April 12, 1999 (H. Rept. 106–84). H.R. 1189 was passed by the House under suspension of the rules on April 13, 1999. The Senate companion to H.R. 1189, S. 1260, was passed in the Senate by unanimous consent on July 1, 1999. The House passed S. 1260 under suspension of the rules on July 26, 1999. The President signed S. 1260 on August 5, 1999, and it is Public Law 106–44.

Satellite Copyright, Competition, and Consumer Protection Act of 1999, H.R. 1554

Introduced by Subcommittee Chairman Howard Coble, for himself, Mr. Berman, Mr. Bliley, Ms. Bono, Mr. Boucher, Mr. Cannon, Mr. Conyers, Mr. Delahunt, Mr. Dingell, Mr. Gallegly, Mr. Gillmor, Mr. Goodlatte, Mr. Hill, Mr. Hilleary, Mr. Hyde, Mr. Jenkins, Mr. Markey, Mr. McCollum, Mr. Nadler, Mr. Oxley, Mr. Pease, Mr. Pickering, Mr. Rogan, Mr. Rush, Mr. Sawyer, Mr. Sensenbrenner, Mr. Stearns, Mr. Strickland, Mr. Stupak, Mr. Tauzin, Mr. Upton, and Mr. Wexler, H.R. 1554 enables the satellite industry to help consumers by establishing parity between cable and satellite regarding their copyright licenses and the conditions of those licenses. This will result in better competition, which means better service at lower prices. The legislation: (1) reauthorizes the Section 119 (distant signal) satellite compulsory license for five years; (2) authorizes local-to-local retransmission of broadcast signals via satellite; (3) removes the restriction which prevents for 90 days a customer who currently receives network signals via cable from receiving them through satellite; (4) authorizes a satellite carrier to offer a national signal of the Public Broadcasting Service; (5) provides for a discount on the copyright fees paid by satellite carriers (30% for superstations, 45% for distant network signals); (6) provides for must-carry of all broadcast stations via satellite, as it applies to local-to-local copyright license, on or before January 1, 2002; (6) places a moratorium for shutting off Grade B viewers until the FCC has fully implemented the new predictive model system of more accurately identifying unserved households; (7) requires the FCC to promulgate rules for the satellite industry concerning network nonduplication, syndicated exclusivity, and sports blackouts; and (8) shifts the cost for testing a household for determining if it is entitled to receive distant network signals from the customer to the broadcaster and satellite company equally.

H.R. 1554 incorporates the provisions of H.R. 768, H.R. 851, and H.R. 1027. On April 27, 1999 the Committee on Judiciary was discharged from further consideration of the bill. The House passed H.R. 1554 under suspension of the rules on April 27, 1999. On May 20, 1999, the Senate struck all after the Enacting Clause and substituted the language of S. 247, amended, and passed H.R. 1554 by unanimous consent. The House and Senate requested a conference on H.R. 1554. On November 9, 1999, the conference filed a report on H.R. 1554 (H. Rept. 106–464). On November 9, the House agreed to the conference report. The conference report was incorporated into S. 1948 the "Intellectual Property Omnibus Communications Act" which was signed into law as part of H.R. 3194, an omnibus appropriation act, on November 29, 1999, and is Public Law 106–113.

Copyright Damages Improvement Act of 1999, H.R. 1761/Digital Theft Deterrence and Copyright Damages Improvement Act of 1999, H.R. 3456

Introduced by Representative James E. Rogan, for himself, and Mr. Coble, H.R. 1761 provides more stringent deterrents to copyright infringement and stronger enforcement of the laws enacted to protect intellectual property rights. H.R. 1761 accomplishes this by increasing the statutory penalties in the Copyright Act for copyright infringement, creating a new statutory penalty for situations where infringement is part of a "repeated pattern or practice" of infringement, and clarifying Congress' intent that the United States Sentencing Commission ensure that the sentencing guideline for intellectual property offenses provide for consideration of the retail price of the legitimate infringed-upon item and the quantity of infringing items in order to make the guideline sufficiently stringent to deter such crime.

On May 12, 1999, the Subcommittee held an oversight hearing on "Implementation of the NET Act and Enforcement against Internet Piracy." Testimony was received from Kevin V. DiGregory, Deputy Assistant Attorney General, Computer Crimes Division, U.S. Department of Justice; Timothy B. McGrath, Interim Staff Director, U.S. Sentencing Commission; Batur Oktay, Corporate Counsel, Adobe Systems, Inc., on behalf of the Business Software Alliance (BSA); Tim Starback, Emigre, Inc., on behalf of the Software and Information Industry Association (SIIA); and Tod Cohen, Vice President and Counsel, New Technology, Motion Picture Association of America (MPAA).

On May 20, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1761, amended, by voice vote, a quorum being present. On May 26, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 1761, as amended, with additional full Committee amendment by voice vote, a quorum being present. H.R. 1761 was reported, amended, by the Committee on the Judiciary on July 1, 1999 (H. Rept. 106–216). The Senate passed its companion bill, S. 1257, by unanimous consent on July 1, 1999. On August 2, 1999, the House struck all after the Enacting Clause of S. 1257 and inserted the provisions of H.R. 1761 and passed S. 1257 by unanimous consent. On November 19, 2000, the Senate concurred in the House amendment with an amendment by unanimous consent. On November 18, 1999, Mr. Coble introduced H.R. 3456, the "Digital Theft Deterrence and Copyright Damages Improvement Act of 1999," which incorporated the Senate amendments to H.R. 1761. On November 18, 1999, the House passed H.R. 3456 by unanimous consent. On November 19, 1999, the Senate passed H.R. 3456 by unanimous consent. On December 9, 1999, the President signed H.R. 3456 and it is Public Law 106–160.

Rural Local Broadcast Signal Act, H.R. 3615

Introduced by Representative Bob Goodlatte, for himself, Mr. Aderholt, Mr. Baker, Mr. Baldacci, Mr. Ballenger, Mr. Barrett, Mr. Bartlett, Mr. Bass, Mr. Bereuter, Mr. Berry, Mr. Bishop, Mr. Boehlert, Mr. Bonilla, Ms. Bono, Mr. Boswell, Mr. Boucher, Mr. Boyd, Mr. Bryant, Mr. Buyer, Mr. Canady, Ms. Capps, Mr. Chambliss, Ms. Chenoweth-Hage, Ms. Clayton, Mr. Coble, Mr. Collins, Mr. Cooksey, Mr. Creamer, Ms. Cubin, Mr. Davis, Mr. Deal, Mr. DeFazio, Mr. Dickey, Mr. Doolittle, Mr. Duncan, Mr. Edwards, Mr. Ehlers, Mr. Ehrlich, Ms. Emerson, Mr. Ewing, Mr. Farr, Mr. Fletcher, Mr. Foley, Ms. Fowler, Mr. Frost, Mr. Ganske, Mr. Gekas, Mr. Gilchrest, Mr. Goode, Mr. Goodling, Mr. Goss, Mr. Gutknecht, Mr. Hastings of Washington, Ms. Hayes, Mr. Herger, Mr. Hill, Mr. Hilleary, Mr. Hinchey, Mr. Holden, Mr. Houghton, Mr. Hutchinson, Mr. Isakson, Mr. Jenkins, Ms. Johnson, Mr. Jones, Mr. Kildee, Mr. Kind, Mr. Klink, Mr. LaHood, Mr. Latham, Mr. Lewis, Mr. Lucas, Mr. McHugh, Mr. McInnis, Mr. Metcalf, Mr. Minge, Mr. Moran, Mr. Nethercutt, Mr. Norwood, Mr. Nussle, Mr. Oberstar, Mr. Olver, Mr. Oxley, Mr. Peterson of Minnesota, Mr. Peterson of Pennsylvania, Mr. Phelps, Mr. Pickering, Mr. Pombo, Mr. Pomeroy, Mr. Portman, Mr. Quinn, Mr. Radanovich, Mr. Rahall, Mr. Reynolds, Mr. Riley, Mr. Rodriguez, Mr. Rogers, Mr. Sandlin, Mr. Shaffer, Mr. Sherwood, Mr. Shimkus, Mr. Shows, Mr. Simpson, Mr. Sisisky, Mr. Skeen, Mr. Smith of Texas, Mr. Smith of Michigan, Mr. Stenholm, Mr. Tauzin, Mr. Thomas, Mr. Thompson, Mr. Thornberry, Mr. Thune, Mr. Traficant, Mr. Udall, Mr. Upton, Mr. Vitter, Mr. Walden, Mr. Walsh, Mr. Wamp, Mr. Watkins, Mr. Weller, and Mr. Wicker, H.R. 3615 amends the Rural Electrification Act of 1936 to ensure improved access to the signals of local television stations by multichannel video providers to all households which desire such service in unserved and underserved rural areas by December 31, 2006. On March 31, 2000, the Committee on the Judiciary was discharged from further consideration of the bill. On April 13, 2000, the House passed H.R. 3615 by the Yeas and Nays: 375–37. The Senate did not act on the bill.

National Recording Preservation Act of 2000, H.R. 4846

Introduced by Representative William M. (Bill) Thomas, for himself, Mr. Boehner, Mr. Bonior, Mr. Bryant, Mr. Davis of Florida, Mr. Ehlers, Mr. Ewing, Ms. Fattah, Mr. Hoyer, Mr. Jenkins, Ms. McCarthy, Mr. Ney, Mr. Serrano, Mr. Tanner, and Mr. Wamp, H.R. 4846 establishes the National Recording Registry in the Library of Congress to maintain and preserve sound recordings and collections of sound recordings that are culturally, historically, or aesthetically significant.

On July 25, 2000, the Committee on the Judiciary was discharged from further consideration of the bill. On July 25, 2000, the House passed H.R. 4846, amended, under suspension of the rules. On October 25, 2000, the Senate passed H.R. 4946 with an amendment and an amendment to the Title by unanimous consent. On November 1, 2000, the House disagreed with the Senate amendments. On November 1, 2000, the Senate receded from its amendments by unanimous consent. On November 9, 2000, the President signed H.R. 4846 and it is Public Law 106–474.

Copyright Technical Corrections Act of 2000, H.R. 5106

Introduced by Representative Howard Coble, Mr. Berman, and Ms. Bono, H.R. 5106 makes purely technical amendments to Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999, Pub. L. 106–113 (IPCORA), and title 17, United States Code. H.R. 5106 corrects errors in references, spelling, and punctuation; conforms the table of contents with section headings; restores the definitions in chapter 1 to alphabetical order; deletes an expired paragraph; and creates continuity in the grammatical style used throughout title 17.

On September 8, 2000, the Subcommittee was discharged from further consideration of the bill. On September 13, 2000, the Committee met in open session and ordered favorably reported the bill H.R. 5106, by voice vote, a quorum being present. H.R. 5106 was reported, amended, by the Committee on the Judiciary on September 18, 2000 (H. Rept. 106–860). On September 19, 2000, the House passed H.R. 5106 under suspension of the rules. The Senate did not act on the bill.

Work Made for Hire and Copyright Corrections Act of 2000, H.R. 5107

Introduced by Representative Howard Coble, Mr. Berman, Ms. Bono, Mr. Boucher, Mr. Conyers, Mr. Delahunt, Mr. Goodlatte, Mr. Jenkins, Ms. Lofgren, Ms. McCarthy, Mr. Nadler, Mr. Rogan, Mr. Rohrabacher, Mr. Scott, and Mr. Wexler, H.R. 5107 restores the status quo as it existed before November 29, 1999, as to the issue of whether a sound recording can qualify as a “work made for hire” under the second part of the definition of that term in Section 101 of the Copyright Act, and to do so in a manner that does not prejudice any person or entity that might have interests concerning this question. H.R. 5107 also makes other non-controversial corrections to the Copyright Act. These amendments remove expired sections and clarify miscellaneous provisions governing fees and record keeping procedures.

The Subcommittee held an oversight hearing on the issue of sound recordings as works made for hire on Thursday, May 25, 2000. Testimony was received from: The Honorable Marybeth Peters, Registrar of the United States Copyright Office; Hilary Rosen, President and CEO of the Recording Industry Association of America; Paul Goldstein, Lillick Professor of Law, Stanford Law School; Michael Greene, President and CEO of the National Academy of Recording Arts and Sciences; Marci Hamilton, Thomas H. Lee, Chair in Public Law, Cardozo School of Law; and Sheryl Crow, recording artist.

On September 8, 2000, the Subcommittee was discharged from further consideration of the bill. On September 13, 2000, the Committee met in open session and ordered favorably reported the bill H.R. 5107, by voice vote, a quorum being present. H.R. 5107 was reported by the Committee on the Judiciary on September 18, 2000 (H. Rept. 106–861). On September 19, 2000, the House passed H.R. 5107, amended, under suspension of the rules. On October 12, 2000, the Senate passed H.R. 5107 by unanimous consent. On October 27, 2000, the President signed H.R. 5107, and it is Public Law 106–379.

PATENTS

Technology Transfer Commercialization Act of 1999, H.R. 209

Introduced by Representative Constance A. Morella, for herself, and Mr. Brown of California, H.R. 209 amends the Stevenson-Wydler Technology Innovation Act of 1980 to revise requirements regarding enumerated authority under a cooperative research and development agreement to permit Government laboratories to grant licenses to a federally owned invention for which a patent application was filed before the signing of the agreement, and directly within the scope of work under such agreement.

On May 6, 1999, the Committee on the Judiciary was discharged from considering the bill. On May 11, 1999, the House passed H.R. 209 under suspension of the rules. On October 5, 2000, the Senate passed H.R. 209 with an amendment by unanimous consent. On October 17, 2000, the House agreed to the Senate amendment and passed H.R. 209 under suspension of the rules. On November 1, 2000, H.R. 209 was signed by the President and is Public Law 106–404.

United States Patent and Trademark Office Reauthorization Act, Fiscal Year 2000, H.R. 1225

Introduced by Subcommittee Chairman Howard Coble, for himself, H.R. 1225 enables the Patent and Trademark Office (PTO), a self-sustaining federal agency, to generate as much revenue through the collection of user fees as necessary to operate, and to retain all of those funds for this purpose. The bill will prevent the diversion of these funds to other federal programs or for other endeavors, such as deficit reduction, and will proscribe the creation of new statutory surcharges which have been used in the past for activities unrelated to PTO operations.

On March 25, 1999, the Subcommittee held an oversight hearing on the Patent and Trademark Office reauthorization. Testimony was received from nine witnesses, representing seven organizations.

On May 20, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1225 by voice vote, a quorum being present. On May 26, 1999, the full Committee met in open session and ordered favorably reported the bill H.R. 1225 by voice vote, a quorum being present. H.R. 1225 was reported by the Committee on the Judiciary on June 9, 1999 (H. Rept. 106–177). The Senate counterpart, S. 1258, passed the Senate on July 1, 1999, by unanimous consent. On July 26, 1999, the House passed S. 1258 under suspension of the rules. On August 5, 1999, the President signed S. 1258 and it is Public Law 106–42.

Patent Fairness Act of 1999, H.R. 1598

Introduced by Representative Ed Bryant, for himself, Mr. Aderholt, Mr. Archer, Mr. Baker, Mr. Barr, Mr. Bartlett, Mr. Blagojevich, Mr. Blunt, Mr. Boehner, Ms. Bono, Mr. Callhan, Mr. Cannon, Mr. Castle, Mr. Chambliss, Mr. Clement, Mr. Collins, Mr. Conyers, Mr. Davis of Virginia, Mr. Delahunt, Mr. DeMint, Mr. Diaz-Balart, Mr. Duncan, Mr. Ehrlich, Ms. Eshoo, Mr. Filner, Mr. Ford, Mr. Franks, Mr. Frelinghuysen, Mr. Frost, Mr. Gibbons, Mr. Gordon, Mr. Green, Mr. Hayes, Mr. Hefley, Mr. Hill, Mr. Hilleary, Mr. Hobson, Mr. Hoyer, Mr. Hyde, Mr. Isakson, Mr. Istook, Ms. Jackson-Lee, Mr. Jenkins, Ms. Johnson, Mr. Linder, Mr. Maloney, Mr. Matsui, Mr. McCrery, Mr. McDermott, Mr. Menendez, Mr. Moran of Virginia, Mr. Ney, Ms. Northrup, Mr. Norwood, Mr. Pastor, Mr. Payne, Mr. Pickering, Mr. Price, Mr. Riley, Mr. Rothman, Ms. Roukema, Mr. Sandlin, Mr. Saxton, Mr. Sessions, Mr. Shays, Mr. Simpson, Mr. Smith of Washington, Mr. Smith of New Jersey, Mr. Smith of Texas, Mr. Stump, Mr. Sununu, Mr. Tanner, Ms. Tauscher, Mr. Thornberry, Mr. Wamp, Mr. Watt, Mr. Weldon and Mr. Wicker, H.R. 1598 amends Federal law to require, if the Commissioner of Patents and Trademarks determines that certain standards are met, restoration of the term of any patent, in force on September 24, 1984, and on the filing date of a patent term restoration application under this Act, that claims: (1) a drug product; (2) a method of using a drug product; or (3) a method of manufacturing a drug product.

On July 1, 1999, the Subcommittee held a hearing on H.R. 1598. Testimony was received from the following witnesses: Senator Robert G. Torricelli of New Jersey; The Honorable Ed Bryant, Member of Congress, 7th District of Tennessee; The Honorable Jim McDermott, Member of Congress, 7th District of Washington; The Honorable Henry A. Waxman, Member of Congress, 29th District of California; The Honorable Marion Berry, Member of Congress, 1st District of Arkansas; Peter Barton Hutt, Partner, Covington & Burling; Bruce L. Downey, Chairman & Chief Executive Officer and President, Barr Laboratories; Andrew M. Berdon, Vice President and General Counsel, Purepac Pharmaceutical Company; Jonathan R. Spicehandler, M.D., President, Schering-Plough Research Institute; Gerald Meyer, Senior Consultant, AAC Consulting Group, Inc; Bruce Lehman, President and Chief Executive Officer International Intellectual Property Institute; William Orr, Chairman, National Alternative Fuels Association; Maura Kealey, Deputy Director, Public Citizen's Congress Watch; Richard Selden, M.D., Ph.D., Chief Executive Officer Transkaryotic Therapies, Inc., (TKT); Gordon Binder, Chief Executive Officer, Amgen; and Richard P. Burgoon, Jr., Vice President, General Counsel & Assistant Secretary Arena Pharmaceuticals, Inc. No further action was taken on the bill.

American Inventors Protection Act of 1999, H.R. 1907

Introduced by Subcommittee Chairman Howard Coble, H.R. 1907 guarantees 17 years of patent protection to diligent applicants; makes technology which is accessible to citizens of other countries available to Americans as well; allows earlier inventors limited relief when they cannot endure the prohibitively high costs of patenting every process or method that contributes to the development of an "end" product; reduces patent litigation by improving the reexamination process; protects inventors from scam promoters; and streamlines operations at the Patent and Trademark Office (PTO).

The Subcommittee held a hearing on the Committee Print of the "American Inventors Protection Act" (later introduced as H.R. 1907) on March 25, 1999. Testimony was received from seven witnesses representing seven organizations, along with two Members of Congress.

On May 20, 1999, the Subcommittee met in open session and ordered reported the Committee Print on the "American Inventors Protection Act" by voice vote, a quorum being present. On May 26, 1999, the full Committee met in open session and ordered reported favorably the bill H.R. 1907 with amendment by voice vote, a quorum being present. H.R. 1907 was reported, amended, by the Committee on the Judiciary on August 3, 1999 (H. Rept. 106–287, Part I). On August 4, 1999, the House passed H.R. 1907, as amended, under suspension of the rules as agreed to by the Yeas and Nays: 376–43. Senator Lott introduced the Senate companion to H.R. 1907, S. 1948, on November 17, 1999. The House passed H. Rept. 106–479, the conference report accompanying an omnibus appropriation act, H.R. 3194, on November 18, 1999, by a vote of 296–135. The Senate incorporated S. 1948 by reference into H.R. 3194, and passed H. Rept. 106–479 by a vote of 80–8 on November 19, 1999. The President signed H.R. 3194 on November 29, 1999, and it is Public Law 106–113.

Patent and Trademark Office Reauthorization Act, H.R. 4034

Introduced by Subcommittee Chairman Howard Coble, for himself, Ms. Bono, Mr. Delahunt, Mr. Frank, Mr. Norwood, Mr. Pease, and Mr. Wexler, H.R. 4034 ensures that the PTO is vested with the authority to retain all the user fees it collects for agency expenditures. This change will maximize the ability of the PTO to serve the growing demand for its services by the inventor and trademark communities.

On March 25, 1999, the Subcommittee held an oversight hearing on the Patent and Trademark Office reauthorization. Testimony was received from nine witnesses, representing seven organizations.

On March 23, 2000, the Subcommittee met in open session and ordered favorably reported the bill H.R. 4034 by voice vote, a quorum being present. On May 9, 2000, the Committee met in open session and ordered favorably reported the bill H.R. 4034 by unanimous consent, a quorum being present. H.R. 4034 was reported by the Committee on the Judiciary on July 11, 2000 (H. Rept. 106–722). No further action was taken on the bill.

Intellectual Property Technical Amendments Act of 2000, H.R. 4870

Introduced by Subcommittee Chairman Howard Coble, and Mr. Berman, H.R. 4870 remedies miscellaneous technical and clerical drafting errors currently set forth in the U.S. Code and will also clarify provisions of last year's American Inventor's Protection Act (AIPA). This bill aims to make these remedial changes in three primary areas: patent law, trademark law, and the organization of the U.S. Patent and Trademark Office (PTO). The bill contains no provisions regarding copyright law or the U.S. Copyright Office.

On July 20, 2000, the Subcommittee met in open session and ordered favorably reported the bill H.R. 4870 by voice vote, a quorum being present. On July 25, 2000, the Committee met in open session and ordered reported favorably the bill H.R. 4870 by voice vote, a quorum being present. H.R. 4870 was reported, amended, by the Committee on the Judiciary on September 14, 2000 (H. Rept. 106–853). On September 19, 2000, the House passed H.R. 4870 under suspension of the rules. The Senate did not act on the bill.

TRADEMARK

Madrid Protocol Implementation Act, H.R. 769

Introduced by Subcommittee Chairman Howard Coble, and Mr. Berman, H.R. 769 implements the Madrid Protocol Agreement ("Protocol") which provides for an international registration system for trademarks.

On March 11, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 769, by voice vote, quorum being present. On March 24, 1999, the full Committee met in open session and ordered favorably reported the bill H.R. 769, by voice vote, a quorum being present. H.R. 769 was reported by the Committee on the Judiciary on April 12, 1999 (H. Rept. 106–81). On April 13, 1999, H.R. 769 passed the House under suspension of the rules. The Senate did not act on the bill.

To amend the Trademark Act of 1946 to increase the penalties for infringing the rights pertaining to famous performing groups and to clarify the law pertaining to the rights of individuals who perform services as a group, H.R. 1125

Introduced by Representative Dennis J. Kucinich, and Mr. Norwood, H.R. 1125 amends the Trademark Act of 1946 to declare it is not a violation of Federal or State law for an individual who had been a member of a group under a common famous name, but subsequently terminated any relationship with such group, to be able to represent, in any promotions, advertisements, or performances that such individual had formerly been a member of such group performing under such famous name, if such representations do not tend to deceive or confuse as to the nature, characteristics, qualities geographic origin, sponsorship, or approval of his or her services with such group.

The provisions of H.R. 1125 were included in H.R. 1565. The Subcommittee held a hearing on H.R. 1565 on May 5, 1999. Testimony was received from the Honorable Todd Dickinson, Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks, U.S. Patent & Trademark Office; Michael K. Kirk, Executive Director, American Intellectual Property Law Association (AIPLA); Kimbley L. Muller, Vice President, International Trademark Association (INTA); Garo Partoyan, Chairman, Trademark Committee, Intellectual Property Owners (IPO); Jon Bauman, (a/k/a Bowzer, formerly of Sha Na Na); and Chuck Blasko, original member of the Vogues. The provisions were ultimately removed from H.R. 1565.

Trademark Amendments Act of 1999, H.R. 1565

Introduced by Subcommittee Chairman Howard Coble, H.R. 1565 makes significant improvements in trademark law. Section two provides holders of famous marks with a right to oppose or seek cancellation of a mark that would cause dilution as provided in the "Federal Trademark Dilution Act of 1995." Pub. L. 104–98, 109 Stat. 985 (1996), Lanham Act § 43(c), 15c U.S.C. Section three seeks to clarify that in passing the Dilution Act, Congress did intend to allow for injunctive relief and/or damages against a defendant found to have wilfully intended to engage in commercial activity that would cause dilution of a famuous mark. Section four provides private citizens and corporate entities the right to sue the Federal Government for trademark infringement. Section five amends section 43(a) of the Trademark (Lanham) Act of 1946 to provide that in an action for trade dress infringement, where the matter sought to be protected is not registered with the U.S. Patent and Trademark Office, the plaintiff has the burden of proving that the trade dress is not functional. Section six makes technical amendments. Section seven seeks to resolve the problem of "imposter" celebrity musical groups by creating an authenticity certification mark that can only be used by qualifying members of a musical group.

The Subcommittee held a hearing on H.R. 1565 on May 5, 1999. Testimony was received from The Honorable Todd Dickinson, Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks, U.S. Patent & Trademark Office; Michael K. Kirk, Executive Director, American Intellectual Property Law Association (AIPLA); Kimbley L. Muller, Vice President, International Trademark Association (INTA); and Garo Partoyan, Chairman, Trademark Committee, Intellectual Property Owners (IPO).

On May 20, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 1565, amended, by voice vote, a quorum being present. On May 26, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 1565, as amended, by voice vote, a quorum being present.H.R. 1565 was reported, amended, by the Committee on Judiciary on July 22, 1999 (H. Rept. 106–250). the Senate counterpart, S. 1259, passed in the Senate on July 1, 1999, under unanimous consent. The House passed S. 1259 on July 26, 1999. On August 5, 1999, the President signed S. 1259 and it is Public Law 106–43.

Antitampering Act of 1999, H.R. 2100

Introduced by Representative Bob Goodlatte, for himself, Mr. Frank, Mr. Gibbons, Mr. Holden, Mr. LaHood, Mr. Latham, Ms. Lofgren, Ms. Meek, Mr. Price, Mr. Rothman, Mr. Shays, Mr. Smith of Texas, and Mr. Toomey, H.R. 2100 amends the Trademark Act of 1946 (Lanham Act) and the Federal Criminal code to declare unlawful unauthorized modification of product identification codes, including: (1) specified acts of tampering with the product identification code of any good; and (2) importing, exporting, distributing, or brokering goods whose product identification codes have been tampered with.

On October 21, 1999, the Subcommittee held a hearing on H.R. 2100. Testimony was received from the following witnesses: John S. Bliss, Esq., Executive Director, Coalition Against Product Tampering; Gilbert Lee Sandler, Counsel, American Free Trade Association; Aaron Graham, Director of Assets Protection, Matrix Essentials, Inc.; John Paul DeJoria, Chairman and Chief Executive Officer, John Paul Mitchell Systems; Mardi Mountford, Executive Director, International Formula Council; and James A. Dahl, President, Integrity Resource Group, Inc.

On March 23, 2000, the Subcommittee met in open session and ordered favorably reported the bill H.R. 2100, amended, by the Yeas and Nays: 6–3. No further action was taken on the bill.

Trademark Cyberpiracy Prevention Act, H.R. 3028

Introduced by Representative James E. Rogan, for himself, Mr. Boucher, Mr. Coble, Mr. Goodlatte, and Mr. Salmon, H.R. 3028.

The Subcommittee held a hearing on Wednesday, July 28, 1999, on Internet Domain Names and Intellectual Property Rights. The following witnesses appeared at the hearing: Andrew Pincus, General Counsel, United States Department of Commerce; Francis Gurry, Assistant Director General & Legal Counsel, World Intellectual Property Organization; Michael Roberts, Interim President and CEO, Internet Corporation for Assigned Names and Numbers (ICANN); Michael A. Daniels, Chairman of the Board, Network Solutions, Incorporated; Jonathan Cohen, President, Intellectual Property Constituency of the Domain Name Supporting Organization of ICANN; Ken Stubbs, Chairman of the Executive Committee, Internet Council of Registrars (CORE); Kathlene Karg, Director of Intellectual Property and Public Policy. Interactive Digital Software Association, for the Copyright Coalition on Domain Names; Mike Kirk, Executive Director, American Intellectual Property Law Association (AIPLA); and Anne Chasser, President, International Trademark Association (INTA).

On October 7, 1999, the Subcommittee met in open session and ordered favorably reported the bill H.R. 3028, by voice vote, a quorum being present. On October 13, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 3028, amended, by voice vote, a quorum being present. H.R. 3028 was reported, amended, by the committee on Judiciary on October 25, 1999 (H. Rept. 106–412). H.R. 3028 was incorporated into the conference report on H.R. 1554 (H. Rept. 106–464). On November 9, the House agreed to the conference report. The conference report was incorporated into S. 1948 the "Intellectual Property Omnibus Communications Act" which was signed into law as part of H.R. 3194, an omnibus appropriation act, on November 29, 1999, and is Public Law 106–113.

OTHER INTELLECTUAL PROPERTY RIGHTS

Collections of Information Antipiracy Act, H.R. 354

Introduced by Subcommittee Chairman Howard Coble, for himself, Mr. Barr, Mr. Barrett of Nebraska, Mr. Barrett of Wisconsin, Mr. Bartlett, Mr. Bass, Mr. Bereuter, Ms. Berkley, Mr. Berman, Ms. Biggert, Ms. Bono, Mr. Canady, Mr. Cannon, Mr. Chabot, Mr. Conyers, Mr. Coyne, Mr. Delahunt, Mr. Doolittle, Mr. Filner, Mr. Foley, Mr. Ford, Mr. Frank, Mr. Gallegly, Mr. Goodlatte, Mr. Goss, Mr. Granger, Mr. Greenwood, Mr. Hall of Texas, Mr. Hall of Ohio, Mr. Herger, Mr. Hobson, Mr. Hutchinson, Mr. Hyde, Mr. Jackson, Ms. Jackson-Lee, Mr. Lahood, Mr. Lantos, Ms. Lee, Mr. Linder, Mr. Luther, Ms. Maloney, Mr. Maloney, Mr. Matsui, Mr. McInnis, Mr. Meeks, Ms. Millender-McDonald, Mr. Gary Miller of California, Mr. George Miller of California, Mr. Minge, Mr. Moakley, Ms. Morella, Ms. Myrick, Ms. Holmes-Norton, Mr. Pastor, Mr. Pease, Mr. Peterson, Mr. Petri, Mr. Portman, Ms. Pryce, Mr. Regula, Mr. Reynolds, Mr. Rothman, Mr. Royce, Mr. Salmon, Mr. Shaffer, Mr. Sessions, Mr. Shaw, Mr. Shays, Mr. Sherman, Mr. Shows, Mr. Sununu, Mr. Tancredo, Ms. Tauscher, Mr. Traficant, Mr. Vento, Mr. Weldon, and Mr. Wexler, H.R. 354 responds to a need to supplement copyright law to prevent the wholesale copying of another's collection of information in a manner which harms the market for that collection. The bill ensures incentives for investment in the production and dissemination of collections of information, while maintaining continued access to information contained in such collections for public interest purposes such as education, science and research.

The Collections of Information Antipiracy Act prohibits the misappropriation of commercially valuable collections by those who pirate data that has been collected by others through substantial effort and expense, and use it in a way that causes market injury to the producer of the original collection. This protection is modeled in part on the Lanham Act, which already makes various types of unfair competition a civil wrong under federal law. Importantly, existing protections for collections of information afforded by other bodies of law, most notably copyright and contract rights, are maintained in their present form. The bill is intended to supplement these legal rights, not replace them.

H.R. 354 was the topic of a legislative hearing on Thursday, March 18th, 1999. Testifying at the hearing was Marybeth Peters, Register of Copyrights, Copyright Office of the United States, Library of Congress; Andrew Pincus, general Counsel, United States Department of Commerce; James G. Neal, University Libraries, Johns Hopkins University; Terrance M. McDermott, Executive Vice President, The National Association of Realtors; Marilyn G. Winokur, Executive Vice President, Microdex, Incorporated, Dr. Joshua Lederberg, Professor, Sackler Foundation Scholar, The Rockfeller University; Lynn Henderson, President, Doane Agricultural Services Company; Michael Kirk, Executive Director, American Intellectual Property Lawyers Association; Charles E. Phelps, Provost, University of Rochester; and Dan Duncan, Vice President, Government Affairs, Software and Information Industry Association.

On May 20, 1999, the Subcommittee on Courts and Intellectual Property met in open session and ordered favorably reported the bill H.R. 354 with an amendment in the nature of a substitute, by a voice vote, a quorum being present. On May 26, 1999, the Committee met in open session and ordered reported favorably the bill H.R. 354 with one amendment, by a voice vote, a quorum being present, H.R. 354 was reported, amended, by the Committee on Judiciary on September 30, 1999 (H. Rept. 106–349, Part I).

Security and Freedom Through Encryption (SAFE) Act, H.R. 850

Introduced Representative Bob Goodlatte, for himself, Mr. Ackerman, Mr. Andrews, Mr. Archer, Mr. Armey, Mr. Bachus, Mr. Baird, Mr. Baker, Mr. Baldacci, Mr. Ballenger, Mr. Barcia, Mr. Barr, Mr. Barrett of Nebraska, Mr. Barrett of Wisconsin, Mr. Barton, Mr. Bilbray, Mr. Blumenauer, Mr. Blunt, Mr. Boehner, Mr. Bonilla, Mr. Bonior, Ms. Bono, Mr. Boucher, Mr. Brady of Texas, Mr. Brady of Pennsylvania, Ms. Brown, Mr. Brown, Mr. Bryant, Mr. Burr, Mr. Burton, Mr. Calvert, Mr. Camp, Mr. Campbell, Mr. Cannon, Ms. Capps, Mr. Chabot, Mr. Chambliss, Ms. Chenoweth-Hage, Ms. Christensen, Ms. Clayton, Mr. Clement, Mr. Clyburn, Mr. Coble, Mr. Collins, Mr. Conyers, Mr. Cook, Mr. Cooksey, Mr. Cox, Mr. Crane, Mr. Crowley, Ms. Cubin, Mr. Cummings, Mr. Cunningham, Mr. Davis of Illinois, Mr. Davis of Virginia, Mr. Deal, Mr. DeFazio, Mr. Delahunt, Ms. DeLauro, Ms. DeLay, Mr. DeMint, Mr. Deutsch, Mr. Diaz-Balart, Mr. Dickey, Mr. Dooley, Mr. Doolittle, Mr. Doyle, Mr. Dreier, Mr. Duncan, Ms. Dunn, Mr. Ehlers, Ms. Emerson, Mr. Engel, Mr. English, Ms. Eshoo, Mr. Etheridge, Mr. Ewing, Mr. Farr, Mr. Filner, Mr. Fletcher, Mr. Foley, Mr. Forbes, Mr. Ford, Mr. Fossella, Mr. Frank, Mr. Franks, Mr. Frost, Mr. Gallegly, Mr. Gejdenson, Mr. Gekas, Mr. Gephardt, Mr. Gibbons, Mr. Gillmor, Mr. Goode, Mr. Goodling, Mr. Gordon, Mr. Green, Mr. Gutknecht, Mr. Hall of Texas, Mr. Hall of Ohio, Mr. Hansen, Mr. Hastings of Washington, Ms. Hayes, Mr. Herger, Mr. Hill, Mr. Hilleary, Mr. Hilliard, Mr. Hinchey, Mr. Hobson, Mr. Hoeffel, Mr. Hoeskstra, Mr. Holt, Ms. Hooley, Mr. Horn, Mr. Houghton, Mr. Hutchinson, Mr. Inslee, Mr. Istook, Mr. Jackson, Ms. Jackson-Lee, Mr. Jefferson, Ms. Johnson of Texas, Ms. Johnson of Connecticut, Mr. Johnson, Mr. Kanjorski, Mr. Kasich, Ms. Kelly, Mr. Kennedy, Ms. Kilpatrick, Mr. Kind, Mr. King, Mr. Kingston, Mr. Knollenberg, Mr. Kolbe, Mr. LaHood, Mr. Lampson, Mr. Largent, Mr. Latham, Ms. Lee, Mr. Lewis of Georgia, Mr. Lewis of Kentucky, Mr. Linder, Ms. Lofgren, Mr. Lucas, Mr. Luther, Mr. Maloney, Mr. Manzullo, Mr. Markey, Mr. Martinez, Mr. Matsui, Ms. McCarthy, Mr. McDermott, Mr. McGovern, Mr. McInnis, Mr. McIntosh, Ms. McKinney, Mr. Meehan, Ms. Meek, Mr. Menendez, Mr. Metcalf, Mr. Mica, Ms. Millender-McDonald, Mr. Gary Miller of California, Mr. George Miller of California, Mr. Minge, Mr. Moakley, Mr. Moran of Virginia, Mr. Moran of Kansas, Ms. Morella, Ms. Myrick, Mr. Nadler, Mr. Napolitano, Mr. Neal, Mr. Nethercutt, Mr. Ney, Ms. Northrup, Ms. Holmes-Norton, Mr. Norwood, Mr. Nussle, Mr. Olver, Mr. Ose, Mr. Packard, Mr. Pallone, Mr. Pastor, Mr. Pease, Mr. Peterson, Mr. Pickering, Mr. Pombo, Mr. Pomeroy, Mr. Price, Ms. Pryce, Mr. Quinn, Mr. Radanovich, Mr. Rahall, Mr. Rangel, Mr. Reynolds, Mr. Riley, Ms. Rivers, Mr. Rogan, Mr. Rohrabacher, Ms. Ros-Lehtinen, Mr. Rush, Mr. Ryan, Mr. Salmon, Ms. Sanchez, Mr. Sanders, Mr. Sanford, Mr. Sawyer, Mr. Scarborough, Mr. Schaffer, Mr. Sensenbrenner, Mr. Serrano, Mr. Sessions, Mr. Shays, Mr. Sherman, Mr. Shimkus, Mr. Shows, Ms. McIntosh-Slaughter, Mr. Smith of Washington, Mr. Smith of New Jersey, Mr. Smith of Texas, Mr. Souder, Ms. Stabenow, Mr. Stark, Mr. Stenholm, Mr. Sununu, Mr. Sweeney, Mr. Talent, Mr. Tancredo, Mr. Tanner, Ms. Tauscher, Mr. Tauzin, Mr. Taylor, Mr. Terry, Mr. Thomas, Mr. Thompson of Mississippi, Mr. Thune, Mr. Tiahrt, Mr. Tierney, Mr. Udall of Colorado, Mr. Udall of New Mexico, Mr. Underwood, Mr. Upton, Mr. Vento, Mr. Walden, Mr. Walsh, Mr. Wamp, Ms. Waters, Mr. Watkins, Mr. Watt, Mr. Watts, Mr. Weldon, Mr. Weller, Mr. Wexler, Mr. Whitfield, Mr. Wicker, Mr. Wise, Ms. Woolsey, and Mr. Wu, H.R. 850 makes a series of changes to U.S. encrption 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. 850 generally codifies that policy by affirmatively prohibiting restrictions on the domestic use and sale of encryption. It also prohibits the government from imposing a 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. 850 significantly relaxed 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 Thursday, March 4, 1999, the Subcommittee held a hearing on H.R. 850. The following individuals testified: William Reinsch, Undersecretary of Commerce for Export Administration, United States Department of Commerce; Ronald D. Lee, Associate Deputy Attorney General, United States Department of Justice; Barbara McNamara, Deputy Director, National Security Adminstration; Tom Parenty, Data and Communications Security, Sybase, Incorporated; Craig McLaughlin, Chief Technology Officer, Privada, Incorporated; Grover Norquist, President, Americans for Tax Reform; Professor Dorothy E. Denning, Georgetown, University; Alan B. Davidson, Staff Counsel, Center for Democracy and Technology; Ed Gillespie, Executive Director, Americans for Computer Privacy; and Dave McCurdy, President, Electronic Industries Alliance.

On March 11, 1999, the Subcommittee met in open session and orderly favorably reported the bill H.R. 850, by voice vote, a quorum being present. On March 24, 1999, the Committee met in open session and ordered reported favorably the bill H.R. 850, by voice vote, a quorum being present. H.R. 850 was reported by the Committee on Judiciary on March 27, 1999 (H. Rept. 106–117, Part I). The bill was also referred to the Committees on International Relations, Armed Services, Commerce and Intelligence. Due to the legislation the Administration revisited their encryption policy to be more in line with the bill, thereby obviating the need for the legislation.

Consumer and Investor Access to Information Act of 1999, H.R. 1858

Representative Tom Bliley introduced H.R. 1858 It was referred to the Committees on Commerce and Judiciary. It was held at full Committee for purposes of markup and floor consideration. On September 30, 1999, the Committee on Commerce reported on H.R. 1858 (H. Rept. 106–350). On October 8, 1999, the Committee on the Judiciary was discharged from considering the bill. No further action was taken on the bill.

OVERSIGHT ACTIVITIES

U.S. Patent and trademark Office

On March 9, 2000, 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 Q. Todd Dickinson, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks; Charles Van Horn, Board of Directors, American Intellectual Property Law Association; Kim Muller, President, International Trademark Association; Ronald Myrick, President, Intellectual Property Owners; Colleen M. Kelley, National President, National Treasury Employees Union; Ronald J. Stern, President, Patent Office Professional Association; Kina Lamblin, Vice President and General Counsel, VISX, Inc.; Gregory J. Maier, Chair, Section of Intellectual Property Law, American Bar Association; Professor Rochelle Dreyfuss, Director, Engelberg Center for Innovation Law and Policy, New York University School of Law.

U.S. Copyright Office

On May 25, 2000, 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 Honorable Marybeth Peters, Register of Copyrights, Copyright Office of the United States.

Article III Courts

On July 22, 1999, the Subcommittee held an oversight hearing on the Structural Alternatives for the United States Court of Appeals. The Subcommittee received testimony from: The Honorable Tom Campbell, Member of Congress, 15th District of California; Senator Ted Stevens of Alaska; Senator Slade Gorton of Washington; Senator Jon Kyl of Arizona; Senator Dianne Feinstein of California; Senator Frank Murkowski of Alaska; Senator Harry Reid of Nevada; The Honorable Procter Hug, Jr., Chief Judge, Ninth Circuit Court of Appeals; The Honorable Charles E. Wiggins, Senior Circuit Judge, U.S. Court of Appeals, Ninth Circuit; The Honorable Pamela Ann Rymer, Circuit Judge, Ninth Circuit Court of Appeals; The Honorable Diarmuid O'Scannlain, Circuit Judge, Ninth Circuit Court of Appeals, The Honorable William D. Browning, District Judge For the District of Arizona; The Honorable David R. Thompson, Circuit Judge, Ninth Circuit Court of Appeals; Eleanor Acheson, Assistant Attorney General, Office of Policy development Department of Justice; Arthur Hellman, Professor of Law, University of Pittsburgh School of Law; Ronald L. Olson, Esq., Munger, Tolles & Olson; and William N. LaForge, Chairman, Committee on Government Relations Federal Bar Association.

Chief Judge Norma Holloway Johnson's decision to bypass the random case assignment system in six politically sensitive cases

After reviewing a July 31, 1999 Associated Press report that the Chief Judge of the U.S. District Court for the District of Columbia bypassed the normal random case assignment system in two politically sensitive cases, the Committee asked the Chief Judge about this matter in an August 26, 1999, letter. When she failed to respond to the legitimate concerns of the Subcommittee, she was again contacted by letter on November 3, 1999. When it became clear that she would not respond, investigative staff were directed to look into the matter further. The Subcommittee discovered that the Chief Judge made four additional special assignments of campaign finance related cases for a total of six.

After conducting an inquiry, the Subcommittee filed a judicial complaint pursuant to 28 U.S.C. § 372(c)(1) on January 10, 2000. The Subcommittee supplemented its complaint with more information on February 16, 2000. On March 28, 2000, the Clerk for the U.S. Court of Appeals informed the Subcommittee that the complaint (Judicial Complaint 00–1) was referred to a special committee on judges for investigation. The special committee then hired outside counsel to conduct fact finding in this matter. At the time of this writing, no decision has been issued by the Judicial Council. In response to the Subcommittee's oversight, the District Court for the District of Columbia abolished its policy that allowed the court's chief judge to bypass the traditional random assignment process. They substituted a system in which protracted cases would be assigned on a random basis.

The Subcommittee did not file its complaint lightly. The Subcommittee felt compelled to determine whether or not these unusual special assignments were proper. It was done in the most judicious manner possible—by seeking review first by the Judicial Council. The Subcommittee is hopeful that the current Judicial Council investigation will answer the concerns laid out in the Subcommittee's complaint. In addressing the Subcommittee's concerns, the Judicial Council should seek to establish confidence in our courts, the impartial administration of justice, and the principle of judicial independence. This can only be done by a thorough, fair, and honest review of the facts and the law.

The Subcommittee is concerned about the length of time it has taken to review this matter. The Subcommittee understands that the investigative phase of this investigation was completed by mid-September, 2000. Furthermore, the Subcommittee is concerned generally about the perception that judges are unwilling to vigorously pursue complaints against other judges. The proper operation of the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 372, depends on the willingness of judges to police their colleagues. The Subcommittee may, in the next Congress, review the operation and effectiveness of this statute to determine whether thorough reviews of credible complaints are vigorously pursued and whether appropriate disciplinary measures are taken when warranted.

Copyrighted webcast programming on the Internet

On June 15, 2000, the Subcommittee held an oversight hearing on "Copyrighted Webcast Programming on the Internet." The Subcommittee received testimony from the following: The Honorable Marybeth Peters, Register of Copyright, Copyright Office of the United States, Library of Congress; Jack Valenti, President and Chief Executive Officer, Motion Picture Association of America on behalf of the Copyright Assembly; Thomas J. Ostertag, General Counsel, Office of the Commissioner of Baseball; Jonathan Potter, Executive Director, Digital Media Association; Ian Mccallum, Cofounder, iCraveTV.com; Peggy Miles, Chairman, International Webcasting Association and President, Intervox Communication; Hilary Rosen, President and Chief Executive Officer, Recording Industry Association of America, Inc.; Edward O. Fritts, President and Chief Executive Officer, National Association of Broadcasters; Dean Kay, President and Chief Executive Officer, Lichelle Music Company on behalf of the American Society of Composers, Authors and Publishers; Charles P. Moore, Vice President, Business Development, RadioAMP.com; and Scott Purcell, President and Chief Executive Officer, WWW.com.

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, 1999, 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, 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 or 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, and annual losses of U.S. property to domestic and international piracy.

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*

BILL McCOLLUMN, Florida
ELTON GALLEGLY, California
EDWARD A. PEASE, Indiana
CHRISTOPHER B. CANNON, Utah
MARY BONO, California [1]
CHARLES T. CANADY, Florida
BOB GOODLATTE, Virginia
JOE SCARBOROUGH, Florida [2]

SHEILA JACKSON LEE, Texas
HOWARD L. BERMAN, California
ZOE LOFGREN, California
BARNEY FRANK, Massachusetts
MARTIN T. MEEHAN, Massachusetts

[1] Mary Bono, California, reassigned from the Subcommittee on Immigration and Claims to the Subcommittee on Commercial and Administrative Law on March 24, 1999.
[2] Joe Scarborough, Florida, assigned to the Subcommittee on March 24, 1999.

Tabulation of Subcommittee legislation and activity

Legislation referred to the Subcommittee	195
Legislation reported favorably to the full Committee	14
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	4
Legislation discharged from the Subcommittee	22
Legislation pending before the full Committee	6
Legislation discharged from the Committee	17
Legislation reported to the House	17
Legislation pending in the House	8
Legislation passed by the House	26
Legislation pending in the Senate	5
Legislation included in Appropriations bill	1
Legislation vetoed by the President	0
Legislation enacted into public law	21
Legislation on which hearings were held	20
Days of hearings (legislative and oversight)	27
Private Bills:	
Claims bills referred to Subcommittee	34
Immigration bills referred to Subcommittee	93
Bills on which hearings were held	0
Claims bills heard/reported favorably to the full Committee	5
Immigration bills heard/reported favorably to the full Committee	19
Claims bills ordered reported to the House	5
Immigration bills ordered reported to the House	19
Claims bills which passed the House	5
Immigration bills which passed the House	18
Claims bills pending in the House	0
Immigration bills pending in the House	1
Claims bills pending in the Senate	2
Immigration bills pending in the Senate	0
Claims bills which became law	3
Immigration bills which became law	18

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

Driver's license standards

Section 355 of title III (general provisions) of H.R. 2084, the "Department of Transportation and Related Agencies Appropriations Act, 2000", which the President signed into law on October 9, 1999 (Public Law 106–69), repealed section 656(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 656(b) had provided that a federal agency could accept for any identification-related purpose a driver's license, or other comparable identification document, issued by a State on or after October 1, 2000, only if the application process and form of the document met certain security standards.

H.R. 441, the Nursing Relief for Disadvantaged Areas Act of 1999

H.R. 441 creates a new temporary registered nurse visa program designated "H–1C" that would provide up to 500 visas a year and that would sunset in four years. To be able to petition for an alien, an employer would have to meet four basic conditions. First, the employer would have to be located in a health professional shortage area as designated by the Department of Health and Human Services. Second, the employer would have to have at least 190 acute care beds. Third, a certain percentage (35%) of the employer's patients would have to be Medicare patients. Fourth, a certain percentage (28%) of patients would have to be Medicaid patients. The bill contains the most important safeguards found in the expired H–1A temporary registered nurse visa program and has added ones of its own.

The legislation requires the Attorney General to grant a national interest waiver on behalf of an alien physician if the alien works full time as a physician for five years in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. A federal agency or a department of public health in a state must have previously determined that the alien physician's work in such an area or at such facility was in the public interest.

The legislation also makes a clarification regarding the acceptable organizational structure for purposes of L visas and employment based visas for multinational executives and managers of firms providing accounting or management consulting services.

On February 2, 1999, Representative Bobby Rush introduced H.R. 441.

On March 18, 1999, the Subcommittee on Immigration and Claims reported H.R. 441 to the Judiciary Committee by voice vote.

On March 24, 1999, the Judiciary Committee ordered H.R. 441 reported by voice vote to the House.

On May 12, 1999, the Judiciary Committee reported H.R. 441 (H. Rept. 106–135).

On May 24, 1999, the House passed H.R. 441 under suspension of the rules by voice vote.

On June 24, 1999, the Senate Judiciary Committee ordered H.R. 441 favorably reported to the Senate.

On October 22, 1999, H.R. 441 passed the Senate as amended by unanimous consent.

On November 2, 1999, the House passed H.R. 441 as amended by the Senate by voice vote.

On November 12, 1999, the President signed H.R. 441 into law (Public Law 106–95).

H.R. 3061, to extend the S-Visa Program and Refugee Resettlement Funding

H.R. 3061 reauthorizes the S-visa program, which provides 250 visas per year to be issued by the Justice Department to informants in international organized crime cases, through September 13, 2001. The bill also reauthorizes funding of the refugee resettlement program through September 30, 2002.

On October 12, 1999, Subcommittee Chairman Lamar Smith introduced H.R. 3061.

On October 26, 1999, the House passed H.R. 3061 under suspension of the rules by voice vote.

On November 8, 1999, the Senate passed H.R. 3061 by unanimous consent.

On November 13, 1999, the President signed H.R. 3061 into law (Public Law 106–104).

Discipline of INS employees

Title I of the “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000,” contained in H.R. 3194, the “Consolidated Appropriations Act for FY2000”, which the President signed into law on November 29, 1999 (Public Law 106–113), directs the Attorney General 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.

Shortage of health care professionals waiver

Section 117 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, 2000,” contained in H.R. 3194, the “Consolidated Appropriations Act for FY2000”, which the President signed into law on November 29, 1999 (Public Law 106–113). The legislation requires the Attorney General to grant a national interest waiver on behalf of an alien physician if the alien works full time as a physician for five years in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs. A federal agency or a department of public health in a state must have previously determined that the alien physician's work in such an area or at such facility was in the public interest.

Prohibition of fund use for countries refusing to accept return of their nationals

Section 627 of the general provisions of Title VI of the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000," contained in H.R. 3194, the "Consolidated Appropriations Act for FY2000", which the President signed into law on November 29, 1999 (Public Law 106–113), prohibits the use of funds appropriated in the Act for the purpose of granting either immigrant or nonimmigrant visas, or both, to citizens, subjects, nationals, or residents of countries that the Attorney General has determined deny or unreasonably delay accepting the return of their citizens, subjects, nationals, or residents under section 243(d) of the Immigration and Nationality Act.

Prohibition of fund use regarding involuntary return of refugees

Section 251 of Title II, the Department of State Authorities and Activities, of the "Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001," contained in H.R. 3194, the "Consolidated Appropriations Act for FY2000", which the President signed into law on November 29, 1999 (Public Law 106–113), prohibits the use of funds made available to effect the involuntary return by the United States of any person to a country in which the person has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, except on grounds recognized as precluding protection as a refugee under the United Nations Convention Relating to the Status of Refugees of July 28, 1951, and the Protocol Relating to the Status of Refugees of January 31, 1967, subject to the reservations contained in the United States Senate Resolution of Ratification. Also, no funds may be used to effect the involuntary return of any person to any country unless the Secretary of State first notifies the appropriate congressional committees, except that in the case of an emergency involving a threat to human life, the Secretary of State shall notify the appropriate congressional committees as soon as practicable.

Guidelines for overseas refugee processing

Section 253 of Title II, the Department of State Authorities and Activities, of the "Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001," contained in H.R. 3194, the "Consolidated Appropriations Act for FY2000", which the President signed into law on November 29, 1999 (Public Law 106–113), requires the Secretary of State, after consultation with the Attorney General, to issue guidelines to ensure that persons with potential biases against any refugee applicant, including persons employed by, or otherwise subject to influence by, governments known to be involved in persecution on account of religion, race, nationality, membership in a particular group, or political opinion, shall not in any way be used in processing determinations of refugee status, including interpretation of conversations or examination of documents presented by such applicants.

Gender-related persecution task force and report

Section 254 of Title II, the Department of State Authorities and Activities, of the "Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001," contained in H.R. 3194, the "Consolidated Appropriations Act for FY2000", which the President signed into law on November 29, 1999 (Public Law 106–113), requires the Secretary of State, in consultation with the Attorney General and other appropriate Federal agencies, to establish a task force with the goal of determining eligibility guidelines for women seeking refugee status overseas due to gender-related persecution. The Secretary of State must also prepare and submit a report to Congress outlining the guidelines determined by the task force.

Eligibility for in-country refugee processing in Vietnam

Section 255 of Title II, the Department of State Authorities and Activities, of the "Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001," contained in H.R. 3194, the "Consolidated Appropriations Act for FY2000", was signed into law by the President on November 29, 1999 (Public Law 106–113). It provides that for purposes of eligibility for in-country refugee processing for nationals of Vietnam during fiscal years 2000 and 2001, an alien who is the son or daughter of a qualified national, is 21 years of age or older, and was unmarried as of the date of acceptance of the alien's parent for resettlement under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City, shall be considered to be a refugee of special humanitarian concern to the United States and shall be admitted to the United States for resettlement if the alien would be admissible as an immigrant under the Immigration and Nationality Act. A "qualified national" is a national of Vietnam who: (1) was formerly interned in a re-education camp in Vietnam by the Government of the Socialist Republic of Vietnam or is the widow or widower of an individual so interned, (2) qualified for refugee processing under the Orderly Departure Program re-education subprogram and on or after April 1, 1995, is or has been accepted under the Orderly Departure Program or through the United States Consulate General in Ho Chi Minh City for resettlement as a refugee or for admission to the United States as an immediate relative immigrant, and (3) is presently maintaining a residence in the United States or was approved for refugee resettlement or immigrant visa processing and is awaiting departure formalities from Vietnam.

Inadmissibility of foreign nationals engaged in forced abortion or sterilization

Section 801 of Title VIII, the Miscellaneous Provisions of the "Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001," contained in H.R. 3194, the "Consolidated Appropriations Act for FY2000", was signed into law by the President on November 29, 1999 (Public

Law 106–113). It prohibits the Secretary of State from issuing a visa to, and the Attorney General from admitting to the United States, any foreign national whom the Secretary finds, based on credible and specific information, to have been directly involved in the establishment or enforcement of population control policies forcing a woman to undergo an abortion against her free choice or forcing a man or woman to undergo sterilization against his or her free choice, unless the Secretary has substantial grounds for believing that the foreign national has discontinued his or her involvement with, and support for, such policies. The prohibitions described above do not apply in the case of a foreign national who is a head of state, head of government, or cabinet level minister. The Secretary of State may waive the above prohibitions if the Secretary determines that it is important to the national interest of the United States to do so and provides written notification to the appropriate congressional committees containing a justification for the waiver.

H.R. 2886, to provide that an adopted alien who is less than 18 years of age may be considered a child if adopted with or after a child sibling

Under prior law, a foreign-born child who has been adopted by a United States citizen parent was classified as an immediate relative child for purposes of immigration to the United States if the child was under the age of 16 at the time the adoptive U.S. citizen parent(s) filed an immigrant visa petition on the child's behalf. However, in cases involving siblings, adoptive parents frequently wish to adopt older children in order to keep a family group intact. H.R. 2886 allows an alien child age 16 or 17 to qualify as an immediate relative child if the U.S. citizen adoptive parent(s) has also adopted a sibling of that child who is under the age of 16.

On September 21, 1999, Representative Stephen Horn introduced H.R. 2886.

On September 30, 1999, the Subcommittee on Immigration and Claims reported H.R. 2886 to the Judiciary Committee by voice vote.

On October 5, 1999, the Judiciary Committee ordered H.R. 2886 reported by voice vote.

On October 14, 1999, the Judiciary Committee reported H.R. 2886 (H. Rept. 106–383).

On October 18, 1999, the House passed H.R. 2886 under suspension of the rules by a vote of 404–0.

On October 19, 1999, the Senate Judiciary Committee was discharged from consideration of H.R. 2886 and the Senate passed the bill by unanimous consent.

On December 7, 1999, the President signed H.R. 2886 into law (Public Law No. 106–139).

H.R. 371, the Hmong Veterans' Naturalization Act of 2000, and H.R. 5234

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 exempts 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 such persons on the day on which such persons applied for admission as refugees) and who came to the United States as refugees from Laos. The legislation also provides 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.). H.R. 5234 clarifies that these benefits are also available to refugees from Laos who are the surviving spouses of guerilla fighters who had died in Laos, Thailand or Vietnam.

Aliens are required to submit documentation of their, or their spouse's, service with a special guerilla unit, or irregular forces which the Attorney General shall evaluate. A maximum of 45,000 permanent residents can take advantage of the benefits provided. This provision was added as an anti-fraud measure, given the extreme difficulty in determining which Hmong actually served in guerilla units.

On January 19, 1999, Representative Bruce Vento introduced H.R. 371.

On March 23, 2000, the Subcommittee on Immigration and Claims was discharged from consideration of H.R. 371.

On March 30, 2000, the Judiciary Committee ordered H.R. 371 reported as amended by voice vote to the House.

On April 6, 2000, the Judiciary Committee reported H.R. 371 (H. Rept. 106–563).

On May 2, 2000, the House passed H.R. 371 as amended under suspension of the rules by voice vote.

On May 18, 2000, the Senate Judiciary Committee ordered H.R. 371 as amended favorably reported to the Senate.

On May 18, 2000, H.R. 371 passed the Senate as amended by unanimous consent.

On May 23, 2000, the House passed H.R. 371 as amended by the Senate by unanimous consent.

On May 26, 2000, the President signed H.R. 371 into law (Public Law 106–207).

On September 20, 2000, Representative George Radanovich introduced H.R. 5234.

On September 25, 2000, the House passed H.R. 5234 under suspension of the rules by voice vote.

On October 19, 2000, the Senate passed H.R. 5234 by unanimous consent.

On November 1, 2000, the President signed H.R. 5234 into law (Public Law 106–415).

H.R. 4489, Immigration and Naturalization Service Data Management Improvement Act of 2000

H.R. 4489 modifies the requirements of section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that the INS collect data on every alien entering and exiting the United States with a requirement that the Attorney General implement an integrated electronic data system regarding the entry and exit of aliens into and from the United States using available data. Section 110 will place no new documentary or data collection requirements on any alien. The bill contains staggered deadlines for implementing the system at the three types of ports of entry: airports, seaports and land border ports.

Once the INS implements the entry/exit data system at a defined group of ports of entry, the Attorney General is required to submit an annual fiscal year report to the Judiciary Committees of the House and Senate. These reports will contain and analyze the following information: (1) the number of aliens for whom departure data was collected, including country of nationality; (2) the number of departing aliens whose departure data was successfully matched to the alien's arrival data, including country of nationality and an alien's classification as an immigrant or nonimmigrant; (3) the number of aliens who arrived with a nonimmigrant visa or under the visa waiver program for whom no matching departure date was obtained as of the end of the alien's authorized stay, including the country of nationality and date of arrival in the U.S.; and (4) the number of nonimmigrants identified as having overstayed their visas, including the country of nationality.

The Attorney General, in consultation with the Secretary of State, will determine which officers and employees of the Justice and State Departments may enter data into and have access to the data contained in the entry/exit data system. Likewise, the Attorney General has the discretion to permit other federal, state, and local law enforcement officials to have access to the data for law enforcement purposes.

The Attorney General is expected to continuously update and improve the integrated entry and exit data system as technology improves and using the recommendations of the task force established by this legislation. The task force is to be chaired by the Attorney General and composed of government and private sector representatives. The task force is instructed to evaluate: (1) how the Attorney General can efficiently and effectively carry out the data system, (2) how the U.S. can improve the flow of traffic at airports, seaports and land border ports of entry by, among other things, enhancing systems for data collection and data sharing by better use of technology, resources, and personnel, and (3) the cost of implementing each of its recommendations. The task force is to submit an annual report to the House and Senate Committees on the Judiciary containing its findings, conclusions and recommendations. The Attorney General shall make such legislative recommendations as he or she deems appropriate to implement the task force's recommendations and to obtain authorization for the appropriation of funds to implement the recommendations.

Finally, H.R. 4489 contains a sense of Congress regarding international border management cooperation.

On May 18, 2000, Representative Lamar Smith introduced H.R. 4489.

On May 23, 2000, the House passed H.R. 4489 under suspension of the rules by voice vote.

On May 25, 2000, the Senate passed H.R. 4489 by unanimous consent.

On June 15, 2000, the President signed H.R. 4489 into law (Public Law 106–215).

H.R. 2909, the Intercountry Adoption Act of 2000

This legislation implements the "Hague Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption," which was signed by the U.S. in 1994.

The purpose of the Convention is to streamline international adoptions by providing a standard framework for intercountry adoptions between countries that have ratified the Convention. The Convention sets standards designed to protect the rights and interests of children, birth parents and adoptive parents and to prevent abuses of the intercountry adoption process, such as the illegal trafficking in children. The Convention provides that each signatory country establish a national Central Authority to oversee the Convention's implementation in that country. Among other responsibilities, the Central Authority will monitor both cases involving children immigrating to the country and of children being adopted abroad. Convention signatories must also establish a process for accreditation of adoption service providers to ensure that every provider meets minimal standards.

H.R. 2909 makes the minimum changes to the Immigration and Nationality Act necessary to facilitate adoptions under the Convention. Principally, the legislation allows children under the age of 16 who are adopted under the provisions of the Convention to qualify as immediate relatives under the INA if (1) the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States, (2) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, or abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption, (3) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child, and (4) the Attorney General is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations the Attorney General may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents).

On September 22, 1999, Representative Benjamin Gilman introduced H.R. 2909.

On March 22, 2000, the International Relations Committee ordered H.R. 2909 reported to the House by a vote of 28–0.

On June 22, 2000, the Judiciary, Education and the Workforce, and Ways and Means Committees were discharged from consideration of H.R. 2909.

On July 18, 2000, the House passed H.R. 2909 as amended under suspension of the rules by a voice vote.

On July 27, 2000, the Senate passed H.R. 2909 as amended by unanimous consent.

On September 18, 2000, the House further amended and passed by unanimous consent H.R. 2909 as amended by the Senate.

On September 20, 2000, the Senate passed H.R. 2909 as amended by the House by unanimous consent.

On October 6, 2000, the President signed H.R. 2909 into law (Public Law 106–279).

S. 2045, the American Competitiveness in the Twenty-First Century Act of 2000, and H.R. 5362

Background

The H–1B Nonimmigrant Worker Program Prior to S. 2045 and H.R. 5362

"H–1B" visas are available for workers coming temporarily to the United States to perform services in a specialty occupation. Such an occupation is one that requires "(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 fiscal year 2000 was 115,000. The period of authorized admission was up to 6 years. An earlier 65,000 annual quota was raised by the American Competitiveness and Workforce Improvement Act of 1998 ("ACWIA") after it began to be reached before the end of the fiscal year in 1997. Under ACWIA, the cap was to drop to 107,500 in fiscal year 2001 and 65,000 in following years.

Because of the need of employers to bring H–1B aliens on board in the shortest possible time, the H–1B program's mechanism for protecting American workers is not a lengthy pre-arrival review of the availability of suitable American workers (such as the labor certification process necessary to obtain most employer-sponsored immigrant visas). Instead, an employer files a "labor condition application" with the Department of Labor making certain basic attestations (promises) and the Department then investigates complaints alleging noncompliance.

There are six attestations a petitioning employer must make:

- 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. Pursuant to

ACWIA, 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, and universities and certain other employers only have to pay the prevailing wage level of employees at similar institutions.

• There is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

• 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.

• 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.

• Pursuant to ACWIA, two attestations—the no-lay off/non-displacement attestation and the recruitment attestation—apply to job contractors/shops, defined in the bill (for larger companies) as H–1B dependent employers 15% or more of whose workforces are composed of H–1B nonimmigrants and to employers who have been found to have willfully violated the rules of the H–1B program. The H–1B dependent employers (+15%) are subject to these attestations in those instances where they petition for aliens without masters degrees in their specialties or who will not be paid at least $60,000 a year.

• The no-lay off attestations 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 (involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same areas of employment) during the period beginning 90 days before and ending 90 days after the employer files a visa petition for the alien. Additionally, if an H–1B dependent employer places an H–1B nonimmigrant with another employer and the alien works at the other employer's worksite and there are indicia of an employment relationship between the alien and the other employer, the H–1B dependent employer must inquire with the other employer as to whether the other employer will displace any American workers with the alien (and receive assurances that it will not). Regardless of this inquiry, if it turns out that the other employer has so laid off an American worker, the placing employer is subject to penalty (not the "other" employer with which the nonimmigrant is placed).

The recruitment attestation requires an employer to have taken good faith steps to recruit American worker (using industry-wide standards) for the job an H–1B alien will perform and to offer the job to any American worker who applies and is equally or better qualified than the alien.

These two attestations created by ACWIA have never been implemented because the Office of Management and Budget has yet to approve final regulations written by the Labor Department.

Departmental investigations as to whether an employer has failed to fulfill its attestations or has misrepresented material facts in its application are triggered by complaints filed by aggrieved persons or organizations (including bargaining representatives). Investigations can be conducted where there is reasonable cause to believe that a violation has occurred. Pursuant to ACWIA, the Labor Department can investigate an employer using the H–1B program without having received a complaint from an aggrieved party in certain circumstances where it receives specific 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 in a way that affects multiple employees. In addition, ACWIA allows the Labor Department to subject an employer to random investigations for up to five years after the employer is found to have committed a willful failure to meet the conditions of the H–1B program.

The Labor Department enforces 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.

An employer is subject to penalties for failing the attestations and for making a misrepresentation of material fact in an application. Potential penalties include back pay, civil monetary penalties of up to $1,000 per violation (up to $5,000 per willful violation, and up to $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 one to three years. Whistleblower protection is provided to employees.

Pursuant to ACWIA, a $500 fee per alien is charged to all employers except universities and certain other institutions. The funds go principally for scholarship assistance for low-income students studying mathematics, computer science, or engineering, for federal job training services, and for administrative and enforcement expenses.

Labor Department Concerns About the H–1B Program

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

The INS has found that almost 62% of H–1B aliens now work in computer-related occupations. 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 estimated that there were 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 report has serious analytical and methodological weaknesses that undermine the credibility of its conclusions that a shortage of [information technology] workers, exists."

Late in 1999, a study sponsored by the United Engineering Foundation and the Alfred P. Sloan Foundation assessed the demand for information technology workers. The study concluded that "spot shortages may exist, and strong demand can be seen for some kinds of people, but on the whole there is no compelling evidence to suggest a national shortage of [information technology] workers, either now or in the near future,"

The report looked at indicators such as the facts that unemployment among experienced information technology professionals has been rising since 1997 and that there was a lack of any consistent evidence of unusually strong wage growth for such workers that would be consistent with a shortage.

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 for the time being.

Fraud in the H–1B Program

The Subcommittee on Immigration and Claims held a hearing on May 5, 1999, in which it was found that widespread fraud exists in the H–1B program. Inspector General Jacquelyn Williams-Bridgers of the State Department testified that "[w]e have been increasingly faced with more [fraud] allegations and cases recently in the H–1B areas."

Cases were disclosed at the hearing in which H–1B petitions were filed on behalf of paper or front companies and in which falsified educational credentials or claims of job experience were submitted on behalf of unqualified applicants. INS field investigations of suspect H–1B petitioners have identified "mail drop" addresses where no legitimate business activity takes place and numerous instances of companies that filed fraudulent petitions in exchange for payments by unqualified applicants. In many cases, H–1B nonimmigrants turn out not to be highly skilled workers. Inspector General Williams-Bridgers states that "[w]hat we are increasingly seeing are cases where * * * individual * * * enter the U.S. on the premise that they will assume a highly technical job only to find that the individuals are low skilled workers, slated for employment as janitors or nurse's aides or store clerks in companies that have handsomely paid the brokers."

H.R. 4227, the Technology Worker Temporary Relief Act of 2000

H.R. 4227, as reported by the House Judiciary Committee, removed the cap on H–1B visas for fiscal years 2000 through 2002.

The bill added a number of safeguards for American workers to the H–1B program. It provided that the additional visas made available over and above current law in fiscal years 2001 and 2002 would only be available to employers who could demonstrate that they had increased the median wage paid to their American workers over the previous year. The bill provided that employers must pay H–1B aliens at least $40,000 a year unless working at universities or public or private elementary or secondary schools (new college graduates in 1999 with degrees in computer engineering started out earning a median of $46,200 ($45,000 with degrees in electrical and electronics engineering, $45,000 with degrees in computer science and $40,300 with degrees in computer programming)). The bill also required the General Accounting Office to conduct a study of the measures taken by employers using the H–1B program to recruit for these jobs qualified American workers from underrepresented groups such as African-Americans, Hispanics, women, and individuals with a disability and to conduct a study on the measures taken by employers using the H–1B program to continually train and update the existing skills of their present employees, and to promote these employees whenever possible.

H.R. 4227 added a number of anti-fraud measures to the H–1B program. Among these were provisions to require a college degree for all petitioned-for aliens, to require petitioning employers to pay a fee of $100 which will be earmarked for H–1B anti-fraud work at INS and the State Department, to require non-governmental petitioning employers without assets of at least $250,000 to provide documentation of their business activity and to require that employers utilizing the H–1B program provide to the Department of Labor in electronic for specified information about each H–1B alien employed (including country of origin, academic degree, job title, start date and salary level).

S. 2045, the American Competitiveness in the Twenty-First Century Act of 2000

The American Competitiveness in the Twenty-First Century Act of 2000, as enacted into law, increases the H–1B visa quota to 195,000 in fiscal years 2001–03. To ensure that an accumulated backlog of petitions does not count against these limits, the legislation provides that petitions received before the end of fiscal year 2000 are to be counted against that year's cap (which is to be accordingly increased). The quotas for 2001–03 do not apply to H–1B aliens who are employed at or have received offers from institutions of higher education or affiliated nonprofit entities or at nonprofit research organizations or governmental research organizations. If an alien who was counted against the visa cap is found to have been issued a visa or provided status by fraud or willfully misrepresenting a material fact and the visa or status is revoked, then one number shall be restored to the cap in the fiscal year in which the petition is revoked.

S. 2045 provides that aliens employed under H–1B visas can accept new employment upon the filing by the prospective employer of a new H–1B petition (employment authorization will continue until the petition is denied). Prior law required the prospective employer's petition to be first approved. The legislation also provides that if a petition for an employment based immigrant visa has been filed for an alien working under an H–1B visa and a year or more has elapsed since the filing of the visa (or a labor certification request on the alien's behalf), the alien can continue to work under the H–1B visa beyond the normal six year limit until such time as the INS has made a final decision on the petition.

Provision of ACWIA due to expire at the end of fiscal year 2001 are extended through the end of fiscal year 2003.

S. 2045 makes a number of changes to employment based immigrant visa program. First, the per-country limitation on the distribution of visas each year in the five employment based preference categories is essentially repealed. Second, if an employer's immigrant visa petition for an alien worker has been filed and remains unadjudicated for at least 180 days, the petition shall remain valid with respect to a new job if the alien changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed. In addition, an approved labor certification will remain valid with respect to such an alien. Third, unused employment based visas in fiscal years 1999 and 2000 will be made available in future fiscal years.

The legislation modifies the allocation of the $500 per alien fee charged to petitioning employers, including setting aside some funding for private-public partnerships in K–12 education. It also modifies the program requirements of the fee-funded demonstration programs that provide technical skills training for workers.

The legislation authorizes $20 million in each of fiscal years 2001 through 2006 for the "KIDS 2000 Crime Prevention and Computer Education Initiative" that will provide grants to the Boys and Girls Clubs to fund after-school technology programs. It also requires that the National Science Foundation conduct a study on the "digital divide".

Finally, S. 2045 includes the "Immigration Services and Infrastructure Improvements Act of 2000." This legislation requires the INS to take such measures as may be necessary to reduce the backlog in the processing of immigration benefits applications, with the objective of the total elimination of the backlog within one year of enactment and with no reoccurrence. Within 90 days after enactment, the Attorney General must submit a report to Congress concerning her backlog reduction plan. Progress reports (that also describe the additional resources and process changes needed) are required after each fiscal year in which monies authorized under this legislation are appropriated.

H.R. 5362

This legislation increases the per alien fee on H–1B petitions from $500 to $1,000 and extends the fee's life through fiscal year 2003. It also extends the fee exemption to employers that are primary or secondary educational institutions and certain other entities.

Procedural history

On February 9, 2000, Senator Orrin Hatch introduced S. 2045.

On March 9, 2000, the Senate Judiciary Committee ordered S. 2045 favorably reported with an amendment in the nature of a substitute.

On April 11, 2000, the Senate Judiciary Committee reported S. 2045 (S. Rept. 106–260).

On April 11, 2000, House Subcommittee Chairman Lamar Smith introduced H.R. 4227.

On April 12, 2000, the House Subcommittee on Immigration and Claims ordered H.R. 4227 reported as amended by voice vote.

On May 17, 2000, the House Judiciary Committee ordered H.R. 4227 reported as amended to the House by a vote of 18–11.

On June 23, 2000, the House Judiciary Committee reported H.R. 4227 (H. Rept. 106–692).

On October 3, 2000, the Senate passed S. 2045 as amended by a vote of 96–1.

On October 3, 2000, the House passed S. 2045 under suspension of the rules by voice vote.

On October 3, 2000, Representative David Dreier introduced H.R. 5362.

On October 6, 2000, the Judiciary Committee was discharged from consideration of H.R. 5362 and the house passed H.R. 5362 by unanimous consent.

On October 10, 2000, the Senate passed H.R. 5362 by unanimous consent.

On October 17, 2000, the President signed S. 2045 into law (Public Law 106–313) and signed H.R. 5362 into law (Public Law 106–311).

H.R. 4681, to provide for the adjustment of status of certain Syrian nationals

H.R. 4681 expedites adjustment of status to permanent residence for up to 2,000 Syrian Jews who arrived in the United States after 1991 and were granted asylum. To accommodate the Syrian Government, the U.S. initially admitted the aliens as visitors and then granted asylum rather than initially admitting them as refugees. This arrangement resulted in long delays in their adjustment to lawful permanent resident status, because of the 10,000 annual cap on asylee adjustments of status.

On June 15, 2000, Representative Rick Lazio introduced H.R. 4681.

On July 11, 2000, the House suspended the rules and passed H.R. 4681, as amended, by voice vote.

On October 13, 2000, the Senate passed H.R. 4681 by unanimous consent.

On October 27, 2000, the President signed H.R. 4681 into law (Public Law 106–378).

H.R. 3244, Trafficking Victims Protection Act of 2000

H.R. 3244 combats trafficking of persons, especially into the sex trade and slavery in the United States and countries around the world through prosecution of traffickers and through protection and assistance to victims of trafficking.

H.R. 3244 creates a new nonimmigrant "T" visa for persons who: (1) are victims of severe forms of trafficking in persons (sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such acts has not attained 18 years of age or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery), (2) are in the United States or at a United States port of entry on account of such trafficking, (3) have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking or have not attained 15 years of age, and (4) would suffer extreme hardship involving unusual and severe harm upon removal from the United States. H.R. 3244 also permits the Attorney General to grant a "T" visa, if necessary to avoid extreme hardship, to the victim's spouse, children, and parents if the victim is under 21 years of age, and the victim's spouse and children if the victim is 21 years of age or older.

H.R. 3244 precludes anyone from receiving a "T" visa if there is substantial reason to believe that the person has committed an act of a severe form of trafficking in persons. It also places an annual cap of 5,000 on "T" visas for trafficking victims. The legislation permits the Attorney General to waive certain grounds of inadmissibility.

H.R. 3244 requires the Attorney General to grant a trafficking victim authorization to engage in employment in the United States during the period the alien is in lawful temporary resident status as a trafficking victim. H.R. 3244 states that the INS is not prohibited from instituting removal proceedings against an alien admitted with a "T" visa for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission.

H.R. 3244 permits the Attorney General to adjust the status of a "T" visa holder to that of a permanent resident if the alien: (1) has been physically present in the United States for a continuous period of at least three years since the date of admission, (2) has throughout such period been a person of good moral character, and (3) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or would suffer extreme hardship involving unusual and severe harm upon removal from the United States. H.R. 3244 also permits the Attorney General to adjust the status of the victim's spouse, parent, or child, if admitted with a "T" visa, to that of an alien lawfully admitted for permanent residence. The Attorney General may waive certain grounds of inadmissibility. An annual cap of 5,000 is placed on adjustments of status for trafficking victims.

Finally, H.R. 3244 excludes significant traffickers, persons who knowingly assist them, and their spouses, sons, or daughters who knowingly benefit from the proceeds of their trafficking activities from entry into the United States. A son or daughter who was a child at the time he or she received the benefit is exempt from such exclusion from the United States.

On November 8, 1999, Representative Chris Smith introduced H.R. 3244.

On November 8, 1999, the International Relations Committee ordered H.R. 3244 reported by voice vote.

On March 8, 2000, the Subcommittee on Immigration and Claims reported H.R. 3244 as amended to the Judiciary Committee by voice vote.

On April 4, 2000, the Judiciary Committee ordered H.R. 3244 as amended reported to the House by voice vote.

On April 13, 2000, the Judiciary Committee reported H.R. 3244 (H. Rept. 106–487, part II).

On April 14, 2000, the Banking and Financial Services Committee was discharged from consideration of H.R. 3244.

On May 9, 2000, the Ways and Means Committee's time for consideration expired.

On May 9, 2000, the House passed H.R. 3244 as amended under suspension of the rules by voice vote.

On July 27, 2000, the Senate passed H.R. 3244 as amended by unanimous consent and appoints conferees.

On September 14, 2000, the House agreed to conference and instructed conferees by voice vote regarding immigration provisions.

On September 14, 2000, the Speaker appointed House conferees.

On October 5, 2000, the conference report was filed (H. Rept. 106–939) and conferees agreed to conference report.

On October 6, 2000, the House passed a rule and agreed to the conference report by a vote of 371–1.

On October 11, 2000, the Senate agreed to the conference report by a vote of 95–0.

On October 28, 2000, the President signed H.R. 3244 into law (Public Law 106–386).

H.R. 3244, the Battered Immigrant Women Protection Act of 2000

H.R. 3244 creates the term "intended spouse," which is defined as the spouse of a United States citizen or lawful permanent resident whose marriage is not legitimate because of bigamy by the United States citizen or lawful permanent resident. Intended spouses who have been battered or abused may self-petition for visas.

H.R. 3244 allows an alien whose United States citizen or lawful permanent resident spouse, intended spouse, or parent has died, lost citizenship or resident status due to domestic abuse, or divorced within the past two years, to self-petition for visas and cancellation of removal, without adversely affecting the classification of the alien. The legislation also permits abused spouses, intended spouses, and children of United States citizens and lawful permanent residents living abroad to self-petition for visas. It permits the Attorney General to find that a self-petitioner has good moral character if the petitioner's act or conviction for domestic abuse was connected to the petitioner having been abused. It also allows an applicant who filed a self-petition before reaching 21 years of age to continue to pursue the application after turning 21 years old. Such applicants may also receive work authorization and deferred action.

H.R. 3244 permits abused aliens who were married to United States citizens, but divorced, to naturalize in three years. It also requires the Attorney General to parole into the United States a child of an abused alien granted suspension of deportation or cancellation of removal and a parent of an abused alien child granted such relief.

H.R. 3244 creates a waiver for aliens unlawfully present in the United States after previous immigration violations if an alien has been granted a self-petition and there was a connection between the abuse of the alien and the alien's removal, departure from the United States, reentry or reentries into the United States, or attempted reentry into the United States.

H.R. 3244 permits the Attorney General to waive the application of a crime of domestic abuse if the abused alien was not the primary perpetrator of violence, did not commit serious bodily injury, and there was a connection between the abused alien's crime and the alien having been abused. It also extends the waivers for misrepresentation, health-related grounds, and certain crimes for battered spouses of United States citizens and lawful permanent residents who have self-petition visas.

The legislation requires the Attorney General to submit an annual report to Congress detailing the INS policy regarding abused aliens and removal proceedings, the number of requests filed under the policy, the number of requests granted, and the average length of time an abused alien must wait before appearing before an immigration judge to apply for relief from deportation.

H.R. 3244 enables abused aliens eligible to self-petition for permanent residence to adjust their status, regardless of whether they are illegal aliens. In removal cases of abused aliens, the legislation ends using the notice to appear date in terminating continuous physical presence. It also eliminates time limitations on motions to reopen removal and deportation proceedings for victims of domestic abuse. It eliminates remarriage of an abused alien with a self-petition visa as a basis for revocation of the visa.

H.R. 3244 allows abused alien spouses and children of Cuban Adjustment Act, Nicaraguan Adjustment and Central American Relief Act, and Haitian Refugee Immigration Fairness Act applicants to self-petition for the respective relief.

Finally, the legislation creates a new "U" nonimmigrant visa classification for victims of domestic abuse who are helpful to authorities investigating or prosecuting such criminal activity. The Attorney General is given the discretion to convert the status of nonimmigrants to that of permanent residents for humanitarian grounds, family unity, or when it is in the public interest.

On July 20, 2000, the Subcommittee on Immigration and Claims held a hearing on H.R. 3083, the "Battered Immigrant Women Protection Act of 1999". Testimony was received from Representative Janice Schakowsky; Barbara Strack, Acting Executive Associate Commissioner for Policy and Planning, Immigration and Naturalization Service; Dwayne "Duke" Austin, Former INS Senior Spokesman; Jackie Rishty, Staff Attorney, Catholic Charities; Leslye Orloff, Director, Immigrant Women Program, NOW Legal Defense and Education Fund; Maria Ortiz, Shelter for Abused Women; Bree Buchanan, Director of Public Policy, Texas Council on Family Violence.

On October 5, 2000, the "Violence Against Women Act of 2000" was included as Division B of the conference report for H.R. 3244, the "Trafficking Victims Protection Act". Title V of Division B was the "Battered Immigrant Women Protection Act of 2000".

[See above entry for H.R. 3244]

H.R. 2883, the Adopted Citizenship Act of 2000

Under prior law, a child born abroad to two U.S. citizen parents was considered a U.S. citizen at birth as long as one of the parents had had a residence in the United States prior to the birth of the child. In addition, a child born abroad to a U.S. citizen and an alien parent was considered a U.S. citizen at birth if the U.S. citizen parent was, prior to the birth of the child, physically present in the United States for a period or periods totaling not less than five years, at least two of which were after attaining the age of 14. However, if American parents adopted a foreign child, or if a child born abroad to a U.S. citizen parent(s) was not considered a citizen at birth, the child arrived in the United States a permanent resident and a parent had to apply for a certificate of naturalization for the child to become a citizen.

H.R. 2883 provides for automatic citizenship for foreign-born adopted children when they enter the United States—but not retroactively to birth. The bill provides the same automatic citizenship upon entry to the United States for foreign-born children of a U.S. citizen(s) who are not considered citizens at birth under current law. And the bill utilizes this same process for children receiving citizenship on the basis of a parent(s) naturalizing.

The bill provides that a child automatically becomes a U.S. citizen when the following conditions are met: (1) at least one parent of the child is a citizen of the United States, whether by birth or naturalization, (2) the child is under 18, and (3) the child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence. In the case of an adopted child, the adoption must meet the requirements of current immigration law. The bill does reserve a certificate of naturalization process when the foreign-born will reside outside of the United States.

The bill also provides a limited class of aliens with exemptions from the penalties in the Immigration and Nationality Act and title 18 of the United States Code governing illegal voting in federal, state, or local elections and false claims of citizenship by aliens for the purpose of registering to vote or to procure benefits under the Immigration and Nationality Act or any other federal or state laws. In some cases, individuals may have a reasonable—if mistaken—belief that they were citizens of the United States. This could have occurred with foreign-born children brought to the United States at a young age whose parents did not realize that the children did not become citizens automatically. The enactment of H.R. 2883 and its expansion of automatic citizenship to more foreign-born children of U.S. citizens will greatly reduce in the future the number of cases in which such a mistake can be made.

If an alien can show that (1) each natural or adoptive parent of the alien is or was a citizen of the United States, (2) the alien permanently resided in the United States prior to attaining the age of 16, and (3) the alien reasonably believed at the time of voting or falsely claiming citizenship (to obtain an immigration or other benefit under federal or state law) that he or she was a citizen of the United States, the alien is protected against a finding that the alien was not of good moral character (among other things, a bar to naturalization), and is protected against being considered inadmissible or deportable. In addition, an alien who meets this standard shall not be subject to prosecution under sections 611 and 1015 of title 18.

On September 21, 1999, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 2883, which dealt solely with foreign-born adopted children and provided that once brought to the United States by their U.S. citizen parent(s) they would be considered citizens at birth.

On February 15, 2000, Representative William Delahunt introduced H.R. 3667.

On February 17, 2000, The Subcommittee on Immigration and Claims held a hearing on H.R. 2883. Testimony was received from Gerri Ratliff, Director of Business Process and Reengineering Immigration Services Division and Acting Director of the Office of Congressional Relations, U.S. Immigration and Naturalization Service; Edward A. Betancourt, Director of the Office of Policy Review and Interagency Liaison, Overseas Citizens Services, Bureau of Consular Affairs, U.S. State Department; Susan Soon-Keum Cox, Vice President of Public Policy and External Affairs, Holt International Children's Services; and Ms. Maureen Evans, Executive Director, Joint Council on International Children's Services.

On July 11, 2000, the Subcommittee on Immigration and Claims reported H.R. 2883 to the Judiciary Committee by voice vote.

On July 26, 2000, the Judiciary Committee ordered H.R. 2883 reported to the House as amended by voice vote.

On September 14, 2000, the Judiciary Committee reported H.R. 2883 (H. Rept. 106–852).

On September 19, 2000, the House passed H.R. 2883 under suspension of the rules by voice vote.

On October 12, 2000, the Senate passed H.R. 2883 by unanimous consent.

On October 30, 2000, the President signed H.R. 2883 into law (Public Law 106–395).

H.r. 3767, the Visa Waiver Permanent Program Act

The Visa Waiver Pilot Program allows aliens traveling from certain designated countries to come to the United States as temporary visitors for business or pleasure without having to obtain the nonimmigrant visa normally required to enter the United States. There are currently 29 countries participating in this program. The Attorney General, in consultation with the Secretary of State, has the authority to designate countries to the program. To qualify for admission to the program, a country must extend reciprocal visa-free entry privileges to U.S. citizens, have a low (less than 3 percent) nonimmigrant visa refusal rate and have or be developing a machine readable passport. Finally, the admission of the country to the program must not compromise U.S. law enforcement interests.

Since its initial enactment as a temporary program in 1986, the Visa Waiver Pilot Program has been regularly extended by Congress. The latest extension expired on April 30, 2000. H.R. 3767 makes the visa waiver program permanent. The program is of great importance to the U.S. travel and tourism industry and provides benefits to American citizens (through reciprocity) who travel abroad. Additionally, without the program, U.S. taxpayers would have to bear the burden of restaffing Department of State consular offices to issue visas to the millions of visitors who currently enter through the program.

H.R. 3767 makes certain changes to the program that will ensure that it in the future not pose a threat to the safety and well-being of the United States or allows large numbers of aliens to use the program to circumvent immigration laws

- The legislation strengthens the requirement that participating countries develop a program to issue machine readable passports to its citizens by establishing a October 1, 2003, date certain by which all countries currently in the program to implement a machine readable passport (meeting internationally-set criteria). Additionally, beginning on October 1, 2007, all aliens seeking admission under the program must have a valid unexpired machine-readable passport. A machine readable passport allows INS officials to use their limited time to evaluate aliens seeking admission rather than simply inputting data.
- The legislation requires that the INS check the identity of aliens seeking admission under the program with automated electronic databases containing information about inadmissible aliens. The INS and State Department must develop a system that permits them to share data in electronic form from their respective records systems.
- The legislation requires the INS to develop a fully automated system for tracking the entry and departure of visa waiver travelers entering by air and sea.
- The legislation establishes procedures for periodic reviews of countries already in the program and for suspending a country's participation in the program during emergency situations such as the overthrow of a democratically elected government, war on the country's territory, economic collapse, or a breakdown in law and order. Such procedures are designed to ensure that the visa waiver program does not pose a threat to the law enforcement and security

interests of the United States and to minimize the possibility that aliens admitted under the program do not leave the United States at the conclusion of their authorized terms of stay.

H.R. 3767 allows corporate aircraft to utilize the visa waiver program under the same conditions and with the same safeguards as may commercial air carriers. And it requires that the State Department provide Congress with visa refusal data regarding countries under consideration for inclusion in the visa waiver program that has not been manipulated by consular officers so as to favor a country's qualification.

H.R. 3767 includes additional provisions not relating to the visa waiver program. The first deals with the immigration law consequences of the privatization of INTELSAT, the International Telecommunications Satellite Organization. Prior to privatization, foreign INTELSAT employees in the United States received "G–4" nonimmigrant visas which are available to officers and employees (and their family members) of international organizations. Such employees (and their family members) are eligible for permanent residence upon retirement (and under certain other circumstances) pursuant to the special immigrant visa program.

Without legislative action, INTELSAT's foreign employees would be forced to leave the United States upon the entity's privatization. H.R. 4767 provides that foreign employees (and their family members) who worked for INTELSAT in the United States for at least six months prior to privatization can continue to use their G–4 visas for as long as they work for INTELSAT or a successor or separated entity. The legislation further provides that these foreign employees (and their families) can continue to make use of the special immigrant visa program despite INTELSAT's privatization. Finally, it provides that those qualifying foreign employees of INTELSAT who work in a managerial or executive capacity may seek permanent residence under the multinational executive and manager employment based immigrant visa program.

H.R. 3767 extends the lengths of the regional center pilot program of the employment creation immigrant visa program through October 1, 2003. This pilot program sets aside 3,000 visas a year for aliens investing in regional centers that promote economic growth. Under the pilot as amended by this bill, qualifying regional centers may create jobs indirectly through revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment.

H.R. 3767 modifies the program set up under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to collect information on alien post-secondary students and exchange visitors. IIRIRA required the implementation (first as a pilot program) of a system which would collect electronically information from schools on foreign students including identity and address, current academic status and any disciplinary action taken by a school against a student as a result of the commission of a crime. The system is soon to go into effect nationwide. The legislation clarifies that the fee funding this program shall be collected by the Attorney General prior to the issuance of a visa, and not by the institution of higher education or exchange visitor program when the alien registers or first commences activities. In addition, it provides that aliens subject to the program who are admitted under "J" exchange visas as au pairs, camp counselors, or participants in summer work travel programs shall pay a fee of no more than $40 [later reduced to $35; see H.R. 4942].

Finally, H.R. 3767 provides that employers utilizing the H–1B program do not have to file amended petitions for alien workers as a result of their being involved in corporate restructurings, including but not limited to mergers, acquisitions, or consolidations, where new corporate entities succeed to the interest and obligations of the original employers and where the terms and conditions of employment remain the same.

On March 1, 2000, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 3767.

On April 4, 2000, the Judiciary Committee ordered H.R. 3767 reported to the House as amended by voice vote.

On April 6, 2000, the Judiciary Committed reported H.R. 3767 (H. Rept. 106–564).

On April 11, 2000, the House passed H.R. 3767 as amended under suspension of the rules by voice vote.

On October 3, 2000, the Senate passed H.R. 3767 as amended by unanimous consent.

On October 10, 2000, the House passed H.R. 3767 as amended by the Senate under suspension of the rules by a voice vote.

On October 30, 2000, the President signed H.R. 3767 into law (Public Law 106–396).

H.R. 2961, the International Patient Act of 2000

H.R. 2961 creates a three year pilot program under which the Attorney General may extend the period of voluntary departure in the case of certain aliens who require medical treatment in the United States and were admitted under the visa waiver program.

Under the visa waiver program, a visit cannot exceed 90 days, and no extensions are available. The only relief that the INS can offer an alien admitted under the visa waiver program who has a compelling need to remain in the U.S. for more than 90 days is to authorize the alien to depart voluntarily after a specified period of time pursuant to section 240B of the Immigration and Nationality Act. This section allows the Attorney General to permit an alien who otherwise is no longer authorized to remain in the United States to depart voluntarily at the alien's own expense in lieu of being placed in removal proceedings or prior to the completion of such proceedings. However, the period of time after which the alien must depart can not exceed 120 days. Thus, an alien admitted under the visa waiver program who faces an emergency situation can be authorized to remain in the United States only for 120 days beyond the initial 90-day admission.

H.R. 2961 establishes a pilot program authorizing the Attorney General to waive the 120-day cap on voluntary departure for a limited number of patients and attending family members who enter the U.S. under the visa waiver program. An alien seeking a waiver would be required to provide a comprehensive statement from the attending physician detailing the treatment sought and the alien's anticipated length of stay in the U.S. In addition, the alien and attending family members would be required to provide proof of their ability to pay for the treatment and their daily living expenses. The bill caps the total number of waivers at 300 annually and limits the number of family members who can enjoy the benefits of a waiver. The bill also requires the INS to provide Congress with an annual report detailing the number of waivers granted each fiscal year and provides for the suspension of the Attorney General's authority to authorize such waivers during any period in which an annual reports is past due.

On September 28, 1999, Representative Ken Bentsen introduced H.R. 2961.

On September 30, 1999, the Subcommittee on Immigration and Claims reported H.R. 2961 to the Judiciary Committee by voice vote.

On October 5, 1999, the Judiciary Committee ordered H.R. 2961 reported to the House by voice vote.

On July 11, 2000, the Judiciary Committee reported H.R. 2961 (H. Rept. 106–721).

On July 18, 2000, the House passed H.R. 2961 under suspension of the rules by a voice vote.

On October 19, 2000, the Senate passed H.R. 2961 by unanimous consent.

On November 1, 2000, the President signed H.R. 2961 into law (Public Law 106–406).

H.R. 4068, the Religious Workers Act of 2000

"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 two 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 two years. The two non-minister categories are limited to 5,000 visas a year and were set to sunset on October 1, 2000. H.R. 4068, the "Religious Workers Act of 2000," extends the sunset date to October 1, 2003.

On March 23, 2000, Representative Edward Pease introduced H.R. 4068.

On September 19, 2000, the House passed H.R. 4068 under suspension of the rules by a voice vote.

On October 19, 2000, the Senate passed H.R. 4068 by unanimous consent.

On November 1, 2000, the President signed H.R. 4068 into law (Public Law 106–409).

Indochinese Adjustment Act

The "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001," which the President signed into law on November 6, 2000 (Public Law 106–429), permits Vietnamese, Cambodians, and Laotians who were paroled into the

United States by October 1, 1997, to apply for adjustment of status. The provision waives certain grounds of inadmissibility. The number of adjustments is limited to 5,000.

S. 2812, waiver of oath of renunciation and allegiance for naturalization of aliens having certain disabilities

The Act provides a waiver of the oath of renunciation and allegiance for naturalization if in the opinion of the Attorney General the applicants are unable to understand, or to communicate an understanding of, its meaning because of physical or developmental disabilities or mental impairments.

On June 29, 2000, Senator Orrin Hatch introduced S. 2812.

On July 12, 2000, Representative Ileana Ros-Lehtinen introduced H.R. 4838, an identical bill to S. 2812.

On July 20, 2000, the Senate Judiciary Committee ordered S. 2812 reported to the Senate.

On July 21, 2000, the Senate passed S. 2812 by unanimous consent.

On October 10, 2000, the House passed H.R. 4838 as amended under suspension of the rules by voice vote, inserted the language into S. 2812 in lieu of its Senate-passed language, and then passed S. 2812 by unanimous consent.

On October 19, 2000, the Senate agreed to the House amendment to S. 2812 by unanimous consent.

On November 6, 2000, the President signed S. 2812 into law (Public Law 106–448).

S. 484, the Bring Them Home Alive Act of 2000

S. 484 requires the Attorney General to provide refugee status to any alien (and his or her parent, spouse, or child) who is a national of Vietnam, Cambodia, Laos, China, or any of the independent states of the former Soviet Union, who personally delivers into the custody of the U.S. government a living American prisoner of war from the Vietnam War. It grants similar status to any alien and his or her family members who are nationals of North Korea, China, or the independent states of the former Soviet Union, who delivers a living American prisoner of war from the Korean War.

On February 25, 1999, Senator Ben Nighthorse Campbell introduced S. 484.

On May 18, 2000 the Senate Judiciary Committee ordered S. 484 favorably reported to the Senate.

On May 24, 2000, the Senate passed S. 484 as amended by unanimous consent.

On May 25, 1999, Representative Joel Hefley introduced a similar bill (H.R. 1926).

On October 24, 2000, the House Judiciary and International Relations Committees were discharged from consideration of S. 484.

On October 24, 2000, the House passed S. 484 by unanimous consent.

On November 9, 2000 the President signed into law (Public Law 106–484).

S. 3239, to provide special immigrant status for certain United States international broadcasting employees

S. 3239 makes available 100 special immigrant visas a year for broadcasters at the Voice of America, Radio Liberty, Radio Free Europe, Radio Marti, Radio Free Iraq, Radio Free Asia and other international broadcasting services of the Broadcasting Board of Governors.

On October 25, 2000, Senator Jesse Helms introduced S. 3239.

On October 25, 2000, the Senate passed S. 3239 by unanimous consent.

On October 31, 2000, the House passed S. 3239 under suspension of the rules by voice vote.

On November 22, 2000, the President signed S. 3239 into law (Public Law 106–536).

Legal Immigration Family Equity Act

Title XI of the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001", contained in H.R. 4942, the "District of Columbia Appropriations Act, 2001", which the President signed into law on December 21, 2000 (Public Law 106–554), as modified by title XV of division B of the "Miscellaneous Appropriations Act, 2001," contained in H.R. 4942, includes the Legal Immigration Family Equity Act."

There are more than one million spouses and minor children of permanent resident aliens who are on a waiting list for the limited number of immigrant visas available to them each year. Currently, they must wait for up to six years for visas to become available, making them endure long separations from their loved ones (as they generally cannot visit the United States while on the waiting list).

The LIFE Act creates a new nonimmigrant "V" visa for such spouses and children who have waited at least three years for their immigrant visas that they can continue their wait while living in the United States with their husbands or wives and their parents. A V visa is available if (1) An immigrant visa petition (filed on or before the date of enactment) has been pending for three years, (2) an immigrant visa petition (filed on or before the date of enactment) has been approved but the alien is still on the waiting list for an immigrant visa, or (3) an immigrant visa petition (filed on or before the date of enactment) has been approved but an application for an immigrant visa is still pending. The Attorney General may grant V visa holders work authorization.

If the immigrant's visa petition, application for immigrant visa, or adjustment of status application is denied, a V visa holder's period of authorized admission ends 30 days after the denial. Entry without admission, unlawful presence, and certain other grounds of inadmissibility do not apply to V visa applicants.

Even though an unlimited number of visas are available each year for the spouses and minor children of U.S. citizens, citizens who marry foreigners overseas must wait for up to 18 months before their spouses can join them in the United States while the INS processes the applications. To remedy this hardship, the LIFE Act makes available "K" nonimmigrant visas to aliens (and their minor children) who have concluded valid marriages with United States citizens, are the beneficiaries of visa petitions, and seek to enter the U.S. to await approval of the visa petitions. If the immigrant visa petition or the adjustment of status application based on such petition is denied, the alien's period of authorized admission ends 30 days after the denial.

About 400,000 "late amnesty" aliens claim that they met the conditions set out for amnesty under the Immigration Reform and Control Act of 1986 and yet were wrongly prevented by the INS from receiving amnesty. After the IRCA application deadline for amnesty passed, these aliens filed class action lawsuits claiming that the INS wrongly refused to accept their applications or discouraged them from applying for amnesty even though they met the amnesty's requirements. The LIFE Act allows those aliens who were members of the *Catholic Social Services* v. *Reno, LULAC* v. *INS,* and *Zambrano* v. *INS* class action lawsuits to apply anew for the IRCA amnesty during the one year period following the issuance of final regulations implementing this provision. If such aliens can show that they meet IRCA's requirements for amnesty (primarily, that they entered the U.S. before January 1, 1982, and resided continuously as unlawful aliens through May 4, 1988, have not been convicted of any felony or of three or more misdemeanors in the United States, and possess basic citizenship skills), they will be granted permanent residence. The LIFE Act requires the Attorney General to establish a process for eligible applicants to apply from abroad. The Act also grants spouses and unmarried children (who entered the U.S. before December 1, 1988, and resided in the U.S. on such date) relief from certain grounds of removal and authorizes them to work. The Attorney General shall establish an application process for eligible spouses and unmarried children living abroad.

The LIFE Act also restores "section 245(i)" for a temporary period. Section 245(i) of the Immigration and Nationality Act was adopted on a temporary basis in 1994. It 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 upon payment of a penalty fee. 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 three and 10 year bars on admissibility instituted by section 301(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998 (Public Law 105–119) sunsetted section 245(i) as of January 14, 1998. However, it allowed aliens who had applications for immigrant visas filed on their behalf before this date to be processed under section 245(i) regardless of the date of processing. The LIFE Act further extends this "grandfather" clause. The LIFE Act permits aliens who are present in the United States by its date of enactment and who have an immigrant visa petition filed on their behalf on or before April 30, 2001, to utilize section 245(i). This requirement will ensure that section 245(i) will not encourage further illegal immigration. The LIFE Act also provides that 245(i) fees received on behalf of aliens grandfathered under the Act shall (after up to $200 is deducted for the alien's processing costs) be equally split between the

Breached Bond/Detention Fund and the Immigration Examinations Fee Account.

The LIFE Act also makes minor modifications to immigration law regarding aliens eligible for relief under the Nicaraguan Adjustment and Central American Relief Act of 1997 and the Haitian Refugee Immigration Fairness Act of 1998. The LIFE Act provides that Nicaraguan, Cubans and Haitians eligible for adjustment of status to permanent residence under NACARA and HRIFA may receive this relief despite having been previously removed under an order of removal and may make one motion to reopen exclusion, deportation, or removal proceedings to apply for such adjustment notwithstanding time and number limitations on motions to reopen. The LIFE Act also provides that aliens (primarily from El Salvador and Guatemala) who were the beneficiaries of special rules for suspension of deportation and cancellation of removal under NACARA may also receive relief despite having been previously removed under an order of removal and may make one motion to reopen deportation or removal proceedings to apply for such relief notwithstanding time and number limitations on motions to reopen.

Program to collect information relating to nonimmigrant foreign students and other exchange program participants

Section 110 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, 2001,” contained in H.R. 4942, “District of Columbia Appropriations Act, 2001”, which the President signed into law on December 21, 2000 (Public Law 106–554), modifies the program set up under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to collect information on alien post-secondary students and exchange visitors. The provision provides that aliens subject to the program who are admitted under “J” exchange visas as au pairs, camp counselors, or participants in summer work travel programs shall pay a fee of no more than $35.

Genealogy fee

Section 112 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, 2001,” contained in H.R. 4942, “District of Columbia Appropriations Act, 2001”, which the President signed into law on December 21, 2000 (Public Law 106–554), establishes a genealogy fee for providing genealogy research and information services.

Premium fee for employment-based petitions and applications

Section 112 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, 2001,” contained in H.R. 4942, “District of Columbia Appropriations Act, 2001”, which the President signed into law on December 21, 2000 (Public Law 106–554), authorizes the Attorney General to establish a $1,000 fee (in addition to any normal petition/application fee) that will be used to provide premium processing services to employers submitting employment-based petitions and applications who meet certain criteria.

CLAIMS

H.R. 456

H.R. 456 would make $100,000 payments to each of the survivors of the Americans who were killed on April 14, 1994, when two United States helicopters were shot down over Iraq, so as to provide those survivors with payments similar to the payments already made by the Department of Defense to the survivors of foreign nationals killed in the same incident.

On April 14, 1994, two American Blackhawk helicopters on a humanitarian mission in the no-fly zone of Iraq were shot down by two American F–15 fighter planes when the helicopters were mistakenly identified as Iraqi helicopters. There were 15 Americans (14 active military and one State Department employee) and 11 foreign nationals aboard the helicopters. There were no survivors. The Kurd foreign nationals killed in the shootdown were employed by the United States. Therefore, their families received compensation under the Federal Employees Compensation Act. A decision was made by the Secretary of Defense, under authority provided in 10 U.S.C. 127, to provide compensation beyond those benefits that when combined with their FECA benefits would total $100,000. The foreign military families received an *ex gratia* payment of $100,000 from the Secretary of Defense with no offset for any other benefits. No such payments was made to the families of the Americans killed in the shootdown. The law does not provide a mechanism for this type of payment to the American families of active military personnel. The Military Claims Act provides that a claim for personal injury or death is not allowed by or on behalf of U.S. active duty personnel if that injury or death is incident to service. Further, suit by or on behalf of active duty personnel against the Government for damages arising from government action or inaction is precluded because of the doctrine of *Feres* v. *United States,* 340 U.S. 135 (1950).

There has been no other situation where both American government employees (military and civilian) and foreign nationals were killed in the same incident and the Secretary has made *ex gratia* payments to the families of the foreign nationals. The Committee thoroughly reviewed the arguments put forth by the Department of Defense and Department of Justice concerning need for uniformity of benefits for all Americans serving their country and the setting of a precedent that would lead to bills in the future based on friendly fire incidents. While respecting the need to provide uniform treatment to all our military and government employees, the Committee found that this standard was compromised by the Secretary of Defense when he made the *ex gratia* payments. The Committee concluded that this case was unique because it is the only friendly fire incident where the Secretary of the Defense Department chose to make *ex gratia* payments to the families of the foreign nationals killed in the same incidents with Americans. The Committee provided this remedy based solely on the fact *ex gratia* payments were made from the Secretary of Defense's discretionary funds to the foreign nationals' survivors.

On February 2, 1999, Representative Mac Collins introduced H.R. 456.

On May 18, 1999, the Subcommittee on Immigration and Claims held a hearing on H.R. 456 (The Subcommittee also held hearings in the 105th and 106th Congresses.). Testimony was received from U.S. Representative Mac Collins; U.S. Representative Mark Udall; Captain Elliott L. Bloxom, Director of Compensation, Military Personnel Policy, Office of Under Secretary of Defense (Personnel and Readiness), Department of Defense; Donald M. Remy, Deputy Assistant Attorney General, Civil Division, Department of Justice; and Mrs. Georgia Bergmann.

On June 22, 1999, the Subcommittee on Immigration and Claims reported H.R. 456 as amended to the Judiciary Committee by voice vote.

On July 20, 1999, the Judiciary Committee ordered reported H.R. 456 to the House as amended by voice vote.

On July 29, 1999, the Judiciary Committee reported H.R. 456 (H. Rept. 106–270).

The text of the bill was enacted into law as part of H.R. 3194, the "Consolidated Appropriations Act for FY 2000", which the President signed into law on November 29, 1999 (Public Law 106–113).

S. 1515—Radiation Exposure Compensation Act Amendments of 2000

The Radiation Exposure Compensation Act of 1990 was enacted to affirm the responsibility of the federal government to compensate individuals who were harmed by radioactive fallout from atomic testing, or were harmed by being a test site participant, or in the mining of the uranium necessary for the production of nuclear weapons. S. 1515 amends the Radiation Exposure Compensation Act to revise eligibility requirements for claims relating to: (1) leukemia contracted as a result of atmospheric nuclear testing as well as expansion of the areas in States affected, (2) uranium mining as it pertains to individuals employed in the milling and transport of uranium ore or vanadium-uranium ore and the States in which they are eligible, (3) written documentation of pertinent diagnoses and modification of the diseases which constitute a condition covered under the Act, (4) determination and payment of claims, (5) application of Native American law and Native American consideration to claims, and (6) resubmittal of previously denied claims. It also revises the limitations on attorney fees for services rendered in connection with a claim. The ten percent maximum fee included in the original Act is replaced with an applicable percentage consisting of two percent for the filing of an initial claim and ten percent for any claim for which a service contract had already been entered into prior to enactment or for any resubmittal of a denied claim. The General Accounting Office is directed to periodically submit a status report to Congress on the implementation of the Act. The Public Service Health Service Act is amended to establish a program of grants to Federal, State or local medical centers, or nonprofit organizations for education, prevention, and early detection of radiogenic cancers and diseases. Appropriations are authorized for FY 2000–2010.

On August 5, 1999, Senator Orrin Hatch introduced S. 1515.

On November 2, 1999, the Senate Judiciary Committee ordered S. 1515 reported as amended to the Senate.

On November 19, 1999, S. 1515 passed the Senate with an amendment by unanimous consent.

On May 24, 2000, the House Judiciary Committee ordered S. 1515 reported as amended by voice vote.

On June 26, 2000, the House Judiciary Committee reported S. 1515 (H. Rept. 106–697).

On June 27, 2000, the House passed S. 1515 as amended under suspension of the rules by voice vote.

On June 28, 2000, the Senate passed S. 1515 as amended by the House by unanimous consent.

On July 10, 2000, the President signed S. 1515 into law (Public Law 106–245).

ACTION ON OTHER PUBLIC LEGISLATION

LEGISLATION PASSED BY THE HOUSE AND THE SENATE

H. Con. Res. 122, recognizing the United States Border Patrol's seventy-five years of service since its founding

On May 27, 1999, Representative Silvestre Reyes introduced H. Con. Res. 122, recognizing the United States Border Patrol's seventy-five years of service since its founding.

On November 10, 1999, the House suspended the rules and passed H. Con. Res. 122 by voice vote.

On November 19, 1999, the Senate passed H. Con. Res. 122 by unanimous consent.

LEGISLATION PASSED BY THE HOUSE

IMMIGRATION

H.R. 3879, the Sierra Leone Peace Support Act of 2000

Section 8 of this bill as introduced would have granted nationals of Sierra Leone who had been continuously physically present in the United States since January 1, 1998, temporary protected status under section 244 of the Immigration and Nationality Act until such time as the President certified that conditions were sufficiently improved to allow them to return. The bill as passed by the House did not contain this provision.

On March 9, 2000, Representative Sam Gejdenson introduced H.R. 3879.

On April 13, 2000, the International Relations Committee ordered H.R. 3879 reported as amended to the House.

On May 3, 2000, the Judiciary Committee was discharged from consideration of H.R. 3879.

On May 3, 2000, the House passed H.R. 3879 as amended under suspension of the rules by voice vote.

H.R. 4678, the Child Support Distribution Act of 2000

H.R. 4678 was designed to improve the collection and distribution of child support payments, and for other purposes. Section 604 provided that nonimmigrant aliens would be inadmissible if they had child support arrearages of greater than $2,500 (subject to waiver by the Attorney General). In addition, immigration officers would have been authorized to serve on any alien who was an applicant for admission legal process with respect to any action to enforce or establish a child support obligation.

On June 15, 2000, Representative Nancy Johnson introduced H.R. 4678.

On July 26, 2000, the Judiciary Committee was discharged from consideration of H.R. 4678.

On September 7, 2000, the House passed H.R. 4678 by a vote of 405–18.

No further action was taken on H.R. 4678 in the 106th Congress.

H.R. 5062, to establish the eligibility of certain aliens for cancellation of removal

Legal permanent residents may apply for cancellation of removal if they have been in this status for five years, have continuously resided in the U.S. for seven years, and have not committed any offense classified as an "aggravated felony." It is in the Attorney General's sole and unreviewable discretion whether to grant cancellation of removal in particular cases. In 1996, Congress through the Illegal Immigration Reform and Immigrant Responsibility Act and the Antiterrorism and Effective Death Penalty Act retrospectively expanded the aggravated felony definition to include additional offenses and provided that legal permanent residents convicted of aggravated felonies are ineligible for cancellation of removal. Legal permanent residents who committed such now-aggravated felonies before 1996 are still deportable and ineligible for relief.

H.R. 5062 would have provided that criminal offenses committee before 1996 that were retrospectively classified as "aggravated felonies" in 1996 (except for rape or sexual abuse of a minor) would not bar cancellation of removal. Legal permanent residents already removed because of such offenses would have been able to reopen their removal proceedings to apply for cancellation of removal.

On July 27, 2000, Representative Bill McCollum introduced H.R. 5062.

On September 19, 2000, the House passed H.R. 5062 under suspension of the rules by voice vote.

No further action was taken on H.R. 5062 in the 106th Congress.

H.R. 238, to increase penalties for alien smuggling

Under current law, individuals convicted of alien smuggling crimes often receive lenient sentences. The General Accounting Office has found that convicted smugglers, including those responsible for death or serious injury, receive an average sentence only 10 months, which may be suspended, plus an average fine of about $140.

H.R. 238 would have directed the United States Sentencing Commission to double terms of imprisonment and fines for alien smuggling crimes, except those committed on behalf of a close family member, to render emergency assistance, or for a purpose other than profit. The bill would also have enhanced penalties in cases involving use of a firearm, serious injury, or death. Finally, H.R. 238 would have increased the number of INS investigators assigned to alien smuggling by 50 in each of the fiscal years 2001–2005.

On January 6, 1999, Representative James Rogan introduced H.R. 238.

On May 18, 1999, the Subcommittee on Immigration and Claims held a hearing on H.R. 238. Testimony was received from Representative Rogan and from Mr. Bo Cooper, Acting General Counsel, Immigration and Naturalization Service.

On March 9, 2000, the Subcommittee on Immigration and Claims ordered H.R. 238 as amended reported to the Judiciary Committee by voice vote.

On July 25, 2000, the Judiciary Committee ordered H.R. 238 as amended favorably reported to the House by voice vote.

On September 14, 2000, the Judiciary Committee reported H.R. 238 (H. Rept. 106–850).

On October 3, 2000, the House passed H.R. 238 as amended under suspension of the rules by voice vote.

No further action was taken on H.R. 238 in the 106th Congress.

LEGISLATION REJECTED BY THE HOUSE OF REPRESENTATIVES

H.R. 4892—the Scouting for All Act

H.R. 4892 would have repealed the Federal charter granted to the Boy Scouts of America.

On July 19, 2000, Representative Lynn Woolsey introduced H.R. 4892.

On September 12, 2000, the Judiciary Committee was discharged from further consideration of H.R. 4892.

On September 13, 2000, the House failed to pass the bill under suspension of the rules by a vote of 12–362 (with 51 present).

CLAIMS

H.R. 3485, the Justice for Victims of Terrorism Act

The Justice for Victims of Terrorism Act would have amended the Federal judicial code to revise the definition of "agency of instrumentality of a foreign sate" for purposes of provisions regarding exceptions to: 1) the jurisdictional immunity of a foreign state where money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act, and 2) the immunity from attachment or execution where the judgment relates to a claim for which the foreign state is not immune. H.R. 3485 directed that monies due from or payable by the United States to any State against which a judgment is pending under the jurisdictional provisions be subject to attachment and execution in like manner and to the same extent as if the United States were a private person. The bill authorized the President, upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, to waive attachment provisions in connection with any judicial order directing attachment in aid of execution against the premises of a foreign diplomatic mission to the United States, or any funds held by or in the name of such foreign diplomatic mission determined by the President to be necessary to satisfy actual operating expenses of such foreign diplomatic mission. The bill specified that a waiver shall not apply to the proceeds of such use if the premises of the foreign diplomatic mission have been used for any non-diplomatic purpose, or a sale or transfer if any asset of a foreign diplomatic mission is sold or otherwise transferred for value to a third party. All assets of any agency or instrumentality of a foreign state were considered assets of that foreign state.

On November 18, 1999, Representative Bill McCollum introduced H.R. 3485.

On April 13, 2000, the Subcommittee on Immigration and Claims held a hearing on H.R. 3485. Testimony was received from Terry A. Anderson; Stephen M. Flatow; and Maggie A. Khuly.

On June 21, 2000, the Judiciary Committee ordered H.R. 3485 as amended reported to the House by voice vote.

On July 13, 2000, the Judiciary Committee reported H.R. 3485 (H. Rept. 106–733).

On July 18, 2000, the Judiciary Committee filed a supplemental report (H. Rept. 106–733, Part 2).

On July 25, 2000, the House passed H.R. 3485 under suspension of the rules by voice vote.

Similar legislative language to H.R. 3485 was subsequently placed in H.R. 3244 by the conference committee. On October 5, 2000, the conference report on H.R. 3244 was filed (H. Rept. 106–939) and conferees agreed to the conference report.

On October 6, 2000, the House passed a rule and agreed to the conference report on H.R. 3244 by a vote of 371–1.

On October 11, 2000, the Senate agreed to the conference report on H.R. 3244 by a vote of 95–0.

On October 28, 2000, the President signed H.R. 3244 into law (Public Law 106–386).

Legislation Passed by the Judiciary Committee

H.R. 1520, the Child Status Protection Act of 1999

Immediate relatives (spouses, unmarried children under age 21, and parents) of United States citizens are eligible for permanent residence without numerical limitation. Other relatives of U.S. citizens and certain relatives of alien permanent residents may enter as family-based preference immigrants, which are subject to numerical limitations. To ensure that only the authorized number of visas are issued each fiscal year, the Department of State's Visa Office sets a constantly updated "cutoff date" for each preference category.

Subject to reasonable time for processing, the spouses, children and parents of U.S. citizens should receive their visas without delay. Unfortunately, many children of U.S. citizens are in jeopardy of losing their entitlement to a visa as an immediate relative because of the enormous backlog of adjustment of status cases that has developed at the INS. According to the INS, the backlog of unprocessed adjustment of status applications approaches one million and the servicewide average processing time for adjustment of status applications has approached three years.

Because of these delays, many immediate relative children will reach age 21 before they have a chance to receive a visa. When a child of a U.S. citizen "ages out" by turning 21, the child's application automatically shifts to the family first preference category. Depending on when the child's petition was initially filed and how quickly the cutoff date advances, the child can face a wait of anywhere from eighteen months to two years in addition to the adjustment of status processing delay. Because of the per-country limitation, the wait for some nationalities is much longer. For applicants from Mexico, the cutoff date is April 22, 1994. For applicants from the Philippines, it is May 1, 1988.

H.R. 1520 would have addressed the predicament of these children who, through no fault of their own, lose the opportunity to obtain a visa before they reach age 21. Under the bill, they still would have been processed in the family first preference category. However, they would no longer have had to wait for a visa based on the date of their petition but would have gone to the head of the line.

On April 22, 1999, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 1520.

On September 30, 1999, the Subcommittee on Immigration and Claims ordered H.R. 1520 reported to the Judiciary Committee by voice vote.

On October 5, 1999, the Judiciary Committee ordered H.R. 1520 reported to the House by voice vote.

No further action was taken on H.R. 1520 in the 106th Congress.

H.R. 1788, the Nazi Benefits Termination Act of 1999

H.R. 1788 would have rendered individuals who were determined to have been participants in Nazi persecution ineligible for federal public benefits. The Department of Justice's Office of Special Investigations (OSI) is responsible for investigating former Nazi persecutors who entered and established residence in the United States under false pretenses after the Second World War. In many cases OSI investigations lead to formal denaturalization and deportation proceedings that result in loss of federal public benefits, but in some cases former Nazi persecutors, once discovered, leave the United States voluntarily for fear of public disclosure and deportation. Those who leave voluntarily may continue to receive federal public benefits. Records indicate that 44 individuals who were charged as former Nazi persecutors had continued thereafter to collect Social Security benefits, and eight such individuals continued to receive such benefits as of June 1999. In addition, OSI continues to pursue hundreds of additional individuals who are believed to have participated in Nazi persecution and are still living in the United States. Former Nazi persecutors who evade final deportation orders may continue to receive federal public benefits for many years.

Under H.R. 1788, an immigration judge would have been able to hold a hearing to determine whether an individual was a participant in Nazi persecution, and the immigration judge's determination would have been subject to review by the Attorney General. If an individual was found to have been a participant in Nazi persecution, an immigration judge (or the Attorney General) would have issued an order prohibiting the individual from receiving federal public benefits. The individual would have been able to appeal such an order to the Court of Appeals for the Federal Circuit.

On May 13, 1999, Representative Bob Franks introduced H.R. 1788.

On June 22, 1999, the Subcommittee on Immigration and Claims ordered H.R. 1788 reported to the Judiciary Committee by voice vote.

On July 20, 1999, the Judiciary Committee ordered H.R. 1788 reported to the House by voice vote.

On July 21, 1999, the Government Reform Committee's Subcommittee on Government Management, Information and Technology ordered H.R. 1788 favorably reported to the Government Reform Committee by voice vote.

On September 14, 1999, the Judiciary Committee reported H.R. 1788 (H. Rept. 106–321, Part 1).

On September 30, 1999, the Government Reform Committee ordered H.R. 1788 reported to the House as amended by voice vote.

On October 6, 1999, the Government Reform Committee reported H.R. 1788 (H. Rept. 106–321, Part 2).

No further action was taken on H.R. 1788 in the 106th Congress.

H.R. 2121, the Secret Evidence Repeal Act of 1999

H.R. 2121 would have eliminated the Alien Terrorist Removal Court and generally prevented the Justice Department from continuing its longstanding practice of using classified or confidential evidence in selected national-security-related immigration proceedings.

Under H.R. 2121, in removing an alien who is a national security threat, opposing an application for admission, or opposing an application for discretionary relief from removal, the Department would have had to request that a federal district court judge prepare an unclassified summary of classified information for use in the proceeding. In other immigration proceedings, such as removal of illegal or criminal aliens, or applications for refugee status, asylum, permanent residence, or citizenship, neither the classified or confidential evidence, nor any unclassified summary thereof, would have been available to the Department.

To request an unclassified summary in the three types of cases described above, the Department would first have had to certify that the information could not be developed from open sources. The district court would have decided what, if any, classified summary could be provided to the alien, to the alien's attorney, and to the immigration judge adjudicating the proceeding. The immigration judge would not have seen the classified evidence, only the summary, and would have decided whether the summary should be used.

Outside that limited context, the bill would have prohibited the use of classified or confidential information in removal proceedings, bond proceedings relating to detention, proceedings to exclude aliens arriving in the United States, and adjudications of immigration benefits.

On June 10, 1999, Representative David Bonior introduced H.R. 2121.

On February 10, 2000, the Subcommittee on Immigration and Claims held a hearing on H.R. 2121. Testimony was received from Representative Bonior; U.S. Representative Campbell; Professor David Cole of Georgetown University Law Center; Ms. Nahla Al-Arian; and Mr. Larry Parkinson, General Counsel, Federal Bureau of Investigation, with additional material submitted by six individuals and organizations.

On May 23, 2000, the Judiciary Committee held a hearing on H.R. 2121. Testimony was received from Representatives Bonior and Campbell; Mr. Parkinson; Mr. Bo Cooper, General Counsel, Immigration and Naturalization Service; Mr. Gregory Nojeim, the American Civil Liberties Union; Professor Cole; Mr. Hany Kiareldeen; Ms. Al-Arian; Mr. Bruce Ramer, the American Jewish Committee; Mr. Thomas Homburger, the Anti-Defamation League; Mr. Steven Emerson; and Mr. Stephen Flatow.

On September 26, 2000, the Judiciary Committee ordered H.R. 2121 as amended reported to the House by voice vote.

On October 17, 2000, the Judiciary Committee reported H.R. 2121 (H. Rept. 106–981).

No further action was taken on H.R. 2121 in the 106th Congress.

H.R. 4548, the Agricultural Opportunities Act

Background

The Fruit, Vegetable, and Horticultural Specialty Industry and Labor Force

The branch of agriculture that relies most heavily on hired farmworkers, and hired immigrant farm workers, is that composed of fruit, vegetable, and horticultural specialty crops ("FVH"). As the Commission on Agricultural Workers states, "many farmers with several hundred acres of land raise crops which can be mechanically planted, tended and harvested, and need only one or two 'hired hands' to maintain their operations. In contrast, FVH-producing farmers are likely to need hundreds of seasonal employees to accomplish the same tasks." Many fruits and vegetables are still hand harvested and packed because they are so perishable and easily bruised.

FVH farmers rely on seasonal hiring that employs between 1 and 2 million workers annually. The average wage in 1998 for hired farmworkers was $6.18. In 1998–99, 52% of seasonal agricultural workers admitted to being illegal, up from 7% in 1989. Some estimate that the figure is up to 80%.

A FVH representative has stated that "The combination of increased INS enforcement activity, the verification programs of the Social Security Administration, shortages of legal U.S. workers of unprecedented proportions and an unworkable program for the legal admission of alien workers are having serious negative consequences on the agricultural industry *and* the agricultural work force. * * * [There is an] increasing frequency of farm labor shortages and crop losses and precipitated a problem which is rapidly reaching crisis proportions.” On the other hand, the Department of Labor believes there is an oversupply of farm labor. In a 1997 report, the General Accounting Office stated that “[t]here appears to be no national agricultural labor shortage now, although localized labor shortages may exist for individual crops and in specific geographical areas.” The GAO based its conclusion that major shortages will not develop on the theory that future INS enforcement efforts are unlikely to significantly reduce the number of illegal alien farmworkers. However, even if this prediction proves true, it is not good public policy to endorse a labor supply mechanism that relies on illegal labor.

The H–2A Temporary Agricultural Worker Program

The “H–2A” temporary agricultural worker program allows for aliens to come to perform agricultural labor or services of a temporary or seasonal nature. The Attorney General can approve an employer’s petition for an alien only after the employer has applied to the Secretary of Labor for a certification that:

> (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and
>
> (B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

A certification cannot be issued by the Secretary (1) during a strike or lockout, (2) if the employer has in the previous two year period substantially violated a material term or condition of a labor certification, (3) where the worker will not be covered under worker’s compensation unless the employer has given assurances that it will provide adequate insurance, or (4) if the employer has not made positive recruitment efforts within a region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers, who, if recruited, would be willing to work (this is in addition to the circulation through the interstate employment service system of the employer’s job offer). The employer’s job offer to U.S. workers shall offer no less than the same benefits, wages, and working conditions offered to H–2A workers.

Among additional requirements, (1) charges for food cannot exceed $5.26 per day, (2) free transportation must be provided between living quarters and worksites, (3) the employer shall guarantee to offer H–2As work for at least three fourths of the workdays of the period the work contract is in effect, (4) free housing must be provided to the H–2As meeting applicable standards, (5) wages, if paid by the hour, must be at least the adverse effect wage rate (the annual weighed average hourly wage rate for field and livestock workers for the region as determined by the Department of Agriculture), the prevailing hourly rate, or the minimum wage, whichever is highest, and (6) wages, if paid at a piece rate, must be supplemented if necessary to equal at least what the worker would have to be paid if he were paid hourly and must also not be less than the prevailing piece rate.

The Labor Department cannot require that applications be filed more than 60 days before the first date that the H–2As are needed. Applications must be approved not later than 20 days before the date the aliens are needed if the employer has met the certification criteria and the employer "does not have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services. * * *" Normally, an alien's stay can be for up to one year.

Expedited procedures are provided for denials or revocations of certifications.

Expectations were that applications would be made for 200,000 or more aliens each year. In 1996, only 9,635 aliens were admitted under the program. While utilization has increased somewhat since 1996 (the Department of Labor certified 41,827 workers in 1999, compared with 17,557 in 1996), it has never reached expectations.

Why the low numbers? A grower representative has testified that:

> The current H–2A temporary agricultural worker program is not working for three principal reasons. One is the structural problems built into the program. [The Department of Labor] ignored some of the most important of the H–2A streamlining provisions of the Immigration Reform and Control [Act. Second, t]he program is administered in a highly adversarial fashion. DOL regards H–2A applicants as potential, if not actual, lawbreakers and acts as though its mission is to keep employers out of the program rather than to help them use this program which Congress provided. The third reason the program is not working has to do with compliance enforcement and litigation. So-called farmworker advocates have for years strongly opposed the H–2A program. They have made both DOL and H–2A users targets for harassment and litigation. They have attempted to accomplish in the courts what they were unable to accomplish in Congress.

The General Accounting Office has found that "a large number of Labor's certifications are issued too late to ensure that employers will be able to get workers by the specified date of need." The Department of Labor "has acknowledged problems with the current H–2A program and is working administratively * * * to reengineer and streamline the program to better assure growers an adequate, predictable labor supply. * * *"

H.R. 4548, the Agricultural Opportunities Act

H.R. 4548 would have created a three year pilot program for agricultural guest workers using a new "H–2C" visa, with no cap on the number of visas available annually. Each visa would have been valid for up to ten months, plus an additional two-month extension if necessary. The bill would have created a central registry of American agricultural workers maintained by the Labor Department. When qualified American workers were not available from the registry, growers would have been allowed to recruit and employ alien labor under the H–2C program. As a grower representative has noted:

> The registry mechanism offers significant improvements over the current labor certification system. One of the most important of these is timeliness. Currently, employers seeking H–2A workers are required to file a labor certification application a minimum of 45 days in advance of the date workers are needed. This is followed by the cumbersome procedures for processing job orders and recruiting U.S. workers. * * *
>
> The registry mechanism is based on searching a computerized data bank of workers who have already indicated their interest in agricultural employment.

At least twenty-eight days before workers were needed, a grower would have had to apply for American workers from the registry before he could bring in H–2C workers. The grower's application would have had to include assurances that the work was temporary or seasonal, that he would advertise locally for American workers and contact former workers, and that he was not using aliens as strikebreakers.

The Labor Department would then have referred a sufficient number of qualified American workers from the registry by seven days before the grower's date of need, or, if there was a shortfall, notified the Departments of Justice and State of the number of H–2C visas that would have to be issued to eligible aliens to make up the difference. If the Labor Department failed to process the application in time, the grower could have applied directly to the State and Justice Departments for issuance of the necessary visas. The bill also provided expedited emergency procedures for obtaining H–2C workers if American workers referred from the registry were unwilling or unable to perform the job, of if a grower encountered unexpected and urgent labor requirements.

The Attorney General would have been required to establish a verification system to ensure that growers who hire H–2C workers did not also hire illegal aliens.

The bill would also have required growers to pay H–2C workers prevailing wages, provide them with housing (or a housing allowance under certain circumstances), and reimburse them for transportation costs. Each H–2C worker would have been given a reliable identification document that was counterfeit-resistant, tamper-resistant, and compatible with federal law enforcement databases. The Attorney General would have been required to verify that H–2C workers departed from the United States after the expiration of their visas.

On May 25, 2000, Representative Richard W. Pombo introduced H.R. 4548.

On June 15, 2000, the Subcommittee on Immigration and Claims held a hearing on H.R. 4548. Testimony was received from Representative Pombo; Mr. John R. Fraser, U.S. Department of Labor; Ms. Cindy Fagnoni, U.S. General Accounting Office; Dr. James S. Holt, National Council of Agricultural Employers; Mr. Robert Dolibois, American Nursery and Landscape Association; Mr. Mark Krikorian, Center for Immigration Studies; Mr. Marcos Camacho, United Farmworkers Union; Ms. Michelle Williamson, Williamson Berry Farms; Mr. Dewey L. Hukill, Texas Farm Bureau; Mr. William Buchanan, American Council for Immigration Reform; and Ms. Cecilia Munoz, National Council of La Raza, with additional material submitted by five individuals and organizations.

On July 27, 2000, the Subcommittee on Immigration and Claims ordered H.R. 4548 as amended reported to the Judiciary Committee by a vote of 7–0.

On September 20, 2000, the Judiciary Committee ordered H.R. 4548 as amended reported to the House by a vote of 16–11.

On October 17, 2000, the Judiciary Committee reported H.R. 4548 (H. Rept. 106–982, Part 1).

No further action was taken on H.R. 4548 in the 106th Congress.

Legislation Passed by the Ways and Means Committee

H.R. 984, the Caribbean and Central America Relief and Economic Stabilization Act

Section 401 of this trade liberalization legislation would have authorized $80,000,000 to be used by the INS to support increased detention requirements for criminal aliens from Central America held in detention and to address an expected influx of illegal immigrants from Central America.

On March 4, 1999, Representative Philip Crane introduced H.R. 984.

On June 10, 1999, the Ways and Means Committee ordered H.R. 984 reported as amended by voice vote.

On June 7, 2000, the Judiciary Committee was discharged from consideration of H.R. 984.

No further action on H.R. 984 was taken in the 106th Congress.

Language similar to H.R. 984 was placed in H.R. 434, the "African Growth and Opportunity Act", which the President signed into law on May 18, 2000 (Public Law 106–200). The language contained in section 401 was not included in H.R. 434.

Legislation Passed by the Subcommittee

H.R. 3918, Immigration Reorganization and Improvement Act of 1999

H.R. 3918 would have replaced the Immigration and Naturalization Service (INS) with two separate bureaus—the Bureau of Immigration Services and the Bureau of Immigration Enforcement. The bill responded to the recommendations made by the Commission on Immigration Reform, which stated that separating immigration enforcement and service functions would lead to more effective enforcement and improved service to the public. H.R. 3918 would have eliminated the mission conflict and overload of the current INS. The enforcement bureau would have been a true law enforcement agency that would remove illegal and criminal aliens, not release them back into our communities. The service bureau would have processed applications quickly and thoroughly.

In the established Bureau of Immigration Services, H.R. 3918 would have created the position of Director as the head of the Service Bureau. The Director would have reported directly to the Attorney General or her delegate. H.R. 3918 would have transferred from the Commissioner of the INS to the Director of the Bureau of Immigration Services all functions, personnel, infrastructure, and funding related to adjudications of nonimmigrant and immigrant visa petitions, naturalization petitions, asylum and refugee applications, adjudications performed at Service centers, and all other adjudications under the Immigration and Nationality Act performed by the INS. H.R. 3918 also would have created the position of Chief Financial Officer for the Bureau of Immigration Services within that bureau.

H.R. 3918 would have created the position of Director as the head of the Bureau of Immigration Enforcement. The Director would have reported directly to the Attorney General or her delegate. H.R. 3918 would have transferred from the Commissioner of the INS to the Director of the Bureau of Immigration Enforcement all functions, personnel, infrastructure, and funding related to the Border Patrol, detention and deportation, intelligence, investigations, and inspections. A Chief Financial Officer for the Bureau of Immigration Enforcement would also have been created.

H.R. 3918 would have required the Attorney General to submit to the Committees on Appropriations of the House of Representatives and the Senate a report on the proposed division and transfer of funds between the Bureau of Immigration Services and the Bureau of Immigration Enforcement, the proposed division of personnel between such bureaus, and a plan to carry out this Act.

H.R. 3918 also would have required the Attorney General to submit a plan to transfer the detention operations of the Bureau of Immigration Enforcement to the Federal Prison System.

On July 15, 1999, Representative Harold Rogers introduced H.R. 2528.

On July 29, 1999, the Subcommittee on Immigration and Claims held a hearing on H.R. 2528. Testimony was received from Inspector General Michael Bromwich, Department of Justice; Richard M. Stana, Associate Director, Administration of Justice Issues, General Government Division, General Accounting Office; Ernesto Hernandez; Margarita Muzzall; Jean Campbell, District Director, Office of U.S. Representative Dick Armey; Elizabeth Vuna, Director of Constituent Services, Office of U.S. Representative Stephen Horn; Beatriz Mancilla, District Representative, Office of U.S. Representative Peter Hoekstra; John Wood, Constituent Liaison, Office of U.S. Representative Bob Clement; U.S. Representative Harold Rogers; U.S. Representative Silvestre Reyes; Doris Meissner, Commissioner, Immigration and Naturalization Service; Susan Martin, Former Director, Commission on Immigration Reform; Paul Berg, President, United States Border Patrol Chiefs' Association; Richard Gallo, President, Federal Law Enforcement Officers Association; T.J. Bonner, President, National Border Patrol Council; Dennis Smith, Executive Vice President, National Immigration and Naturalization Service Council, American Federation of Government Employees, AFL–CIO; Mark Hetfield, Director, Hebrew Immigrant Aid Society.

On November 4, 1999, the Subcommittee on Immigration and Claims ordered H.R. 2528 as amended reported to the Judiciary Committee by voice vote.

On March 14, 2000, Representative Harold Rogers introduced H.R. 3918, a bill identical to the original version of H.R. 2528.

On March 22, 2000, the Subcommittee on Immigration and Claims ordered H.R. 3918 favorably reported to the Judiciary Committee by voice vote.

No further action on H.R. 3918 was taken in the 106th Congress.

H.R. 5285, Serious Human Rights Violators Accountability Act of 2000

H.R. 5285 would have defined "serious human rights violators" as aliens who were persecutors, violators of religious freedom, war criminals, those involved in committing genocide, torturers, and those who committed other serious crimes for political, religious, or discriminatory purposes.

H.R. 5285 would have amended the Immigration and Nationality Act to make serious human rights violators inadmissible and removable and to bar them from receiving immigration benefits, including refugee status, asylum, cancellation or withholding of removal, adjustment of status, and United States citizenship. H.R. 5285 would also have provided criminal penalties for serious human rights violators who re-entered the United States illegally and for those who assisted serious human rights violators to enter the United States.

Under H.R. 5285, when the Justice Department found serious human rights violators living in the United States, the INS would have had to arrest and detain them and begin removal proceedings. United States Attorneys would also have had to investigate to determine whether they should be criminally prosecuted. To ensure accountability, the Justice Department would have had to report to Congress every six months on its removal and prosecution efforts.

H.R. 5285 would also have created a right of action for U.S. individuals who identified serious human rights violators in the United States. Upon being informed by a U.S. citizen or legal permanent resident, by sworn statement under penalty of perjury, of an alleged serious human rights violator in the United States, the INS would have had to investigate the allegation and either remove the alien or issue a written determination that the alien was not a serious human rights violator. If the INS failed to act, the complainant would have been able to bring a civil action in federal court for injunctive relief and also receive reimbursement for reasonable attorneys fees and costs if successful.

H.R. 5285 would also have required the Attorney General to revise the regulations implementing the Convention Against Torture to render ineligible for withholding or deferral of removal under the Convention aliens who were "serious human rights violators," particularly serious criminals, had committed a serious nonpolitical crime outside the United States before arriving in the U.S., or were a danger to the security of the U.S.

On September 25, 2000, the Subcommittee on Immigration and Claims Chairman Lamar Smith introduced H.R. 5285.

On September 28, 2000, the Subcommittee on Immigration and Claims held a hearing on H.R. 5285. Testimony was received from U.S. Representative Mark Foley; Mr. Kevin Rooney, Director, Executive Office for Immigration Review; Mr. Bo Cooper, General Counsel, Immigration and Naturalization Service; Ms. Genevieve Augustin; Mr. Dan Stein, Executive Director, Federation for American Immigration Reform; and Ms. Elisa Massimino, Washington Office Director, Lawyers Committee for Human Rights.

On October 3, 2000, the Subcommittee on Immigration and Claims ordered H.R. 5285 favorably reported to the Judiciary Committee, as amended, by voice vote.

No further action on H.R. 5285 was taken in the 106th Congress.

H.R. 5377, extension of 212(h) waiver limitation

Currently, a lawful permanent resident who has an aggravated felony conviction is barred from applying for a waiver of inadmissability granted under section 212(h) of the Immigration and Nationality Act. However, an alien with no lawful status and an aggravated felony conviction can apply for such a waiver. H.R. 5377 would have extended the limitation on waivers under section 212(h) to aliens unlawfully present in the United States with aggravated felony convictions.

On October 3, 2000, the Subcommittee on Immigration and Claims ordered an original bill reported to the Judiciary Committee by voice vote.

On October 4, 2000, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced the text of the bill as H.R. 5377.

No further action on H.R. 5377 was taken in the 106th Congress.

H.R. 5378 clarification of continuous physical presence

H.R. 5378 would have amended the Immigration and Nationality Act to clarify the special rule relating to continuous residence or physical presence under section 240A(d) of the Act, relating to cancellation of removal.

On October 3, 2000, the Subcommittee on Immigration and Claims ordered an original bill reported to the Judiciary Committee by voice vote.

On October 4, 2000, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced the bill as H.R. 5378.

No further action on H.R. 5378 was taken in the 106th Congress.

H.R. 5379, clarification of mandatory detention provisions

Currently, section 236(c) of the Immigration and Nationality Act provides that "the Attorney General shall take into custody and alien who is" inadmissible or deportable for various crimes "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." H.R. 5379 would have clarified that the Attorney General is required to detain certain criminal aliens during removal proceedings, regardless of whether the INS arrests the alien immediately upon release from a criminal sentence.

On October 3, 2000, the Subcommittee on Immigration and Claims ordered an original bill reported to the Judiciary Committee by voice vote.

On October 4, 2000, Subcommittee on Immigration and Claims Chairman Lamar Smith introduced the bill as H.R. 5379.

No further action on H.R. 5379 was taken in the 106th Congress.

HEARINGS ON PUBLIC LEGISLATION NOT PROCESSED

IMMIGRATION

H.R. 1745

On May 18, 1999, the Subcommittee on Immigration and Claims held a hearing on H.R. 1745, a bill introduced by Representative Robert Andrews that would have amended the Immigration and Nationality Act to provide for the removal of aliens who associate with known terrorists. Testimony was received from Representative Andrews; Michael J. Wildes; and Bo Cooper, Acting General Counsel, Immigration and Naturalization Service.

H.R. 945, to deny to aliens the opportunity to apply for asylum in Guam

On May 18, 1999, the Subcommittee on Immigration and Claims held a hearing on H.R. 945, a bill introduced by Representative Robert Underwood that would have responded to a growing influx of illegal aliens into Guam by preventing aliens from applying for asylum in Guam. Testimony on H.R. 945 was received from Representative Underwood and from Captain Anthony S. Tangeman, U.S. Coast Guard.

H.R. 3058, the Anti-Atrocity Alien Deportation Act

On February 17, 2000, the Subcommittee on Immigration and Claims held a hearing on H.R. 3058, a bill introduced by Representative Mark Foley that would have made aliens who have committed acts of torture inadmissible and removable. It would also have established the U.S. Justice Department's Office of Special Investigations (OSI), which was created in 1979 as a temporary agency to track down Nazi war criminals in the U.S., as a permanent agency responsible for investigating, removing, denaturalizing, or prosecuting aliens guilty of Nazi persecutions, genocide, or torture. Testimony was received from Representative Foley; Mr. James Costello, Associate Deputy Attorney General, U.S. Department of Justice; and Mr. Richard Krieger, President, International Educational Missions, Inc.

CLAIMS

H.R. 1371 and H.R. 3295

On June 8, 2000, the Subcommittee on Immigration and Claims held hearings on H.R. 1371, a bill introduced by Representative Eleanor Holmes Norton, that would amended the Federal tort claims provisions of title 28, United States Code, to repeal the exception for claims arising outside the United States, and for other purposes, and H.R. 3295, a bill introduced by Representative Sam Farr, that would have provided for the payment of compensation to the families of the Federal employees who were killed in the crash of a United States Air Force CT–43A aircraft on April 3, 1996, near Dubrovnik, Croatia, carrying Secretary of Commerce Ronald H. Brown and 34 others. Testimony on H.R. 1371 was received from Representative Holmes Norton and Robin E. Jacobsohn, Deputy

Assistant Attorney General, U.S. Department of Justice. Testimony on H.R. 3295 was received from Representative Farr, Kenneth and Maureen Dobert, Darrell W. Darling, and Nora Poling.

H.R. 675, H.R. 3418, H.R. 3478, H.R. 3495, H.R. 4263, and H.R. 4398

On September 21, 2000, the Subcommittee on Immigration and Claims held hearings on H.R. 675, a bill introduced by Representative Paul E. Kanjorski, that would have provided jurisdiction and procedures for affording relief for injuries arising out of exposure to hazards involved in the mining and processing of beryllium, H.R. 3418, a bill introduced by Representative Paul Kanjorski, that would have established a compensation program for employees of the Department of Energy, its contractors, subcontractors, and beryllium vendors, who sustained a beryllium-related illness due to the performance of their duty, to establish a compensation program for certain workers at the Paducah, Kentucky, gaseous diffusion plant, to establish a pilot program for examining the possible relationship between workplace exposure to radiation and hazardous materials and illnesses or health conditions, and for other purposes, H.R. 3478, a bill introduced by Representative Marcy Kaptur, that would have established a compensation program for the contractors of the Departments of Energy and Defense and beryllium vendors who sustained a beryllium-related illness due to the performance of their duty, and for other purposes, H.R. 3495, a bill introduced by Representative Ted Strickland, that would have established a compensation program for Department of Energy employees injured in Federal nuclear activities, H.R. 4263, a bill introduced by Representative Tom Udall, that would have established a compensation and health care program for employees and survivors at the Department of Energy facility in Los Alamos, New Mexico who have sustained beryllium, radiation-related, asbestos, and hazardous substances injury, illness, or death due to the performance of their duties, and for other purposes, and H.R. 4398, a bill introduced by Representative Ed Whitfield, that would have established a compensation and health care program for employees of the Department of Energy, its contractors, subcontractors, and certain vendors, who have sustained beryllium and radiation-related injury, illness, or death due to the performance of their duties, and for other purposes. Testimony was received from U.S. Senator George Voinovich, Representative Kanjorski, Representative Kaptur, Representative Strickland, Representative Whitfield, Representative Mark Udall, Representative Zach Wamp, Representative Tom Udall, Bill Richardson, Secretary, U.S. Department of Energy, Dr. David Michaels, Assistant Secretary of the Office of Environment Safety and Health, U.S. Department of Energy; Lisa Ledwidge, Institute for Energy and Environmental Research; Steve Markowitz, Director, Center for the Biology of Natural Systems; Richard D. Miller, Policy Analyst, Paper, Allied-Industrial, Chemical and Energy Workers International Union; Ken Rosenman, M.D., Michigan State University; Dan Guttman, Esquire, former Executive Director, President's Advisory Committee on Human Radiation Experiments, Lawrence Repsher, M.D.; Donald Elisburg, Esquire, former Assistant Secretary of Labor for Employment Standards; Ann Orick; Sam Ray; Clara Harding; Ray Slaughter; and Pete Lopez.

FEDERAL CHARTERS

Subcommittee policy on new Federal charters

On March 4, 1999, 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 operations. 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, 103rd, 104th, and 105th Congress, 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.

H.R. 604—to amend the Charter of the Amvets Organization

H.R. 604 would amend the federal charter for the American Veterans of World War II, Korea, and Vietnam (AMVETS). In 1998, at the AMVETS annual convention, the delegates voted for an official name change from American Veterans of World War II, Korea, and Vietnam to American Veterans to more accurately reflect the membership of AMVETS. Additionally, the AMVETS have voted to change the structure of their governing body. H.R. 604 contains language to reflect the structural change. Finally, the organization has changed the location of their headquarters from the District of Columbia to Lanham, Maryland. Therefore, the "Headquarters and principal place of business" section of their charter needs to be changed to indicate they are now located in Maryland. In order for these changes to be recognized by the Department of Veterans Affairs the AMVETS federal charter has to be amended.

On February 4, 1999, Representative Bob Stump introduced H.R. 604.

On September 20, 2000, the Judiciary Committee ordered H.R. 604 as amended reported to the House by voice vote.

On September 27, 2000, the Judiciary Committee reported H.R. 604 (H. Rept. 106–904).

On December 15, 2000, the House passed H.R. 604 as amended without objection.

No further action on H.R. 604 was taken in the 106th Congress.

Private Claims and Private Immigration Legislation

During the 106th Congress, the Subcommittee on Immigration and Claims received referral of 34 private claims bills and 93 private immigration bills. The Subcommittee held no hearings on these bills. The Subcommittee recommended 5 private claims bills and 19 private immigration bills to the full Committee. The Committee ordered 5 private claims bills and 19 private immigration bills reported to the House.

The House passed 5 private claims bills and 18 private immigration bills reported by the Committee. Of the 5 private claims bill and 18 private immigration bills, 3 private claims bill and 18 private immigration bills were passed by the Senate and signed into law by the President. Two bills were still pending in the Senate at the close of the 106th Congress.

One private bill ordered reported by the full Committee was not approved by the full House prior to the close of the 106th Congress.

Oversight Activities

IMMIGRATION

Recent INS Decisions Impacting the Agency's Ability to Control Criminal and Illegal Aliens

On February 25, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on Recent INS Decisions Impacting the Agency's Ability to Control Criminal and Illegal Aliens. Testimony was received from U.S. Representative Silvestre Reyes; Doris Meissner, Commissioner, U.S. Immigration and Naturalization Service; Dan Stein, Executive Director, Federation for American Immigration Reform; Norman Rabkin, Director, accompanied by Evi Rezmovic, Assistant Director, Administration of Justice Issues, General Accounting Office; Most Reverend Nicholas DiMarzio, Auxiliary Bishop, Newark, NJ; and Professor Frank Bean, Ashbel Smith Professor of Sociology and Public Affairs, Population Research Center, University of Texas at Austin.

Issues Arising from Past Designations of Temporary Protected Status and Fraud in Prior Amnesty Programs

On March 4, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on Issues Arising from Past Designations of Temporary Protected Status and Fraud in Prior Amnesty Programs. Testimony was received from Paul Virtue, General Counsel, Immigration and Naturalization Service; Mark Krikorian, Executive Director, Center for Immigration Studies; Daniel Stein, Executive Director, Federation for American Immigration Reform; Elisa Massamino, Director, Lawyers Committee for Human Rights; Professor Monica Heppel, Mount Vernon College and Research Director, Inter-American Institute on Migration and Labor; and John F. Shaw, Former Assistant Commissioner for Investigations, U.S. Immigration and Naturalization Service.

The Impact of Immigration on Recent Immigrants and Black and Hispanic Citizens

On March 11, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on the Impact of Immigration on Recent Immigrants and Black and Hispanic Citizens. Testimony was received from Dr. L. Randall Wray, Senior Scholar, The Jerome Levy Economics Institute of Bard College; Professor George Borjas, John F. Kennedy School of Government, Harvard University; Dr. Steve Camarota, Center for Immigration Studies; Dr. Frank Morris; Dr. William Spriggs, Director of Research and Public Policy, National Urban League; Roy Beck; Professor Vernon Briggs, School of Industrial and Labor Relations, Cornell University; Dr. Georges Vernez, Director, Center for Research on Immigration Policy, RAND; Stephen Moore, Director, Fiscal Policy Studies, CATO Institute; Professor Mark Partridge, Department of Economics, St. Cloud (Minnesota) State University; and Professor Julian Betts, Department of Economics, University of California, San Diego.

Illegal Immigration Issues

On March 18, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on Illegal Immigration Issues. Testimony was received from Margaret Bianculli, Director, Sachem Quality of Life Organization; David J. Stoddard; Professor Peter Kwong, Director of Asian-American Studies, Hunter College; Dan Stein, Executive Director, Federation for American Immigration Reform; Elisa Massimino, Director, Lawyers Committee for Human Rights; Selena Walsh, Director of Policy and Communications, LULAC (League of United Latin American Citizens); Michael R. Bromwich, Inspector General, U.S. Department of Justice; Michael Cronin, Associate Commissioner for Programs, U.S. Immigration and Naturalization Service; Donna Hamilton, Principal Deputy Assistant Secretary for Consular Affairs, U.S. Department of State; Louis Nardi, Director of Investigations for Field Operations, U.S. Immigration and Naturalization Service; William R. Brownfield, Principal Deputy Assistant Secretary for International Narcotics and Law Enforcement Affairs, U.S. Department of State; and Amy Dale, Administrator of Detention Services, Federal Bureau of Prisons.

Benefits to the American Economy of a More Educated Workforce

On March 25, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on the Benefits to the American Economy of a More Educated Workforce. Testimony was received from Professor Barry Chiswick, Department of Economics, University of Illinois at Chicago; Dr. James R. Edwards, Jr.; Richard W. Judy, Director, Center for Workforce Development, Hudson Institute; Rebecca Burdette, Quan, Burdette and Perez; Randel K. Johnson, Vice President-Labor & Employee Benefits, U.S. Chamber of Commerce; William Archey, President and CEO, American Electronics Association; Kersi Shroff and Stephen Clarke, Senior Legal Specialists, Directorate of Legal Research, Western Law Division, Law Library of Congress; and Laura Reiff, Baker and McKenzie.

Law Enforcement Problems at the Border Between the United States and Canada, Focusing on the Issues of Drug Smuggling, Illegal Immigration and Terrorism

On April 14, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on Law Enforcement Problems at the Border Between the United States and Canada, Focusing on the Issues of Drug Smuggling, Illegal Immigration and Terrorism. Testimony was received from Michael Pearson, Executive Associate Commissioner, Field Operations, U.S. Immigration and Naturalization Service; Eugene Davis, Deputy Chief, U.S. Border Patrol, Blaine, Washington, U.S. Immigration and Naturalization Service; Michael Bromwich, Inspector General, U.S. Department of Justice; Robert Trotter, Assistant Commissioner, U.S. Customs Service; Dale Brandland, Sheriff, Whatcom County, Washington; Mark Hall, President, National Border Patrol Council Local 2599, Detroit, Michigan; David Harris, President, INSIGNIS Strategic Research; and Demetrios G. Papademetriou, Senior Associate, International Migration Policy Program, Carnegie Endowment for International Peace.

Nonimmigrant Visa Fraud

On May 5, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on Nonimmigrant Visa Fraud. Testimony was received from Michael Bromwich, Inspector General, U.S. Department of Justice; Jacquelyn Williams-Bridgers, Inspector General, U.S. Department of State; William Yates, Director of Immigration Services, U.S. Immigration and Naturalization Service; Gary Bradford, Assistant Director, Texas Service Center, U.S. Immigration and Naturalization Service; Nancy Sambaiew, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, U.S. Department of State; Jill Esposito, Post Liaison Division, Visa Office, Bureau of Consular Affairs, U.S. Department of State; John Ratigan, Paul, Weiss, Rifkind, Wharton & Garrison; Lynn Shotwell, American Council on International Personnel; and Mark Mancini, Wasserman, Mancini, & Chang.

Illegal Immigration Issues

On June 10, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on Illegal Immigration Issues. Testimony was received from Tobin Armstrong; Larry Vance, Chairman, Cochise County Concerned Citizens; Angie Morfin, Mothers Taking Action Against Gang Violence; Carol Joyal; Terry Anderson; Ezola Foster, Americans for Family Values; Dan Morris, Americans for an Immigration Moratorium; and Selena Walsh, Director of Policy and Communications, LULAC (League of United Latin American Citizens).

Immigration and Naturalization Service's Interior Enforcement Strategy

On July 1, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on the Immigration and Naturalization Service's Interior Enforcement Strategy. Testimony was received from Robert Bach, Executive Associate Commissioner for Policy and Planning, U.S. Immigration and Naturalization Service, John Fraser, Acting Administrator, Wage and Hour Division, U.S. Department of Labor; Richard Stana, Associate Director, Administration of Justice Issues, General Government Division, U.S. General Accounting Office; Robert Hill, Venable, Baetjer, Howard & Civiletti; Thomas Hammond; Judith Desantis, First Vice President, Federal Law Enforcement Officers Association; Daniel Stein, Executive Director, Federation for American Immigration Reform; David Amick, Sheriff, Woodbury County, Sioux City, Iowa; and Muzaffar Chishti, Director, Immigration Project, Union of Needletrades, Industrial and Textile Employees (UNITE).

Fraudulent Use of Social Security Cards and State and Local Identity Documents for Immigration Purposes

On July 22, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on Fraudulent Use of Social Security Cards and State and Local Identity Documents for Immigration Purposes. Testimony was received from Larry Stewart, Chief Document Examiner, Forensic Services Division, U.S. Secret Service; John Hotchner, Director, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, U.S. Department of State; James Hesse, Chief Intelligence Officer, Forensic Document Laboratory, U.S. Immigration and Naturalization Service; Richard Stana, Associate Director, Administration of Justice Issues, General Government Division, U.S. General Accounting Office; Glenna Donnelly, Assistant Deputy Commissioner, Office of Disability and Income, U.S. Social Security Administration; Detective Sergeant Robert Derbyshire, Supervisor Economic Crimes, Criminal Investigation Division, Baltimore County Policy Department; David Simcox, Chairman, Board of Directors Center for Immigration Studies; Susan Martin, Director, Institute for the Study of International Migration, Georgetown University; Michael Anderson, International Chair, Driver Licensing and Control, American Association of Motor Vehicle Administrators; and Representative (Conn.) Brain Flaherty, National Conference of State Legislatures.

H–1B Temporary Professional Worker Visa Program and Information Technology Workforce Issues

On August 5, 1999, the Subcommittee on Immigration and Claims held an oversight hearing on H–1B Temporary Professional Worker Visa Program and Information Technology Workforce

Issues. Testimony was received from Austin Fragomen, Chairman, American Council on International Personnel; David Smith, Director, Public Policy Department, AFL–CIO; Crystal Neiswonger, TRW, on behalf of the National Association of Manufacturers; Gene Nelson; John Miano, the Programmers Guild; Alison Cleveland, Associate Manager of Labor Policy, U.S. Chamber of Commerce; Paul Kostek, President, Institute of Electrical and Electronics Engineers-USA; and Charles Foster, Tindall & Foster.

Terrorist Threats to the United States

On January 25, 2000, the Subcommittee on Immigration and Claims held an oversight hearing on Terrorist Threats to the United States. Testimony was received from Ambassador Martin Collacott, Canadian Department of External Affairs (retired); Steven Emerson; David Harris, former Chief of Strategic Planning, Canadian Security Intelligence Service (retired); Christopher Sands, Fellow and Director, Canada Project, Center for Strategic and International Studies; Gary Stubblefield, President, Global Options LLC; John Thompson, Director, the Mackenzie Institute; and Ambassador Philip C. Wilcox, U.S. State Department (retired).

Visa Waiver Pilot Program

On February 10, 2000, the Subcommittee on Immigration and Claims held an oversight hearing on the Visa Waiver Pilot Program. Testimony was received from Robert Ashbaugh, Acting Inspector General, U.S. Department of Justice; Ambassador Mary A. Ryan, Assistant Secretary for Consular Affairs, U.S. Department of State; Mike Cronin, Acting Associate Commissioner, Office of Programs, U.S. Immigration and Naturalization Service; Elisa Liang, Associate Deputy Attorney General, U.S. Department of Justice, accompanied by James McAtamney, Counsel to the Deputy Attorney General for National Security; Bill Norman, President and CEO, Travel Industry Association; E. Wayne Merry, Director, Program on European Societies in Transition, The Atlantic Council of the United States; and John Ratigan, Paul, Weiss, Rifkind, Wharton & Garrison.

The Status of Regulations Implementing the American Competitiveness and Workforce Improvement Act of 1998

On May 25, 2000, the Subcommittee on Immigration and Claims held an oversight hearing on the Status of Regulations Implementing the American Competitiveness and Workforce Improvement Act of 1998". Testimony was received from John Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor; John Spotila, Administrator, Office of Information Policy and Regulatory Affairs, U.S. Office of Management and Budget; John Templeton, Co-Convener, Coalition for Fair Employment in Silicon Valley (accompanied by Kevin Hinkston, Co-Convener, Coalition for Fair Employment in Silicon Valley); and Frank Brehm, the Programmer's Guild.

Evaluating the Religious Worker Visa Programs

On June 29, 2000, the Subcommittee on Immigration and Claims held an oversight hearing on Evaluating the Religious Worker Visa Programs. Testimony was received from Mildred Patterson, Managing Director, Visa Office, U.S. Department of State; John Brennan, Consular Office, U.S. Department of State; Jess Ford, Associate Director, International Relations and Trade Issues, U.S. General Accounting Office; and William A. Yates, Director of Immigration Services, U.S. Immigration and Naturalization Service.

Inspector General's Report, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative"

On September 7, 2000, the Subcommittee on Immigration and Claims held an oversight hearing on Inspector General's Report, "An Investigation of the Immigration and Naturalization Service's Citizenship USA Initiative". Testimony was received from Robert L. Ashbaugh, Deputy Inspector General, U.S. Department of Justice.

Oversight Regarding Criminal Aliens Released by INS

In 1999, a number of highly-publicized cases highlighted the problem of criminal aliens whom the INS failed to remove from the United States or transfer for criminal prosecution. Instead, the INS released thousands of criminal aliens who subsequently committed additional serious crimes in the United States.

Subcommittee on Immigration and Claims Chairman Lamar Smith sent a formal inquiry to Attorney General Janet Reno on July 14, 1999, requesting detailed information on inadmissible or deportable criminal aliens who were released from INS custody and then subsequently convicted of additional crimes committed in the United States. The letter requested information identifying such criminal aliens and describing their history of criminal activity. However, the Attorney General failed to respond in a timely or responsive manner. In addition, the INS had previously failed to provide two statutorily mandated reports, due in September 1998 and March 1999, respectively, regarding the release from INS detention of criminal aliens.

On August 4, 1999, the Subcommittee on Immigration voted to authorize the issuance of a subpoena duces tecum to obtain the requested and overdue information. The subpoena was approved and signed by Judiciary Committee Chairman Henry H. Hyde.

In response to the subpoena, the INS provided the two overdue statutorily mandated reports and attempted to negotiate with the Committee the terms of its response to Chairman Smith's July 14, 1999 letter. However, the negotiations were ultimately inconclusive. By letter dated February 9, 2000, Chairman Hyde and Chairman Smith stated that if requested information was not provided by February 28, 2000, the Committee had every intention of enforcing the subpoena according to its original terms.

In response to the February 9, 2000 letter, the INS complied with the subpoena. Information provided by the INS regarding 35,318 criminal aliens released by the agency between October 1, 1994 and May 31, 1999, indicated that about 37 percent of them had been convicted of another crime in the United States after their release by the INS.

Oversight Regarding Illegal Immigration Statistics

As of October 2000, the INS had not updated its official estimates on illegal immigration since its 1996 statistical report. Beginning in 1997, INS officials indicated on a number of occasions that new information was available, but none was released.

On June 21, 2000, Subcommittee on Immigration and Claims Chairman Lamar Smith formally requested an up-to-date statistical report on illegal immigration by July 5, 2000. The INS replied that it expected to release revised estimates by the end of August 2000. However, no information was provided. In September 2000 the INS stated that it would provide a report to Congress on September 28, 2000, but then canceled the release a few hours before it was to occur.

On October 4, 2000, the Subcommittee on Immigration voted to authorize the issuance of a subpoena duces tecum to obtain the report prepared but withheld by the INS. The subpoena was approved and signed by Judiciary Committee Chairman Henry J. Hyde.

In response to the subpoena, the INS provided the requested report. Data in the report indicated that in the years immediately following a major amnesty for illegal aliens enacted in 1986, there was a significant upsurge in illegal immigration.

Refugee consultations

I. Fiscal year 1999

On June 22, 1999, Members of the Judiciary Committee met with Undersecretary of State for Political Affairs Thomas R. Pickering and other Administration officials to discuss the Administration's proposal for an additional 20,000 numbers for emergency refugee admissions for Kosovar refugees in fiscal year 1999.

By letter dated July 1, 1999, the Department of State advised the Chairman of the Judiciary Committee of plans to add 3,000 numbers to the East Asia ceiling by transferring 2,000 numbers from the unallocated reserve and 1,000 numbers from the Latin American allocation.

On August 12, 1999, President Clinton issued Presidential Determination No. 99–33, which provided an additional 13,000 numbers for emergency refugee admissions for Kosovar refugees in fiscal year 2000.

By letter dated September 16, 1999, the Department of State advised the Chairman of the Judiciary Committee of plans to add 1,000 numbers to the Africa ceiling and balance that increase by reducing the East Asia ceiling by 1,000 numbers.

By letter dated September 27, 1999, the Department of State advised the Chairman of the Judiciary Committee of plans to add 250 numbers to the Latin America/Caribbean ceiling, add 250 numbers to the Near East/South Asia ceiling, and balance those increases by reducing the East Asia ceiling by 500 numbers.

By letter dated October 22, 1999, the Department of State advised the Chairman of the Judiciary Committee that fiscal year 1999 admissions totaled 85,006.

II. Fiscal year 2000

On September 22, 1999, Members of the Judiciary Committee met with Deputy Secretary of State Talbott and other Administration officials to discuss the Administration's proposal for refugee admissions in fiscal year 2000. That proposal was as follows:

Areas of Origin:

	Proposed Ceiling
Africa	18,000
East Asia	8,000
Europe:	
Former Yugoslavia (including 10,000 for Kosovo)	27,000
NIS//Baltics	20,000
Latin America/Caribbean	3,000
Near East/South Asia	8,000
Unallocated Reserve	6,000
Total	90,000

On September 30, 1999, President Clinton issued Presidential Determination No. 99–45, which put into force a fiscal year 2000 worldwide refugee ceiling of 90,000. This final determination was identical to the Administration's original proposal.

By letter dated July 24, 2000, the Department of State advised the Chairman of the Judiciary Committee of plans to add 1,500 numbers to the Near East/South Asia ceiling, add 500 numbers to the Latin America/Caribbean ceiling, and balance those increases by reducing the NIS/Baltics ceiling by 2,000 numbers.

By letter dated October 16, 2000, the Department of State advised the Chairman of the Judiciary Committee that fiscal year 2000 admissions totaled 72,518.

III. Fiscal year 2001

On September 14, 2000, 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 2001. That proposal was as follows:

Areas of Origin:

	Proposed Ceiling
Africa	20,000
East Asia	6,000
Europe:	
Former Yugoslavia	20,000
NIS/Baltics	17,000
Latin America/Caribbean	3,000
Near East/South Asia	10,000
Unallocated Reserve	4,000
Total	80,000

On September 29, 2000, President Clinton issued Presidential Determination No. 2000–32, which put into force a fiscal year 2001 worldwide refugee ceiling of 80,000. This final determination was identical to the Administration's original proposal.

SUBCOMMITTEE ON THE CONSTITUTION

CHARLES T. CANADY, Florida, *Chairman*

HENRY J. HYDE, Illinois
ASA HUTCHINSON, Arkansas
SPENCER BACHUS, Alabama
BOB GOODLATTE, Virginia
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
LINDSEY O. GRAHAM, South Carolina

MELVIN L. WATT, North Carolina
MAXINE WATERS, California
BARNEY FRANK, Massachusetts
JOHN CONYERS, JR., Michigan
JERROLD NADLER, New York

Tabulation of subcommittee legislation and activity

Legislation referred to Subcommittee	132
Legislation reported favorably to full Committee	7
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	3
Legislation pending before the full Committee	0
Legislation reported to the House	9
Legislation discharged from the full Committee	9
Legislation pending in the House	3
Legislation passed the House	19
Legislation pending in the Senate	9
Legislation failed passage by the House	2
Legislation vetoed by the President (not overridden)	0
Legislation enacted into public law	4
Legislation on which hearings were held	17
Day of hearings (legislative and oversight)	25

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

The ADA Notification Act

A legislative hearing on H.R. 3590, the "ADA Notification Act," was held by the Subcommittee on the Constitution on May 18, 2000. Witnesses testifying at the hearing were Congressman Mark Foley; Congressman E. Clay Shaw, Jr.; Clint Eastwood; Donna M. and David Batelaan, Lakeworth, Florida; Steven Rattner, College Park, Maryland; Terri L. Davis, Rancho Santa Fe, California; Kyle Glozier, New Freeport, Pennsylvania; Christine Griffin, Executive Director, Disability Law Center, Inc., Boston Massachusetts; Joe Fields, Jr., Attorney, West Palm Beach, Florida; Andy Levy, Attorney, Baltimore, Maryland; Christopher G. Bell, Attorney, Minneapolis, Minnesota; Frederick A. Shoz, ADA Consulting Associates, Ft. Lauderdale, Florida; and Tammy K. Fields, Assistant County Attorney, Palm Beach County, Florida. No further action was taken on the measure.

Since the Americans with Disabilities Act ("ADA") became law a decade ago, it has done much to make public accommodations more accessible to everyone. That progress, however, is being threatened by a growing number of lawyers who are generating huge sums in legal fees for pointing out often simple fixes that would bring properties into compliance with the ADA's accessibility standards. This variety of litigation abuse stems from the lack of any notification provision in the ADA. This gap in the law now poses the danger that attorneys who continue to exploit it will needlessly foment ill will between the disabled community and business owners who would in good faith bring properties into compliance with the ADA if only they were alerted to the law's requirements.

H.R. 3590 would amend the ADA by providing that a court would not have jurisdiction in a case brought under the ADA unless, before filing the complaint, the plaintiff has provided to the defendant notice of the alleged violation, by registered mail or in person, that identifies the specific facts that constitute the alleged violation, and that 90 days have passed during which time the defendant has not corrected the alleged violation. H.R. 3590 also provided that the court may impose and enforce appropriate sanctions upon attorneys failing to meet the 90-day notice requirement.

Armed Services Building Used As Polling Places

On September 21, 2000, H.R. 5174, which would remove the uncertainty regarding the authority of the Department of Defense to permit buildings located on military installations and reserve component facilities to be used as polling places in Federal, State, and local elections for public office, was referred to the Subcommittee on the Constitution. On October 12, 2000, H.R. 5174 was considered by the House under a suspension of the rules and agreed to by the yeas and nays, 297 to 113.

Born-Alive Infants Protection Act

On April 13, 2000, Subcommittee Chairman Charles T. Canady introduced the "Born Alive Infants Protection Act of 2000" (H.R. 4292), a bill that would firmly establish that, for purposes of federal law an infant who is completely expelled or extracted from her mother and who is alive is, indeed, a person under the law—regardless of whether or not her lung development is believed to be, or is in fact, sufficient to permit long-term survival, and regardless of whether the baby survived an abortion. The Committee's Subcommittee on the Constitution held one day of hearings on H.R. 4292 on July 20, 2000. Testimony was received from several witnesses: Prof. Hadley Arkes, Edward Ney Professor of Jurisprudence and American Institutions, Amherst College; Allison Baker, Charlottesville, Virginia; Jill L. Stanek, Mokena, Illinois; Matthew G. Hile, Ph.D., St. Louis, Missouri; Gianna Jessen, Franklin, Tennessee; Honorable Stephanie Tubbs Jones (D–OH); Kenneth Thomas, Legislative Attorney, American Law Division, Congressional Research Service, The Library of Congress; Prof. Gerard V. Bradley, Professor of Law, Notre Dame Law School; Dr. F. Sessions Cole, M.D., Professor of Pediatrics and Cell Biology and Physiology, Washington University School of Medicine, St. Louis, Missouri; Dr. Watson A. Bowes, Jr., M.D., Professor Emeritus, Department of Obstetrics and Gynecology, University of North Carolina at Chapel Hill School of Medicine; and Prof. Robert P. George, McCormick Professor of Jurisprudence, Department of Politics, Princeton University.

On July 26, 2000, the Committee met in open session and ordered favorably reported the bill H.R. 4292, without amendment, by a recorded vote of 22 to 1. H.R. 4292 passed the House on September 26, 2000, by a vote of 380 to 15. Senator Rick Santorum introduced an identical bill in the Senate on September 27, 2000 (S. 3127), but no further action was taken on the measure.

The Bounty Hunter Responsibility Act

The Subcommittee held a legislative hearing on H.R. 2964, the "Bounty Hunter Responsibility Act of 1999" on March 30, 2000. Witnesses testifying at the hearing were Representative Asa Hutchinson; Representative Peter Deutsch; Chinelle Moore, Laurel, Maryland; Theresa Babb, Wilmington, North Carolina; Pamela Read, Coventry, Rhode Island; Jerry Watson, General Counsel, National Association of Bail Insurance Companies; Jonathan Drimmer, Chevy Chase, Maryland; Roger Moore, Attorney at Law, Roger Moore, P.C.; Sheldon Nahmod, Professor of Law, Chicago-Kent Law School; Russell Stanford, Detective, Fraternal Order of Police; Milton Hirsch, Attorney at Law; Tom Nickolich, AAA Bailbond Company; Armando O. Roche, President, Professional Bail Agents of the United States; and John Stein, National Organization for Victim Assistance. No further action was taken on the measure.

After an arrest but before trial, most defendants hire bail bondsmen to post a bond with the court to secure the defendant's release. Bondsmen seeking defendants who either have fled or have missed a court date generally employ bounty hunters who are vested with the bondsman's powers. These bounty hunters are generally considered to have the power to search for and arrest a defendant on bond similar to those of a law enforcement official pursuing an escaped prisoner. Thus, bounty hunters need not obtain, under current law, arrest or search warrants and they need not "knock and announce" before searching.

H.R. 2964, "The Bounty Hunter Accountability Act of 1999," would have established an incentives structure that would encourage the licensing of bounty hunters and bolster their professionalism. The bill is intended to deem bounty hunters, any surety on a bail bond, and any agent of such surety, "state actors" under 42 U.S.C. § 1983 whose powers would be consistent with the police powers most analogous to theirs, that is, those of a police officer pursuing an escaped offender. Under H.R. 2964, a bounty hunter would retain roughly the authority that he currently has and would only be liable to the extent that he exceeds the authority given him under common law interpretations, such as by utilizing excessive force or by performing a false arrest. Under the bill, a surety or agent of a surety is absolved of responsibility for the conduct of a bounty hunter entirely if the surety or agent takes all reasonable steps to assure that the bounty hunter is licensed in a State that requires licenses, or is licensed as a private investigator in a State requiring such licenses.

Celebrating One America

On June 22, 1999, Representative Rangel introduced Celebrating One America, a resolution which expresses the sense of Congress that all people in the United States should reach out across our differences in ethnicity, race, and religion to respect each other and to celebrate, in friendship and unity, one America. The resolution was referred to the Subcommittee on the Constitution on June 28, 1999. On October 13, 1999, the Committee on Judiciary discharged H. Con. Res. 141. The House passed H. Con. Res. 141 by unanimous consent. The Senate received and referred the resolution to the Committee on Judiciary on October 14, 1999. H. Con. Res. 141 was ordered to be reported by the Senate Judiciary Committee without amendment on November 4, 1999. The resolution was agreed to in Senate without amendment and with a preamble by unanimous consent on November 19, 1999 and sent to the House on November 22, 1999.

Child Custody Protection Act

On March 23, 1999, Congresswoman Ileana Ros-Lehtinen introduced the "Child Custody Protection Act" (H.R. 1218), a bill that would make it a federal offense to transport a minor across state lines for the purpose of obtaining an abortion if that action circumvents a state law requiring parental involvement in a minor's abortion. The Committee's Subcommittee on the Constitution held a hearing on H.R. 1218 on May 27, 1999. Testimony was received from the following witnesses: Eileen Roberts, Mothers Against Minors' Abortions, Inc.; Billie Lominick of Newbury, South Carolina; Prof. Lino A. Graglia, A. Dalton Cross Professor of Law, University of Texas School of Law; Dr. Jonathon D. Klein, M.D., American Academy of Pediatrics; and Prof. John C. Harrison, Professor of Law, University of Virginia School of Law. Additional material was submitted by Prof. Stephen B. Presser, Raoul Berger Professor of Legal History, Northwestern University School of Law; National Right to Life Committee, Inc.; Center for Reproductive Law and Policy; National Abortion and Reproductive Rights League; and the American Civil Liberties Union.

On June 8, 1999, the Subcommittee on the Constitution met in open session and ordered reported the bill H.R. 1218, without amendment, by voice vote. On June 23, 1999, the Committee met in open session and ordered reported favorably the bill, H.R. 1218, without amendment, by a recorded vote of 16 to 13. H.R. 1218 passed the House on June 30, 1999, by a vote of 270 to 159. Senator Spencer Abraham introduced an identical bill in the Senate (S. 661) on March 18, 1999. No further action was taken on the measure.

Civic Participation and Rehabilitation Act

On March 2, 1999, Representative John Conyers, Jr. introduced H.R. 906, the "Civic Participation and Rehabilitation Act of 1999," which was referred to the Subcommittee on March 16, 1999. The Civic Participation and Rehabilitation Act of 1999 is designed to secure the federal voting rights of persons who have been released from incarceration. On October 21, 1999, the Subcommittee held a hearing on the bill. Testimony was received from the following witnesses: Representative Danny K. Davis; Marc Mauer, Assistant Director, The Sentencing Project; Roger Clegg, Vice President and General Counsel, Center for Equal Opportunity; Gillian E. Metzger, Staff Attorney, Brennan Center for Justice at NYU School of Law; Viet D. Dinh, Associate Professor of Law and Deputy Director of Asian Law and Policy Studies Program, Georgetown University Law Center; Todd F. Gaziano, Senior Fellow in Legal Studies, The Heritage Foundation; and Hilary O. Shelton, Director to the Washington Bureau of the National Association for the Advancement of Colored People. No further action was taken on the measure.

The Electronic Communications Privacy Act of 2000 and the Digital Privacy Act of 2000

H.R. 5018, the "Electronic Communication Privacy Act of 2000," was introduced on July 27, 2000, by the Chairman of the Constitution Subcommittee, Charles T. Canady. H.R. 4987, the "Digital Privacy Act," was introduced on July 27, 2000, by Representative Bob Barr. A legislative hearing on H.R. 5018 and H.R. 4987 was held on September 6, 2000. Witnesses testifying at the hearing were Kevin DiGregory, Deputy Associate Attorney General, Department of Justice accompanied by David Green, Deputy Chief, Computer Crime and Intellectual Property Section; James Dempsey, Senior Staff Counsel, the Center for Democracy and Technology; Gregory Nojeim, Legislative Council, the American Civil Liberties Union; Robert Corn-Revere, Hogan & Hartson; and Marc Rotenberg, Director, Electronic Privacy Information Center.

H.R. 5018 resulted in part from issues raised during an oversight hearing on "Fourth Amendment Issues Raised by the FBI's 'Carnivore' Program" and "The Fourth Amendment and the Internet," which were held by the Subcommittee on the Constitution on April 6, 2000, and July 24, 2000, respectively.

The development of the Internet as a networked global communications medium, the expansion in the range of transactions that occur "on-line," and the amount of information now stored with third party "Internet service providers" have produced a qualitative change in the nature of communications and, accordingly, in the nature and amount of information that may be obtained by the government. In light of these recent developments, many have asked whether existing statutes protecting citizens from "unreasonable searches and seizures" under the Fourth Amendment appropriately balance the concerns of law enforcement with individuals' concerns that a sufficient degree of privacy and the integrity of personal information are maintained in an age of modern communications and information storage.

The intent of H.R. 5018 was to balance the need for privacy and effective law enforcement in the digital age. H.R. 5018, among other things, sought to raise the standard for the government's access to the transactional data regarding a person's communications obtained with so-called pen register or trap and trace devices; to require the federal government to report annually on the number of requests it makes to disclose the contents of stored electronic communications; and to require high-level Department of Justice approval for interceptions of electronic communications, as is currently required for interceptions of wire and oral communications. H.R. 5018 also would have helped law enforcement capture criminals in the computer age by allowing electronic communications service providers to disclose to law enforcement basic customer records, such as name and address, in certain emergency situations, allowing law enforcement to use devices that track the source and destination of criminal communications without a court order for up to 48 hours in situations involving national security and ongoing attacks on computer networks, and by raising the maximum penalty for the most serious computer violations to ten years in prison.

On September 14, 2000, the Subcommittee ordered favorably reported to the full Committee the bill H.R. 5018 as amended by a voice vote. On September 26, 2000, the full Committee order favorably reported (H. Rept. 106–932, filed October 4, 2000) the bill to the House as amended by a vote of 20 to 1. No further action was taken on the measure.

To amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics

On September 21, 1999, Representative Joe Scarborough introduced legislation "To amend the Ethics in Government Act of 1978 to reauthorize funding for the Office of Government Ethics" (H.R. 2904) through fiscal year 2003. H.R. 2904 was jointly referred to both the Committee on the Judiciary and the Committee on Government Reform.

The Committee on the Judiciary discharged H.R. 2904 on November 2, 1999. The Committee on Government Reform reported the bill on that same date with an amendment to the Federal criminal code provisions concerning bribery, graft, and conflicts of interest. That amendment would include within the definition of "special Government employee" a Reserve officer or officer in the National Guard who is serving voluntarily for not to exceed 130 days during any period of 365 consecutive days. The amendment would also include as an "officer" and "employee" the following: (1) an individual retained, designated, appointed, or employed in the U.S. Government or in the District of Columbia government to perform with or without compensation and subject to the supervision of the President, Vice President, Member of Congress, Federal judge, or officer or employee of the U.S. or District Government a Federal or District function (as defined in this Act) under authority of law or executive Act; (2) a Reserve officer or officer in the National Guard who is serving voluntarily for not to exceed 130 days during any period of 365 consecutive days; and (3) the President, Vice President, Member of Congress, or Federal judge to the extent specified under such provisions. The amendment would exclude as an officer or employee or special Government employee: (1) enlisted members of the armed forces; and (2) an individual who is retained, designated, or appointed without compensation specifically to act as a representative of an interest on an advisory committee established pursuant to the Federal Advisory Committee Act or any similarly established committee whose meetings are generally open to the public. On a motion to suspend the rules, H.R. 2904 passed the House, as amended, on November 8, 1999 by a vote of 386 to 1.

Senator Fred Thompson introduced similar legislation in the Senate on August 15, 1999, reauthorizing the Office of Government Ethics through fiscal year 2003. That bill, S. 1503, passed in the Senate by unanimous consent on November 19, 1999. S. 1503 was sent to the House and referred to both the Committee on the Judiciary and the Committee on Government Reform on February 8, 2000. No further action was taken on the measure.

Flag Protection Amendment

On March 23, 1999, the Subcommittee on the Constitution held a hearing on H.J. Res. 33, a joint resolution proposing to amend the Constitution of the United States to allow Congress to prohibit the physical desecration of the flag of the United States. The proposed amendment reads simply: "The Congress shall have the power to prohibit the physical desecration of the flag of the United States." The amendment itself does not prohibit flag desecration. It merely empowers Congress to enact legislation to prohibit the physical desecration of the flag and establishes boundaries within which it may legislate.

At the March 23, 1999 hearing, the Subcommittee received testimony from 13 witnesses: Representative Randy "Duke" Cunningham; Representative Steve Buyer; Representative John Lewis; Representative John Sweeney; Representative Wayne Gilchrest; Mr. Stephan Ross, concentration camp survivor and senior staff psychologist for the City of Boston Community Schools and Centers; Stephen Presser, Raoul Berger, Professor of Legal History, Northwestern University School of Law; Major General Patrick Brady (USA-Ret), Chairman of the Citizen Flag Alliance's Board of Directors; Bishop Carlton Pearson, presiding Bishop over the Azusa Interdenominational Fellowship, Shawntel Smith, former Miss America from Oklahoma; Captain Joseph F. Rogers, (U.S.N.R.-Ret.), corporate counsel, Alcatel USA; David Skaggs, former United States Representative and current Executive Director of the Democracy and Citizenship Program at the Aspen Institute; and Douglas C. Clifton, executive editor of the Miami Herald.

On April 14, 1999, the Subcommittee on the Constitution held a markup of H.J. Res. 33 and ordered it favorably reported to the full Committee, without amendment, by a vote of 7 to 4. On May 26, 1999, the full Committee met in open session and ordered H.J. Res. 33 favorably reported to the House, without amendment, by voice vote. (H. Rept. 106–191).

The House passed H.J. Res. 33 on June 24, 1999 by a vote of 305–124. The Senate Judiciary Committee reported an identical joint resolution, S.J. Res. 14, on April 29, 1999 (S. Rept. 106–246).

The Senate voted on S.J. Res. 14 on March 29, 2000, and it failed to attain the necessary two-thirds majority, 63–37.

Adding the Martin Luther King, Jr. Holiday to the Flag Code

On May 19, 1999, the Committee met in open session and ordered reported favorably, without amendment and by voice vote, H.R. 576 (H. Rept. 106–176). No hearing was held on H.R. 576 prior to the May 9, 1999 Judiciary Committee markup session. The legislation passed the House by voice vote on October 12, 1999. The Senate Judiciary Committee passed an identical version of H.R. 576, S. 322 (no report was filed), on April 12, 1999. The bill passed the Senate by unanimous consent on June 14, 1999. S. 322 was considered under unanimous consent by the House on October 12, 1999 and it passed without objection. S. 322 was signed by the President and became Public Law 106–80 on October 12, 1999.

H.R. 576 amends 4 U.S.C. § 6(d) to add the Martin Luther King, Jr. holiday to the list of days on which the flag should be especially displayed. Currently, all nine other permanent Federal holidays are listed in the Flag Code to remind Americans to show respect for the people and events that have shaped our nation. However, when Congress passed the legislation creating the King holiday in 1983, it failed to include additional language to the bill that would have amended the Flag Code to include this new holiday on the list of days on which the flag should be especially displayed. H.R. 576 is simple, straightforward legislation that aims to correct the oversight that left the Dr. Martin Luther King, Jr., holiday off the U.S. Flag Code's list of days on which Americans are encouraged to display the American flag.

Innocent Child Protection Act of 2000

On July 19, 2000, Representative Ros-Lehtinen introduced H.R. 4888. The bill was held at the full Committee. The legislative history of H.R. 4888 is detailed in the full Committee section in this report.

The Justice in Fair Housing Act

The Subcommittee held a legislative hearing on H.R. 2437, the "Justice in Fair Housing Enforcement Act of 1999" on October 28, 1999. Witnesses testifying at the hearing were Len Tozer, Tozer Builders, Inc., Winterville, North Carolina, William J. Malleris, President, Maple Court Development, Inc., Naperville, Illinois, Mark Ellis Tipton, Chief Executive Officer and Chairman of the Board of Directors, SMART HOUSE, Inc. and past President of the National Association of Home Builders, Brian D. Black, Director of Building Codes and Standards, Eastern Paralyzed Veterans Association, Buffalo, New York, Paul E. Myers, Assistant Director of the City of Cincinnati's Department of Buildings and Inspections, Cincinnati, Ohio and President of the Building Officials and Code Administrators International Inc., City of St. Bernard and the Village of Evendale, Ohio, Kelly J. Buckland, Executive Director, Idaho State Independent Living Council, Boise, Idaho, and Theresa L. Kitay, partner, Coughlin & Kitay, P. Co. Norcross, Georgia. No further action was taken on the measure.

H.R. 2437 would have provided relief from prosecution to those in the building community who may have committed building design violations under the Fair Housing Amendments Act of 1988 at a time when HUD failed to ensure that novel federal building code requirements were reflected in local building codes on which builders have traditionally relied and when HUD's interpretations of those legal requirements were particularly unclear. H.R. 2437 would exempt from prosecution under the Act only buildings that were designed for first occupancy during the period beginning March 13, 1991—the date on which the Act became effective—and ending on the date of H.R. 2437's enactment; and that received a building permit or other similar approval from the relevant State or local building authorities as meeting the requirements of the applicable building code.

Traditionally, it has been the industry practice for architects and builders to rely on local building code authorities for assurances of legal compliance. Many local jurisdictions had some housing accessibility requirements prior to 1988, so many builders thought that if they received a local building permit, the building was in compliance with accessibility requirements. However, since the federal accessibility requirements generally go beyond local accessibility codes, buildings that meet local requirements do not necessarily meet federal requirements. Currently, however, architects and builders cannot rely on local building code agencies to inform them of what accessibility designs are required under federal law and there is no place for builders, architects or others to go to get building plans approved for compliance with these federal accessibility requirements. This situation has created confusion and the involvement of many architects, builders, developers, and rental housing owners in costly prosecutions for fair housing accessibility violations.

The Notice of Electronic Monitoring Act

A legislative hearing on H.R. 4908, the "Notice of Electronic Monitoring Act," was held by the Subcommittee on the Constitution on September 6, 2000. Witnesses testifying at the hearing were Senator Charles Schumer; James Dempsey, Senior Staff Counsel, The Center for Democracy and Technology; Gregory Nojeim, Legislative Counsel, the American Civil Liberties Union; Marc Rotenberg, Director, Electronic Privacy Information Center; Lewis Maltby, President, National Workrights Institute; Kenneth Segarnick, Assistant General Counsel, United Messaging; and Michael Overly, Foley & Lardner. No further action was taken on the measure.

Individuals and businesses are increasingly using computers in various capacities to maximize productivity in the workplace. Specifically, a majority of companies have implemented electronic mail, or "e-mail," systems to receive and disseminate information throughout the company. Employer monitoring of employee e-mail has raised concerns about privacy in the workplace. An employer should have the right to conduct business in a self-determined manner. Employees, on the other hand, have an interest in some degree of privacy. H.R. 4908 provided that an employer who intentionally, by any electronic means, reads, listens to, or otherwise monitors any wire, oral, or electronic communication of an employee of the employer, or otherwise monitors the computer usage of an employee of the employer, without first having provided the employee notice meeting certain requirements shall be liable to the employee for relief. H.R. 4908 also provided that employers shall provide annual notice to employees regarding its practices regarding the monitoring of employee electronic communications, and notice each time such monitoring practices are changed. Such notice shall include notice of the form of communication or computer usage that will be monitored; the means by which such monitoring will be accomplished and the kinds of information that will be obtained through such monitoring, including whether communications or computer usage not related to the employer's business are likely to be monitored; the frequency of such monitoring; and how information obtained by such monitoring will be stored, used, or disclosed. H.R. 4908 further provides that an employer may conduct electronic monitoring without the notice if the employer has reasonable grounds to believe that a particular employee of the employer is engaged in conduct that violates the legal rights of the employer or another person that involves significant harm to the employer or such other person, and that the electronic monitoring will produce evidence of such conduct. H.R. 4908 also provided that an employee subject to monitoring without required notice may seek relief from a federal court, including actual damages, but not less than liquidated damages in the amount of $5,000; punitive damages; reasonable attorneys' fees and other litigation costs reasonably incurred; and such other preliminary and equitable relief as the court determines to be appropriate. The amount of monetary damages awarded an employee may not exceed 20,000, and the aggregate amount of monetary damages awarded against an employer for a given violation may not exceed $500,000.

National Birmingham Pledge Week Resolution

On June 14, 2000, Representative Bachus submitted H.J. Res. 102, a resolution which recognizes that the Birmingham Pledge is a significant contribution to fostering racial harmony; commends those involved with the creation of the Pledge, including Jim Rotch, who authored the Pledge, and those who have signed it. It expresses the sense of the Congress that a National Birmingham Pledge Week should be established. The House passed the resolution on September 12, 2000 and the Senate passed an amended version of H.J. Res. 102 on October 26, 2000. The House then passed H.J. Res. 102, as amended by the Senate on October 30, 2000 and the resolution was signed into law, Public Law 106–483, by the President on November 11, 2000.

National Motto for Religious People

On July 18, 2000, H. Res. 548, expressing the sense of Congress regarding the national motto for the government of a religious people, was referred to the Subcommittee on the Constitution. On July 24, 2000, H. Res. 548 was considered by the House under a suspension of the rules and agreed to by voice vote.

Ohio State Motto

On May 9, 2000, H. Res. 494, expressing the sense of the House of Representatives that the Ohio State motto is constitutional and urging the courts to uphold its constitutionality, was referred to the Subcommittee on the Constitution. On June 27, 2000, H. Res. 494 was considered by the House under a suspension of the rules and agreed to by the yeas and nays 333 to 27.

Pain Relief Promotion Act of 1999

On June 17, 1999, the Chairman of the Judiciary Committee, Henry J. Hyde, introduced the "Pain Relief Promotion Act of 2000" (H.R. 2260), a bill to amend the Controlled Substances Act to promote pain management and palliative care without permitting assisted suicide. The Subcommittee held a hearing on June 24, 1999. The following witnesses testified: Samira Beckwith, President and CEO, Hope Hospice; Ann Jackson, Executive Director and CEO, Oregon Hospice Association; N. Gregory Hamilton, M.D., Physicians for Compassionate Care; David E. Joranson, M.S.S.W., Senior Scientist and Director of The Pain and Policy Studies Group; Comprehensive Cancer Center, The University of Wisconsin Medical Group; Richard Doerflinger, Associate Director for Policy Development, Secretariat for Pro-Life Activities, National Conference of Catholic Bishops; Walter R. Hunter, M.D., Associate National Medical Director, VistaCare Hospice; David Orentlicher, M.D.; J.D., Professor, Indiana University School of Law—Indianapolis Center for Law and Health; Thomas Marzen, General Counsel, The National Legal Center for the Medically Dependent & Disabled, Inc.

On July 7, 1999, H.R. 2260 was referred to the Commerce Committee. On October 13, 1999, the Commerce Full Committee favorably reported the bill, as amended by voice vote. (H. Rept. 106–378, Part II).

On July 7, 1999, H.R. 2260 was also referred to the Judiciary Committee. On July 20, 1999, the Subcommittee on the Constitution ordered favorably reported to the full Committee the bill H.R. 2260 by voice vote. On September 14, 1999, the full Committee ordered favorably reported the bill as amended to the House by a vote of 16–8. (H. Rept. 106–378, Part I). On October 21, 1999, the Committee on Rules granted a modified open rule (H. Res. 339) providing for the consideration of H.R. 2260. On October 27, 1999, Rule H. Res. 339 passed the House and H.R. 2260 was considered under the provisions of Rule H. Res. 339.

H.R. 2260 passed the House on October 27, 1999, by a vote of 271–156. The Senate Judiciary Committee reported favorably H.R. 2260 with an amendment in the nature of a substitute. On October 25, 2000, Chairman Hyde introduced H.R. 5544, the Pain Relief Promotion Act of 2000, which was the text of the Senate amended version of H.R. 2260. H.R. 5544 was included as one of the provisions of H.R. 2614, the "Certified Development Company Program Improvements Act of 2000". The House passed H.R. 2614 on October 26, 2000. On October 26, 2000 the Senate passed a motion to proceed to consider the conference report to accompany H.R. 2614 by a vote of 55–40. No further action was taken on the measure.

Partial Birth Abortion Ban Act

On February 15, 1999, Representative Canady introduced H.R. 3660. The bill was held at full Committee. The legislative history of H.R. 3660 and S. 1692 are detailed in the full Committee section in this report.

The Property Rights Implementation Act

On June 29, 1999, the Chairman of the Constitution Subcommittee, Charles T. Canady, introduced H.R. 2372, the "Private Property Rights Implementation Act of 1999." H.R. 2372 would clarify and simplify the procedures by which property owners may vindicate their Fifth Amendment constitutional rights in federal court.

The "Takings Clause" protects private property owners from the devaluation of their property caused by excessive regulation, makes government run more efficiently by requiring it to internalize the costs of its more burdensome regulations, and spreads the costs of regulation fairly over its taxpaying citizenry. In recent years, the manner in which federal courts have developed the rules by which they decide whether a case is properly "teed up" for a hearing on the merits—the so called "ripeness doctrine"—has led to the erection of cost prohibitive and excessively time consuming procedural hurdles for takings plaintiffs seeking to bring claims to enforce their federal Fifth Amendment rights against local governments. These "prudential" procedural rules, formulated ad hoc and independent of any grounding in the text of the Constitution, have failed to clarify when a local government has reached "final decision" on the use of private property. Local governments have taken advantage of this ambiguity by denying takings plaintiffs a definitive answer, a "final decision," as to precisely how they can use their property if their initial application for property use is denied. Takings plaintiffs are then left in a perpetual holding pattern in which they cannot land in federal court.

H.R. 2372 was designed to address this systematic suppression of individuals' defenses to property rights violations by clarifying and simplifying the procedures governing federal property rights claims in federal court. In particular, H.R. 2372 clarifies when a "final decision" has been made by a local government regarding the permissible use of private property. H.R. 2372 also removes the requirement that property owners litigate the federal takings claims in state court first and prevents federal judges from abstaining in cases that involve only federal takings claims, over which they have always been the ultimate arbiters.

The Subcommittee held a legislative hearing on the bill on September 15, 1999. Witnesses testifying were Richard Reahard, Bonita Springs, Florida, Dick Goodwin, Goodwin Enterprises, Joseph Barbieri, Deputy Attorney General of California, Diane S. Shea, Associate Legislative Director, National Association of Counties and National League of Cities, and Daniel R. Mandelker, Howard A. Stamper Professor of Law, Washington University.

On February 2, 2000, the Subcommittee ordered favorably reported to the full Committee the bill H.R. 2372 as amended by a voice vote. On March 9, 2000, the full Committee ordered favorably reported (H. Rept. 106–518, filed March 13, 2000) the bill as amended to the full House by the yeas and nays 14 to 7. On March 15, 2000, the Committee on the Judiciary filed a report, House Report 106–518. On March 15, 2000, the Committee on Rules granted a modified closed rule providing for the consideration of H.R. 2372. H.R. 2372 passed the House by a vote of 226 yeas and 182 nays on March 16, 2000.

Religious Liberty Protection Act

On May 5, 1999, Subcommittee Chairman Charles T. Canady introduced the "Religious Liberty Protection Act of 1999" (H.R. 1691), a bill that would protect religious activities and practices from being substantially burdened by government action. H.R. 1691 was introduced, in part, in response to the Supreme Court's partial invalidation of the Religious Freedom Restoration Act (RFRA), which itself was enacted in 1993 in response to an earlier Court decision.

RFRA was a response to the Supreme Court's decision in *Employment Division* v. *Smith,* 494 U.S. 872 (1990), holding that the First Amendment's protection of the free exercise of religion did not extend to religious exercise that is burdened by a neutral law of general applicability. RFRA restored legal protection for religious exercise in such situations by requiring religious freedom claims to be analyzed under the strict scrutiny standard, evaluating whether the offending law is the "least restrictive" means of furthering a "compelling" governmental interest. In 1997, the Supreme Court in *City of Boerne* v. *Flores,* 521 U.S. 507 (1997), invalidated RFRA as applied to infringement of religious freedom by state and local governments.

The Religious Liberty Protection Act of 1998, H.R. 1691's predecessor, was introduced in the 105th Congress in response to the *Boerne* decision. The Subcommittee on the Constitution held five hearings in the 105th Congress on the need for federal protection of religious freedom after the *Boerne* decision and on the Religious Liberty Protection Act of 1998. The hearings examined specific cases of generally applicable laws and government actions that substantially burden the free exercise of religion, patterns of religious discrimination by less-than-generally-applicable laws in the area of land use and zoning, and the constitutionality and effect of the Religious Liberty Protection Act of 1998. The Subcommittee reported the bill favorably with certain amendments and no further action was taken on the bill.

In the 106th Congress the Committee's Subcommittee on the Constitution held one day of hearings on H.R. 1691 on May 12, 1999. Testimony was received from the following witnesses: Dr. Richard Land, President, Ethics and Religious Liberty Commission of the Southern Baptist Convention; Prof. Lawrence G. Sager, Robert B. McKay Professor of Law, New York University School of Law; Von Keetch, Counsel, The Church of Jesus Christ of Latter-Day Saints; J. Brent Walker, General Counsel, Baptist Joint Committee on Public Affairs; Dr. Clarence E. Hodges, Vice President, Seventh-day Adventist Church of North America; Christopher E. Anders, Legislative Counsel, American Civil Liberties Union; Rabbi David Saperstein, Director and Counsel, Religious Action Center of Reform Judaism; Prof. Chai Feldblum, Professor of Law and Director, Federal Legislation Clinic, Georgetown University Law Center;

Prof. Douglas Laycock, Associate Dean of Research, University of Texas Law School; Oliver S. Thomas, Special Counsel for Religious and Civil Liberties, National Council of Churches; Reverend C. J. Malloy, Jr., First Baptist Church of Georgetown; Bradley Jacobs for Michael P. Farris, President, Home School Legal Defense Association; Prof. Marci A. Hamilton, Professor of Law, Benjamin N. Cardozo School of Law; Steven T. McFarland, Director, Center for Law & Religious Freedom, Christian Legal Society.

On May, 26, 1999, the Subcommittee on the Constitution met in open session and ordered favorably reported the bill, H.R. 1691, as amended, by a voice vote. On June 15 and 23, 1999, the Committee met in open session and ordered favorably reported the bill, H.R. 1691, with an amendment, by voice vote. On July 15, 1999, H.R. 1691 passed the House by a vote of 306 to 118. A similar bill was introduced by Senator Orrin Hatch in the Senate on February 23, 2000 (S. 2081), but no further action was taken on the measure.[1]

Religious Land Use and Institutionalized Persons Act of 2000

On July 13, 2000, Subcommittee Chairman Charles T. Canady introduced the "Religious Land Use and Institutionalized Persons Act of 2000" (H.R. 4862), a bill that would provide needed protection for religious liberty in two critical areas. First, H.R. 4862 would protect houses of worship and other religious assemblies and institutions from improper interference by land use authorities. In the recent past, zoning authorities have used their power to restrict churches' times of operation and the number of persons who may attend worship services, and zoning policies have effectively excluded minority faiths from certain jurisdictions and shut down the community ministries of houses of worship. H.R. 4862 would afford houses of worship the level of protection they ought to receive in a society that values religious liberty. It would require that in order for any land use regulation to substantially burden religious exercise, the locality must show that the regulation serves a compelling state interest by the least restrictive means. It would also prohibit various forms of religious discrimination and exclusion in land use matters. The second area addressed by H.R. 4862 is the religious liberty afforded to institutionalized persons, such as those confined in homes for the disabled and chronically ill as well as those confined in correctional facilities. H.R. 4862 provides that the government may not impose a substantial burden on the religious exercise of an institutionalized person unless that burden is justified by a compelling interest that is furthered by the least restrictive means.

An identical bill was introduced by Senator Orrin Hatch in the Senate on July 13, 2000 (S. 2869), and that legislation passed without amendment in the Senate by unanimous consent on July 27, 2000. S. 2869 also passed in the House by unanimous consent on July 27, 2000, and was signed into law as Public Law 106–274 by the President on September 22, 2000.

[1] See "Religious Land Use and Institutionalized Persons Act of 2000" (H.R. 4862/S. 2869) for further action.

Settlement of Discrimination Claims Against Department of Agriculture

On March 30, 2000, Representative Jay Dickey introduced H. Con. Res. 296, expressing the sense of the Congress regarding the necessity to expedite the settlement process for discrimination claims against the Department of Agriculture brought by African-American farmers. H. Con. Res. 296 was referred to the Subcommittee on April 7, 2000 and was discharged by the Subcommittee on May 8, 2000. The resolution was taken up by the House under suspension of the rules on May 8, 2000. On motion to suspend the rules and to agree to the resolution, H. Con. Res. 296 failed to pass by a vote of 216–180 (two-thirds vote required).

Tax Limitation Amendments

On March 11, 1999, Representative Joe Barton introduced H.J. Res. 37, "Proposing an amendment to the Constitution of the United States with respect to tax limitations," which was referred to the Subcommittee on March 29, 1999. On April 15, 1999, H.J. Res. 37 was considered by the House but failed passage by a vote of 229–199 (two-thirds vote required).

On April 6, 1999, Representative Pete Sessions introduced a related joint resolution, H.J. Res. 94, "Proposing an amendment to the Constitutioin of the United States with respect to tax limitation," which was referred to the Subcommittee on April 7, 1999. On April 12, 1999, H.J. Res. 94 was considered by the House but failed passage by a vote of 234–192 (two-thirds vote required).

Unborn Victims of Violence

On July 1, 1999, Representative Lindsey O. Graham introduced the "Unborn Victims of Violence Act of 1999" (H.R. 2436), a bill that would hold violent criminals liable for the harm inflicted upon unborn children during the commission of certain already defined Federal crimes committed against the unborn child's mother. The bill would make it a separate offense to kill or injure an unborn child during the commission of one of the predicate Federal crimes. The Committee's Subcommittee on the Constitution held one day of hearings on H.R. 2436 on July 21, 1999. Testimony was received from the following witnesses: Michael Lenz, Choctaw, Oklahoma; Lt. Colonel Keith Roberts, Deputy Chief, Military Justice Division, Air Force Legal Services Agency, Bolling Air Force Base, Washington, D.C.; Pamela B. Stuart, Attorney; Ronald H. Weich, Attorney, Zuckerman, Spaeder, Goldstein, Taylor & Kolker; Terry M. Dempsey, Judge, District Court, 5th Judicial District, St. James, Minnesota; Prof. Hadley Arkes, Edward Ney Professor of Jurisprudence and American Institutions, Amherst College; Juley Anna Fulcher, Public Policy Director, National Coalition Against Domestic Violence; Prof. Peter N. Rubin, Visiting Professor of Law, Georgetown University Law Center; and Prof. Gerard V. Bradley, Professor, Notre Dame Law School.

On August 4, 1999, the Subcommittee on the Constitution met in open session and ordered favorably reported the bill H.R. 2436, with an amendment, by a vote of 5 to 2. On September 14, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 2436, with an amendment, by a recorded vote of 14 to 11. H.R. 2436 passed the House on September 30, 1999, with an amendment, by a vote of 254 to 172. On February 23, 2000, the Senate Judiciary Committee held hearings on an identical bill (S . 1673, introduced by Senator Michael DeWine on September 30, 1999), but no further action was taken on the measure.

Victims' Rights Amendment

On August 4, 1999, Representative Steve Chabot introduced H.J. Res. 64, "Proposing an amendment to the Constitution of the United States to protect the rights of crime victims." H.J. Res. 64, which seeks to bestow certain rights on "[e]ach individual who is a victim of a crime for which the defendant can be imprisoned for a period longer than one year or any other crime that involves violence," was referred to the Subcommittee on September 24, 1999.

On February 10, 2000, the Subcommittee held a hearing on H.J. Res. 64. Testimony was received from the following witnesses: Senator Jon Kyl, Senator Dianne Feinstein; Representative Steve Chabot; Representative James A. Barcia, Representative Robert C. Scott; Andrea Rehkamp, Executive Director and Co-founder, Mothers Against Drunk Driving, Southwestern Ohio Chapter; Christine Long, Member of the Board of Directors and Chairperson of Victims' Rights Committee, Law Enforcement Alliance of America, Inc., Emmett E. (Bud) Welch, Member, Murder Victims' Families for Reconciliation, Marlene A. Young, Executive Director, National Organization for Victim Assistance; The Honorable Emmet G. Sullivan, United States District Court for the District of Columbia, Member of the Committee on Criminal Law and Chairman of the Subcommittee on Legislation, Judicial Conference of the United States; Steven J. Twist, Member of the Steering Committee, National Victims' Constitutional Amendment Network, and former Chief Assistant Attorney General, State of Arizona; Bruce Fein, Former Associate Deputy Attorney General, United States Department of Justice; Robert P. Mosteller, Professor of Law, Duke University School of Law, Doug Beloof, Professor of Law, Northwestern School of Law of Lewis & Clark College. No further action was taken on the measure.

Wartime Violation of Italian American Civil Liberties Act

On July 1, 1999, Representative Rick Lazio introduced H.R. 2442, the "Wartime Violation of Italian American Civil Liberties Act," which was referred to the Subcommittee on September 24, 1999. The Wartime Violation of Italian American Civil Liberties Act is designed to provide for the preparation of a government report detailing injustices suffered by Italian Americans during World War II. On October 26, 1999, the Subcommittee held a hearing on H.R. 2442. Testimony was received from the following witnesses: Representative Rick Lazio; Representative Eliot Engel; Rose Viscuso Scudero; Doris L. Pinza; Colonel Angelo de Guttadauro (Ret.); Dominic DiMaggio; Lawrence Di Stasi, President, American Italian Historical Association, Western Regional Chapter, and Project Director, "*Una Storia Segreta*: When Italian Americans Were 'Enemy Aliens'"; Anthony E. La Pianta, National Italian American Council; Matthew Di Domenico, Sr., Executive Vice President, National Italian American Foundation; and Dr.

Philip Piccigallo, National Executive Director, Order Sons of Italy in America.

H.R. 2442 was taken up by the House under suspension of the rules on November 10, 1999. The House agreed to the measure under a suspension of the rules by voice vote.

On September 28, 2000, the Senate Committee on the Judiciary ordered H.R. 2442 to be reported with amendments favorably. H.R. 2442 passed the Senate with amendments by unanimous consent on October 19, 2000.

On October 24, 2000, the House suspended the rules and passed H.R. 2442 with the Senate amendments by voice vote. H.R. 2442 was signed into law as Public Law 106–451 by the President on November 7, 2000.

OVERSIGHT ACTIVITIES

The Application of the ADA to Internet Sites

The Subcommittee held an oversight hearing on "The Applicability of the Americans with Disabilities Act to Private Internet Sites" on February 9, 2000. Witnesses testifying at the hearing were Dennis Hayes, Chairman, U.S. Internet Industry Association, Gary Wunder, Programer Analyst-Expert, ITS—Hosp Business Apps, The University of Missouri, Dr. Steven Lucas, CIO and Sr. Vice President, Privaseek, Inc., Judy Brewer, Director, Web Accessibility Initiative (WAI) International Program Office, World Wide Web Consortium (W3C), Susyn Conway, Reston, Virginia, Elizabeth K. Dorminey, Wimberly, Lawson, Steckel, Nelson & Schneider, P.C., Peter D. Blanck, Professor of Law, The University of Iowa College of Law, Walter Olsen, Wilton, Connecticut, and Charles J. Cooper, Cooper, Carvin & Rosenthal.

The Federal government is scheduled to promulgate handicapped accessibility requirements that will apply to Federal department and agency Internet sites. These Federal Standards will likely be used as a model for Internet accessibility requirements by litigants suing private providers of Internet web sites and services under the Americans With Disabilities Act ("ADA"). It is the opinion of the Department of Justice that the ADA's accessibility requirements do apply to private Internet web sites and services, and, on November 2, 1999, the National Federation for the Blind filed a class action lawsuit against America Online—which currently serves approximately 20 million member customers—claiming the ADA's accessibility requirements apply to AOL's Internet services and that the manner in which such services are currently provided violates the ADA.

These developments raise issues related to the new significance of the Internet economy to recent economic growth, the costs that application of the ADA would impose on that rapidly expanding segment of the economy, and the substantial First Amendment implications of applying the ADA to private Internet web sites and services.

Civil Rights Division of the United States Department of Justice

On October 14, 1999, the Subcommittee held an oversight hearing of the Civil Rights Division of the United States Department of Justice regarding charter schools. Testimony was received from the following witnesses: Andy Kopplin, Special Assistant and Director of Policy, Office of the Governor of Louisiana; Larry D. Galloway, Parent and Community Activist; Victor C. Kirk, President, Victor C. Kirk, Inc.; Clint Bolick, Vice President and Director of Litigation, Institute for Justice; Dr. Donna Elam, Associate Director; Southeastern Equity Center; Rolfe McCollister, Jr., Board of Directors, Children's Charter School; Anita Hodgkiss, Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

On July 12, 2000, the Subcommittee held an oversight hearing of the Civil Rights Division regarding a range of issues, including (1) recent developments in the *United States* v. *City of Torrance, California* and *United States* v. *City of Garland, Texas* employment discrimination cases, (2) the Division's handling of charter schools, (3) the status of the Division's school desegregation cases, (4) the Division's handling of its lawsuit against the Adam's Mark hotel chain, and (5) reports on the Division recently issued by the General Accounting Office. Testimony was received from Acting Assistant Attorney General Bill Lann Lee.

Constitutional Rights and the Grand Jury

On July 27, 2000, the Subcommittee held an oversight hearing on constitutional rights and the grand jury. Testimony was received from the following witnesses: James K. Robinson, Assistant Attorney General, Criminal Division, U.S. Department of Justice; Loretta Lynch, United States Attorney for the Eastern District of New York, U.S. Department of Justice; Sara Sun Beale, Professor of Law, Duke University School of Law; Peter J. Henning, Associate Professor of Law and Director of Graduate Studies, Wayne State University Law School; Andrew D. Leipold, Professor of Law, University of Illinois College of Law.

The First Amendment and Restrictions on Political Speech

On May 5, 1999, the Subcommittee held an oversight hearing on "The First Amendment and Restrictions on Political Speech." This hearing focused on the apparent conflict between various recent "campaign finance reform" proposals and the freedom of speech protected by the First Amendment. Witnesses testifying were: David M. Mason, Commissioner, Federal Election Commission; Laura W. Murphy, Director, American Civil Liberties Union, Washington D.C.; Prof. Richard Briffault, Vice Dean and Joseph P. Chamberlain Professor of Legislation, Columbia Law School; Roger Pilon, B. Kenneth Simon Chair in Constitutional Studies, Cato Institute; Glenn J. Moramarco, Senior Attorney, Brennan Center for Justice, New York University School of Law; Joseph Remcho, Attorney, Remcho, Johansen & Purcell; John C. Bonifaz, Executive Director, National Voting Rights Institute; James Bopp, Jr., Attorney, Bopp, Coleson & Bostrom.

The Internet and the Fourth Amendment and the FBI's "Carnivore" Program

The Subcommittee held an oversight hearing on "Fourth Amendment Issues Raised by the FBI's 'Carnivore' Program" on July 24,

2000. Witnesses testifying at the hearing were Dr. Donald M. Kerr, Director, Lab Division, Federal Bureau of Investigation; Larry R. Parkinson, General Counsel, Federal Bureau of Investigation; Kevin V. Di Gregory, Deputy Associate Attorney General, Department of Justice; David Green, Deputy Chief, Computer Crime and Intellectual Property Section, Department of Justice; Barry Steinhardt, Associate Director, American Civil Liberties Union; Alan Davidson, Staff Counsel, The Center for Democracy and Technology; Robert Corn-Revere, Attorney, Hogan & Hartson; Matt Blaze, Research Scientist, AT&T Labs; Stewart Baker, Attorney, Steptoe & Johnson; Peter William Sachs, ICONN, L.L.C.; Tom Perrine, Principal Investigator, Pacific Institute for Computer Security.

The Federal Bureau of Investigation's program, named "Carnivore," is an electronic surveillance tool used to extract data, subject to a court order, from packet-switched networks. Such data may include transactional information, e-mail messages, and other information traveling over the Internet.

The Subcommittee held an oversight hearing on "The Fourth Amendment and the Internet" on April 6, 2000. Witnesses testifying at the hearing were James X. Dempsey, Senior Staff Counsel, The Center for Democracy and Technology; Gregory Nojeim, Legislative Counsel, American Civil Liberties Union, Washington National Office; Kevin V. Di Gregory, Deputy Associate Attorney General, Department of Justice; David Green, Deputy Chief, Computer Crime and Intellectual Property Section, Department of Justice; Stewart Baker, Steptoe & Johnson; Frederick Juergens Baker, Chair, Internet Engineering Task Force; Clifford S. Fishman, Professor of Law, Columbus School of Law, The Catholic University of America; Robert Corn-Revere, Hogan & Hartson L.L.P.; Jeff B. Richards, Executive Director, Internet Alliance; Nicole Wong, Perkins Coie, San Francisco; and Jeffrey Rosen, Associate Professor of Law, The George Washington University Law School.

The development of the Internet as a networked global communications medium, the expansion in the range of transactions that occur "on-line," and the amount of information now stored with third party "Internet service providers" have produced a qualitative change in the nature of communications and, accordingly, in the nature and amount of information that may be obtained by the government. In light of these recent developments, many have asked whether existing statutes protecting citizens from "unreasonable searches and seizures" under the Fourth Amendment appropriately balance the concerns of law enforcement with individuals' concerns that a sufficient degree of privacy and the integrity of personal information are maintained in an age of modern communications and information storage.

Telecommunications Policy and Property Rights

The Subcommittee held an oversight hearing on "Private Property Rights and Telecommunications Policy" on March 21, 2000. Witnesses testifying at the hearing were Steven R. Rosenthal, Partner, Cooper, Carvin & Rosenthal, Viet D. Dinh, Associate Professor of Law, Georgetown Law Center, Steven J. Eagle, Professor of Law, George Mason University School of Law, Brent W. Bitz, Executive

Vice President of Management Services, Charles E. Smith Commercial Realty, Timothy R. Graham, Executive Vice President and General Counsel, Winstar Communications, Inc., John Haring, Principal, Strategic Policy Research, Inc., and John B. Hayes, Principal, Charles River Associates, Inc.

In order to make telecommunications services, such as wireless communications services, more widely available, the Federal Communications Commission ("FCC") has considered issuing a rule that would require building owners to provide access to their properties to telecommunications service providers under rates, terms, and conditions "comparable" to those they have provided in the past to other telecommunications providers, such as phone and cable companies.

The proposals contained in the FCC's Notice of Proposed Rulemaking dated July 7, 1999, would have required real property owners to acquiesce to the physical presence of uninvited telecommunications service providers on their private property in furthering of a public policy promoting the availability of telecommunications services, the proposals, if adopted in a final rule, would implicate the Fifth Amendment of the United States Constitution, which requires the government to pay "just compensation" to property owners when it has "taken" their property by committing it to a public use. On October 12, the FCC issued a ruling that did not impose requirements on property owners, but it left open the possibility that it may do so in the future.