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REPORT ON THE ACTIVITIES

OF THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES

DURING THE

ONE HUNDRED TENTH CONGRESS

PURSUANT TO

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

JANUARY 3, 2009.—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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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, January 3, 2009.

Hon. LORRAINE MILLER,
Clerk, House of Representatives,
Washington, DC.

DEAR MS. MILLER: 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 in the 110th Congress.

Sincerely,

JOHN CONYERS, Jr., *Chairman.*

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110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–941

REPORT ON THE ACTIVITIES OF THE COMMITTEE ON THE JUDICIARY

JANUARY 3, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

Jurisdiction of the Committee on the Judiciary

The jurisdiction of the Committee on the Judiciary is set forth in Rule X, 1.(k) of the Rules of the House of Representatives for the 110th Congress:

RULE X—ORGANIZATION OF COMMITTEES

COMMITTEES AND THEIR LEGISLATIVE JURISDICTIONS

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned 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) Criminal law enforcement.

(8) Federal courts and judges, and local courts in the Territories and possessions.

(9) Immigration policy and nonborder enforcement.

(10) Interstate compacts generally.

(11) Claims against the United States.

(12) Meetings of Congress; attendance of Members, Delegates, and the Resident Commissioner; and their acceptance of incompatible offices.

(13) National penitentiaries.

(14) Patents, the Patent and Trademark Office, copyrights, and trademarks.

(15) Presidential succession.

(16) Protection of trade and commerce against unlawful restraints and monopolies.

(17) Revision and codification of the Statutes of the United States.

(18) State and territorial boundary lines.

(19) Subversive activities affecting the internal security of the United States.

Tabulation of Legislation and Activity

LEGISLATION REFERRED TO COMMITTEE

Public Legislation:	
House bills	885
House joint resolutions	59
House concurrent resolutions	32
House resolutions	86
	1062
Senate bills	35
Senate joint resolutions	2
Senate concurrent resolutions	1
	38
Subtotal	1100
Private Legislation:	
House bills (claims)	1
House bills (copyrights)	0
House bills (immigration)	73
House resolutions (claims)	3
	77
Senate bills (claims)	0
Senate bills (immigration)	0
Subtotal	77
Total	1177

ACTION ON LEGISLATION NOT REFERRED TO COMMITTEE

Held at desk for House action:	
Senate bills	19
	19
Conference appointments:	
House bills	2
Senate bills	0
Total	2

FINAL ACTION

House concurrent resolutions approved (public)	11
House resolutions approved (public)	30
Public legislation vetoed by the President	0
Public Laws	69
Private Laws	0

Printed Hearings

Serial No. and Title

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1. Proposed Immigration Fee Increase. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. February 14, 2007.
2. Amending Executive Order 12866: Good Governance or Regulatory Usurpation? Subcommittee on Commercial and Administrative Law. February 13, 2007.
3. Competition and Future of Digital Music. Antitrust Task Force. February 28, 2007.
4. Senate Approach to Lobbying Reform. Subcommittee on the Constitution. March 1, 2007. (S. 1).
5. Native American Methamphetamine Enforcement and Treatment Act of 2007, Animal Fighting Prohibition Enforcement Act of 2007, and Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. February 6, 2007. (H.R. 545, H.R. 137, H.R. 740).
6. Presidential Signing Statements Under the Bush Administration: A Threat to Checks and Balances and the Rule of Law? Committee on the Judiciary. January 31, 2007.
7. District of Columbia House Voting Rights Act of 2007. Committee on the Judiciary. March 14, 2007. (H.R. 1433).
8. American Innovation at Risk: The Case for Patent Reform. Subcommittee on Courts, The Internet, and Intellectual Property. February 15, 2007.
9. Protecting the Right to Vote: Election Deception and Irregularities in Recent Federal Elections. Committee on the Judiciary. March 7, 2007.
10. Continuing Investigation into the U.S. Attorneys Controversy. Subcommittee on Commercial and Administrative Law. May 3, 2007.
11. Executive Compensation in Chapter 11 Bankruptcy Cases: How Much is Too Much? Subcommittee on Commercial and Administrative Law. April 17, 2007.
12. Ensuring Executive Branch Accountability. Subcommittee on Commercial and Administrative Law. March 29, 2007.
13. Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Are Consumers Really Being Protected Under the Act? Subcommittee on Commercial and Administrative Law. July 3, 2007.
14. Making Communities Safer: Youth Violence and Gang Interventions that Work. Subcommittee on Crime, Terrorism, and Homeland Security. February 15, 2007.
15. Past, Present, and Future: A Historic and Personal Reflection on American Immigration. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. March 30, 2007.
16. Shortfalls of the 1986 Immigration Reform Legislation. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. April 19, 2007.
17. Problems in the Current Employment Verification and Worksite Enforcement System. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. April 24, 2007.
18. Proposals for Improving the Electronic Employment Verification and Worksite Enforcement System. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. April 26, 2007.
19. Tulsa Greenwood Race Riot Accountability Act of 2007. Subcommittee on the Constitution. April 24, 2007. (H.R. 1995).
20. An Examination of Point Systems as a Method for Selecting Immigrants. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 1, 2007.
21. The Inspector General's Independent Report on the F.B.I.'s Use of National Security Letters. Committee on the Judiciary. March 20, 2007.

22. Restoring Checks and Balances in the Confirmation process of U.S. Attorneys. Subcommittee on Commercial and Administrative Law. March 6, 2007. (H.R. 580).
23. Findings and Recommendations of the Antitrust Modernization Commission. Antitrust Task Force. May 8, 2007.
24. The McNulty Memorandums Effect on the Right to Counsel in Corporate Investigations. Subcommittee on Crime, Terrorism, and Homeland Security. March 8, 2007.
25. Shortfalls of the 1996 Immigration Reform Legislation. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. April 20, 2007.
26. Role of Family-Based Immigration in the U.S. Immigration System. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 8, 2007.
27. Comprehensive Immigration Reform: Becoming Americans—U.S. Immigrant Integration. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 16, 2007.
28. Comprehensive Immigration Reform: Impact of Immigration on States and Localities. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 17, 2007.
29. An Update—Piracy on University Networks. Subcommittee on Courts, the Internet, and Intellectual Property. March 8, 2007.
30. Free Flow of Information Act of 2007. Committee on the Judiciary. June 14, 2007. (H.R. 2102).
31. Emmett Till Unsolved Civil Rights Crime Act. Subcommittee on the Constitution jointly with the Subcommittee on Crime, Terrorism, and Homeland Security. June 12, 2007. (H.R. 923).
32. Criminal Justice Responses to Offenders with Mental Illness. Subcommittee on Crime, Terrorism, and Homeland Security. March 27, 2007.
33. Reforming Section 115 of the Copyright Act for the Digital Age. Subcommittee on Courts, the Internet and Intellectual Property. March 22, 2007.
34. U.S. Economy, U.S. Workers and Immigration Reform. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 3, 2007.
35. U.S. Economy, U.S. Workers and Immigration Reform. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 9, 2007.
36. Comprehensive Immigration Reform: The Future of Undocumented Immigrant Students. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 18, 2007.
37. Comprehensive Immigration Reform: Perspectives from Faith-Based and Immigrant Communities. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 22, 2007.
38. Impact of Ledbetter v. Goodyear on the Effective Enforcement of Civil Rights Laws. Subcommittee on the Constitution. June 28, 2007.
39. Comprehensive Immigration Reform: Becoming Americans—U.S. Immigrant Integration. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 23, 2007.
40. Comprehensive Immigration Reform: Labor Movement Perspectives. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 24, 2007.
41. Comprehensive Immigration Reform: Business Community Perspectives. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. June 6, 2007.
42. Comprehensive Immigration Reform: Government Perspectives on Immigration Statistics. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. June 6, 2007.
43. Comprehensive Immigration Reform: Government Perspectives on Immigration Statistics. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. June 19, 2007.
44. Changing Tides: Exploring the Current State of Civil Rights Enforcement Within the Department of Justice. Subcommittee on the Constitution. March 22, 2007.
45. Constitutional Limitations on Domestic Surveillance. Subcommittee on the Constitution. June 7, 2007.
46. African-American Farmers Benefit Relief Act of 2007 and Pigford Claims Remedy Act of 2007. Subcommittee on the Constitution. June 21, 2007. (H.R. 558, H.R. 899).

47. Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. September 6, 2007. (H.R. 1645).

48. Federal Judicial Compensation. Subcommittee on Courts, the Internet, and Intellectual Property. April 19, 2007.

49. Ensuring Artists Fair Compensation: Updating the Performance Right and Platform Parity for the 21st Century. Subcommittee on Courts, the Internet, and Intellectual Rights. July 31, 2007.

50. USCIS Fee Increase Rule. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. September 20, 2007.

51. Second Chance Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. March 20, 2007. (H.R. 1593).

52. Rendition to Torture: The Case of Maher Arar. Subcommittee on the Constitution jointly with the Committee on Foreign Affairs. October 18, 2007.

53. Detention and Removal: Immigration Detainee Medical Care. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. October 4, 2007.

54. U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks on September 11, 2001: Were there Substantive Due Process Violations? Subcommittee on the Constitution. June 25, 2007.

55. The Katrina Impact on Crime and the Criminal Justice System in New Orleans. Subcommittee on Crime, Terrorism, and Homeland Security. April 10, 2007.

56. Continuing Investigation into the U.S. Attorneys Controversy and Related Matters (Part I). Committee on the Judiciary. May 23, 2007.

57. Use and Misuse of Presidential Clemency Power for Executive Branch Officials. Committee on the Judiciary. July 11, 2007.

58. United States Department of Justice. Committee on the Judiciary. May 10, 2007.

59. ADA Restoration Act of 2007. Subcommittee on the Constitution. October 4, 2007. (H.R. 3195).

60. Save America Comprehensive Immigration Act of 2007. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. November 8, 2007. (H.R. 750).

61. Allegations of Selective Prosecution: The Erosion of Public Confidence in Our Federal Justice System. Subcommittee on Crime, Terrorism, and Homeland Security jointly with the Subcommittee on Commercial and Administrative Law. October 23, 2007.

62. Private Prison Information Act and Review of the Prison Litigation Reform Act: A Decade of Reform or an Increase in Prison and Abuses? Subcommittee on Crime, Terrorism, and Homeland Security. November 8, 2007. (H.R. 1889).

63. Legacy of the Trans-Atlantic Slave Trade. Subcommittee on the Constitution. December 18, 2007.

64. Naturalization Delays: Causes, Consequences, and Solutions. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. January 17, 2008.

65. Patent Reform Act of 2007. Subcommittee on Courts, the Internet, and Intellectual Property. April 26, 2007. (H.R. 1908).

66. Stifling or Stimulating—The Role of Gene Patents in Research and Genetic Testing. Subcommittee on Courts, the Internet, and Intellectual Property. October 30, 2007.

67. International Piracy: The Challenges of Protecting Intellectual Property in the 21st Century. Subcommittee on Courts, the Internet, and Intellectual Property. October 18, 2007.

68. Reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974. Printed as Juvenile Justice and Delinquency Prevention Act: Overview and Perspectives. Subcommittee on Crime, Terrorism, and Homeland Security jointly with the Committee on Education and Labor. July 12, 2007.

69. Mandatory Binding Arbitration Agreements: Are They Fair for Consumers? Subcommittee on Commercial and Administrative Law. June 12, 2007.

70. Internet Tax Freedom Act: Internet Tax Moratorium. Subcommittee on Commercial and Administrative Law. May 22, 2007.

71. Local Law Enforcement Hate Crimes Prevention Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. April 17, 2007. (H.R. 1592).

72. COPS Improvements Act of 2007, the John R. Justice Prosecutors and Defenders Incentive Act of 2007, and the Witness Security and Protection Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. April 24, 2007. (H.R. 1700, H.R. 916, H.R. 933).

73. Continuing Investigation into the U.S. Attorneys Controversy and Related Matters (Part II). Subcommittee on Commercial and Administrative Law. June 21, 2007.

74. Reform of the State Secrets Privilege. Subcommittee on the Constitution. January 29, 2008.

75. Continuing Investigation into the U.S. Attorneys Controversy and Related Matters (Part III). Subcommittee on Commercial and Administrative Law. July 12, 2007.

76. Prioritizing Resources and Organization for Intellectual Property Act of 2007. Subcommittee on Courts, the Internet, and Intellectual Property. December 13, 2007. (H.R. 4279)

77. Credit Card Interchange Fees. Antitrust Task Force. July 19, 2007.

78. Warrantless Surveillance and the Foreign Intelligence Surveillance Act: The Role of Checks and Balances in Protecting Americans' Privacy Rights (Part I). Committee on the Judiciary. September 5, 2007.

79. Warrantless Surveillance and the Foreign Intelligence Surveillance Act: The Role of Checks and Balances in Protecting Americans' Privacy Rights (Part II). Committee on the Judiciary. September 18, 2007.

80. Problems with ICE Interrogation, Detention, and Removal Procedures. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. February 13, 2008.

81. H–2B Program. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. April 16, 2008.

82. Paying With Their Lives: The Status of Compensation for 9/11 Health Effects. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law jointly with the Subcommittee on Courts, the Internet, and Intellectual Property. April, 1, 2008.

83. Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs. Committee on the Judiciary. October 31, 2007.

84. Prices at the Pump: Market Failure and the Oil Industry. Antitrust Task Force. May 16, 2007.

85. Impact of Our Antitrust Laws on Community Pharmacies and Their Patients. Antitrust Task Force. October 18, 2007.

86. Federal Bureau of Investigation. Committee on the Judiciary. July 26, 2007.

87. Sex Crimes and the Internet. Committee on the Judiciary. October 17, 2007.

88. National Football League's System for Compensating Retired Players: An Uneven Playing Field? Subcommittee on Commercial and Administrative Law. June 26, 2007.

89. Need for Green Cards for Highly Skilled Workers. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. June 12, 2008.

90. Working Families in Financial Crisis: Medical Debt and Bankruptcy. Subcommittee on Commercial and Administrative Law. July 17, 2007.

91. Employment Section of the Civil Rights Division of the U.S. Department of Justice. Subcommittee on the Constitution. September 25, 2007.

92. Immigration Needs of America's Fighting Men and Women. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. May 20, 2008.

93. Employer Access to Criminal Background Checks: The Need for Efficiency and Accuracy. Subcommittee on Crime, Terrorism, and Homeland Security. April 26, 2007.

94. Torture and the Cruel, Inhuman, and Degrading Treatment of Detainees: The Effectiveness and Consequences of "Enhanced" Interrogation. Subcommittee on the Constitution. November 8, 2007.

95. Net Neutrality and Free Speech on the Internet. Antitrust Task Force. March 11, 2008.

96. National Security Letters Reform Act of 2007. Subcommittee on the Constitution. April 15, 2008. (H.R. 3189).

97. From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules (Part I). Subcommittee on the Constitution. May 6, 2008.

98. To provide for and approve the settlement of certain land claims of the Bay Mills Indian Community, and to provide for and approve the settlement of certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians". Committee on the Judiciary. March 14, 2008. (H.R. 2176, H.R. 4115).

99. Federal Bureau of Investigation (Part II). Committee on the Judiciary. April 23, 2008.

100. Voter Suppression. Subcommittee on the Constitution.

101. U.S. Department of Homeland Security Inspector General Report OIG–08–18, "The Removal of a Canadian Citizen to Syria". Subcommittee on the Constitution jointly with the Committee on Foreign Affairs. June 5, 2008.

102. Retail Gas Prices (Part I): Consumer Effects. Antitrust Task Force. May 7, 2008.

103. War Profiteering and Other Contractor Crimes Committed Overseas. The War Profiteering Prevention Act of 2007, and the Transparency and Accountability in Security Contracting Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. June 19, 2007. (H.R. 400, H.R. 369).

104. Wasted Visas, Growing Backlogs. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. April 30, 2008.

105. Bail Bond Fairness Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. June 7, 2007. (H.R. 2286).

106. Competition in the Airline Industry. Antitrust Task Force. April 24, 2007.

107. Design Law—Are Special Provisions Needed to Protect Unique Industries? Subcommittee on Courts, the Internet, and Intellectual Property. February 14, 2008.

108. Court Security Improvement Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. May 3, 2007. (H.R. 660).

109. Internet Spyware (I–SPY) Prevention Act of 2007, and Securing Aircraft Cockpits Against Lasers Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. May 1, 2007. (H.R. 1525, H.R. 1615).

110. Mandatory Minimum Sentencing Laws—the Issues. Subcommittee on Crime, Terrorism, and Homeland Security. June 26, 2007.

111. Drug Enforcement Administration's Regulation of Medicine. Subcommittee on Crime, Terrorism, and Homeland Security. July 12, 2007.

112. Law Enforcement Confidential Informant Practices. Subcommittee on Crime, Terrorism, and Homeland Security jointly with the Subcommittee on the Constitution. July 19, 2007.

113. Death in Custody Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. July 24, 2007. (H.R. 2908).

114. Department of Homeland Security. Committee on the Judiciary. March 5, 2008.

115. U.S. Patent and Trademark Office. Subcommittee on Courts, the Internet, and Intellectual Property. February 27, 2008.

116. Establishing Consistent Enforcement Policies in the Context of Online Wagers. Committee on the Judiciary. November 14, 2007.

117. Problems with Immigration Detainee Medical Care. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. June 4, 2008.

118. Stop AIDS in Prison Act of 2007, and Drug Endangered Children Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. May 22, 2007. (H.R. 1943, H.R. 1199).

119. Department of Justice. Committee on the Judiciary. February 7, 2008.

120. Implementation of the "Law Enforcement Officers Safety Act of 2004" (Pub. L. No. 108–277) and Additional Legislative Efforts Aimed at Expanding the Authority to Carry Concealed Firearms. Subcommittee on Crime, Terrorism, and Homeland Security. September 6, 2007.

121. Gang Crime Prevention and the Need to Foster Innovative Solutions at the Federal Level. Subcommittee on Crime, Terrorism, and Homeland Security. October 7, 2007.

122. Organized Retail Theft Prevention: Fostering a Comprehensive Public-Private Response. Subcommittee on Crime, Terrorism, and Homeland Security. October 25, 2007.

123. Genocide and the Rule of Law. Subcommittee on Crime, Terrorism, and Homeland Security. October 23, 2007.

124. Enhanced Financial Recovery and Equitable Retirement Treatment Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. November 1, 2007. (H.R. 2878).

125. Managing Arson Through Criminal History (MATCH) Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. November 6, 2007. (H.R. 1759).

126. Promoting Inmate Rehabilitation and Successful Release Planning. Subcommittee on Crime, Terrorism, and Homeland Security. December 6, 2007.

127. Oversight of State-Run Juvenile Correctional Facilities Known as "Boot Camps". Subcommittee on Crime, Terrorism, and Homeland Security. December 13, 2007.

128. Privacy and Cybercrime Enforcement Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. December 18, 2007. (H.R. 4175).

129. Justice Department's Office of Legal Counsel. Subcommittee on the Constitution. February 14, 2008.
130. Enforcement of Federal Criminal Law to Protect Americans Working for U.S. Contractors in Iraq. Subcommittee on Crime, Terrorism, and Homeland Security. December 19, 2007.
131. Promoting the Use of Orphan Works: Balancing the Interests of Copyright Owners and Users. Subcommittee on Courts, the Internet, and Intellectual Property. March 13, 2008.
132. Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. June 10, 2008.
133. Enforcement of Federal Espionage Laws. Subcommittee on Crime, Terrorism, and Homeland Security. January 29, 2008.
134. Cracked Justice—Addressing the Unfairness in Cocaine Sentencing. Subcommittee on Crime, Terrorism, and Homeland Security. February 6, 2008.
135. Department of Homeland Security Law Enforcement Operations. Subcommittee on Crime, Terrorism, and Homeland Security. March 11, 2008.
136. Internet Tax Freedom Act. Subcommittee on Commercial and Administrative Law. July 26, 2007.
137. False Claims Act Correction Act. Subcommittee on Courts, the Internet, and Intellectual Property jointly with the Subcommittee on the Constitution. June 19, 2008. (H.R. 4854).
138. Legislative Proposals Before the 110th Congress to Amend Federal Restitution Laws. Subcommittee on Crime, Terrorism, and Homeland Security. April 3, 2008.
139. American Workers in Crisis: Does the Chapter 11 Business Bankruptcy Law Treat Employees and Retirees Fairly? Subcommittee on Commercial and Administrative Law. September 6, 2007.
140. Child Soldiers Accountability Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. April 8, 2008. (S. 2135).
141. Performance Rights Act. Subcommittee on Courts, the Internet, and Intellectual Property. June 11, 2008. (H.R. 4789).
142. Privacy in the Hands of the Government: The Privacy and Civil Liberties Oversight Board and the Privacy Officer for the U.S. Department of Homeland Security. Subcommittee on Commercial and Administrative Law. July 24, 2007.
143. Mobile Workforce State Income Tax Fairness and Simplification Act of 2007. Subcommittee on Commercial and Administrative Law. November 1, 2007. (H.R. 3359).
144. Ensuring Legal Redress for American Victims of State-Sponsored Terrorism. Committee on the Judiciary. June 17, 2008.
145. Reauthorization and Improvement of DNA Initiatives of the Justice For All Act of 2004. Subcommittee on Crime, Terrorism, and Homeland Security. April 10, 2008.
146. Elder Justice Act, the Elder Abuse Victims Act of 2008, the School Safety Enhancements Act of 2007, and A Child Is Missing Alert and Recovery Center Act. Subcommittee on Crime, Terrorism, and Homeland Security. April 17, 2008. (H.R. 1783, H.R. 5352, H.R. 2352, H.R. 5464).
147. Prevent All Cigarette Trafficking Act of 2007 and the Smuggled Tobacco Prevention Act of 2008. Subcommittee on Crime, Terrorism, and Homeland Security. May 1, 2008. (H.R. 4081, H.R. 5689).
148. Federal State and Local Efforts to Prepare for the 2008 Election. Subcommittee on the Constitution. September 24, 2008.
149. Prison Abuse Remedies Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. April 22, 2008. (H.R. 4109)
150. Federal Prison Industries—Examining the Effects of Section 827 of the National Defense Authorization Act of 2008. Subcommittee on Crime, Terrorism, and Homeland Security. May 6, 2008.
151. Addressing Gangs: What's Effective? What's Not? Subcommittee on Crime, Terrorism, and Homeland Security. June 10, 2008.
152. Habeas Corpus and Detentions at Guantanamo Bay. Subcommittee on the Constitution. June 26, 2007.
153. To authorize the Edward Byrne Memorial Justice Assistance Grant Program at fiscal year 2006 levels through 2012. Subcommittee on Crime, Terrorism, and Homeland Security. May 20, 2008. (H.R. 3546).
154. FBI Whistleblowers. Subcommittee on Crime, Terrorism, and Homeland Security. May 21, 2008.
155. State Secrets Protection Act of 2008. Subcommittee on the Constitution. July 31, 2008. (H.R. 5607).

156. Voting Section of the Civil Rights Division of the U.S. Department of Justice. Subcommittee on the Constitution. October 30, 2007.

157. Regulatory Improvement Act of 2007. Subcommittee on Commercial and Administrative Law. September 19, 2007. (H.R. 3564).

158. Antitrust Agencies: Department of Justice Antitrust Division and Federal Trade Commission Bureau of Competition. Antitrust Task Force. September 25, 2007.

159. Straightening Out the Mortgage Mess: How Can We Protect Home Ownership and Provide Relief to Consumers in Financial Distress? (Part I). Subcommittee on Commercial and Administrative Law. September 25, 2007.

160. Sunshine in the Courtroom Act of 2007. Committee on the Judiciary. September 27, 2007. (H.R. 2128).

161. United States Trustee Program: Watchdog or Attack Dog? Subcommittee on Commercial and Administrative Law. October 2, 2007.

162. Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools. Committee on the Judiciary. October 16, 2007.

163. Arbitration Fairness Act of 2007. Subcommittee on Commercial and Administrative Law. October 25, 2007. (H.R. 3010).

164. Straightening Out the Mortgage Mess: How Can We Protect Home Ownership and Provide Relief to Consumers in Financial Distress? (Part II). Subcommittee on Commercial and Administrative Law. October 30, 2007.

165. Congressional Review Act. Subcommittee on Commercial and Administrative Law. November 6, 2007.

166. Protecting the Playroom: Holding Foreign Manufacturers Accountable for Defective Products. Subcommittee on Commercial and Administrative Law. November 11, 2007.

167. Sales Tax Fairness and Simplification Act. Subcommittee on Commercial and Administrative Law. December 6, 2007. (H. R. 3396).

168. Applicability of Federal Criminal Laws to the Interrogation of Detainees. Committee on the Judiciary. December 20, 2007.

169. The Growing Mortgage Foreclosure Crisis: Identifying Solutions and Dispelling Myths. Subcommittee on Commercial and Administrative Law. January 29, 2008.

170. State Video Tax Fairness Act of 2007. Subcommittee on Commercial and Administrative Law. February 14, 2008. (H.R. 3679).

171. Railroad Antitrust Enforcement Act of 2007. Antitrust Task Force. February 25, 2008. (H.R. 1650).

172. Implementation of the U.S. Department of Justice's Special Counsel Regulations. Subcommittee on Commercial and Administrative Law. February 26, 2007.

173. Automobile Arbitration Fairness Act of 2008. Subcommittee on Commercial and Administrative Law. March 6, 2007. (H.R. 5312).

174. Deferred Prosecution: Should Corporate Settlement Agreements Be Without Guidelines? Subcommittee on Commercial and Administrative Law. March 11, 2008.

175. To amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days. Subcommittee on Commercial and Administrative Law. April 1, 2008. (H.R. 4044).

176. Protecting Americans from Unsafe Foreign Products Act. Subcommittee on Commercial and Administrative Law. May 1, 2008. (H.R. 5913).

177. Rulemaking Process and the Unitary Executive Theory. Subcommittee on Commercial and Administrative Law. May 6, 2008.

178. Allegations of Selective Prosecution: The Erosion of Public Confidence in Our Federal Justice System (Part II). Subcommittee on Commercial and Administrative Law jointly with the Subcommittee on Crime, Terrorism, and Homeland Security. May 14, 2008.

179. Credit Card Fair Free Act of 2008. Antitrust Task Force. May 15, 2008. (H.R. 5546).

180. Retail Gas Prices (Part II): Competition in the Oil Industry. Antitrust Task Force. May 22, 2008.

181. Protecting Employees and Retirees in Business Bankruptcies Act of 2007. Subcommittee on Commercial and Administrative Law. June 5, 2008. (H.R. 3652).

182. Fairness in Nursing Home Arbitration Act of 2008. Subcommittee on Commercial and Administrative Law. June 10, 2008. (H.R. 6126).

183. Enforcement of the Fair Housing Act of 1968. Subcommittee on the Constitution. June 12, 2008.

184. From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules (Part II). Subcommittee on the Constitution. June 18, 2008.
185. Revelations by Former White House Press Secretary Scott McClellan. Committee on the Judiciary. June 20, 2008.
186. Online Pharmacies and the Problem of Internet Drug Abuse. Subcommittee on Crime, Terrorism, and Homeland Security. June 24, 2008.
187. Business Activity Tax Simplification Act of 2008. Subcommittee on Commercial and Administrative Law. June 24, 2008. (H.R. 5267).
188. Executive Office for United States Attorneys. Subcommittee on Commercial and Administrative Law. June 25, 2008.
189. From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules (Part III). Subcommittee on the Constitution. June 26, 2008.
190. Private Prison Information Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. June 26, 2008. (H.R. 1889).
191. Politicization of the Justice Department and Allegations of Selective Prosecution. Subcommittee on Commercial and Administrative Law. July 10, 2008.
192. From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules (Part IV). Subcommittee on the Constitution. July 15, 2008.
193. Competition on the Internet. Antitrust Task Force. July 15, 2008.
194. National Silver Alert Act, the Silver Alert Grant Program Act of 2008, and the Kristen's Act Reauthorization of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. July 15, 2008. (H.R. 6064, H.R. 5898, H.R. 423).
195. Reauthorization of the U.S. Parole Commission. Subcommittee on Crime, Terrorism, and Homeland Security. July 16, 2008.
196. From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules (Part V). Committee on the Judiciary. July 17, 2008.
197. U.S. Department of Justice. Committee on the Judiciary. July 23, 2008.
198. Immigration Raids: Postville and Beyond. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. July 24, 2008.
199. Lessons Learned from the 2005 Presidential Election. Subcommittee on the Constitution. July 24, 2008.
200. Executive Power and Its Constitutional Limitations. Committee on the Judiciary. July 25, 2008.
201. Prevention of Equine Cruelty Act of 2008 and the Animal Cruelty Statistics Act of 2008. Subcommittee on Crime, Terrorism, and Homeland Security. July 31, 2008. (H.R. 6598, H.R. 6597).
202. Sunshine in Litigation Act of 2008. Subcommittee on Commercial and Administrative Law. July 31, 2008. (H.R. 5884).
203. Competition in the Package Delivery Industry. Committee on the Judiciary. September 9, 2008.
204. Fair Copyright in Research Works Act. Subcommittee on Courts, the Internet, and Intellectual Property. September 11, 2008. (H.R. 6845).
205. Juvenile Justice Accountability and Improvement Act of 2007. Subcommittee on Crime, Terrorism, and Homeland Security. September 11, 2008. (H.R. 4300).
206. Federal Bureau of Investigation (Part III). Committee on the Judiciary. September 16, 2008.
207. Bankruptcy Trustee Compensation. Subcommittee on Commercial and Administrative Law. September 16, 2008.
208. Department of Justice, Office of Justice Programs Oversight. Subcommittee on Crime, Terrorism, and Homeland Security. September 18, 2008.
209. Cell Tax Fairness Act of 2008. Subcommittee on Commercial and Administrative Law. September 18, 2008. (H.R. 5793).
210. E-fencing Enforcement Act of 2008, the Organized Retail Crime Act of 2008, and the Combating Organized Retail Crime Act of 2008. Subcommittee Crime, and Terrorism, and Homeland Security. September 22, 2008. (H.R. 6713, H.R. 6491, S. 3434).
211. Executive Office for Immigration Review. Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. September 23, 2008.
212. Lehman Brothers, Sharper Image, Bennigan's, and Beyond: Is Chapter 11 Bankruptcy Working? Subcommittee on Commercial and Administrative Law. September 26, 2008.
213. Continuing Investigation into the U.S. Attorneys Controversy and Related Matters (Part IV). Committee on the Judiciary. October 3, 2008.

Committee Prints

Serial No. and Title

1. Federal Rules of Appellate Procedure. December 1, 2007.
2. Federal Rules of Civil Procedure. December 1, 2007.
3. Federal Rules of Criminal Procedure. December 1, 2007.
4. Federal Rules of Evidence. December 1, 2007.

House Documents

H. Doc. No. and Title

110–24. A letter from the Chief Justice, Supreme Court of the United States, transmitting amendment to the Federal Rules of Appellate Procedure that has been adopted by the Supreme Court, pursuant to 28 U.S.C. 2074. Referred to the Committee on the Judiciary. April 30, 2007. (Executive Communication 1374).

110–25. A letter from the Chief Justice, Supreme Court of the United States, transmitting amendment to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court, pursuant to 28 U.S.C. 2075. Referred to the Committee on the Judiciary. April 30, 2007. (Executive Communication 1375).

110–26. A letter from the Chief Justice, Supreme Court of the United States, transmitting amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court, pursuant to 28 U.S.C. 2074. Referred to the Committee on the Judiciary. April 30, 2007. (Executive Communication 1376).

110–27. A letter from the Chief Justice, Supreme Court of the United States, transmitting amendments to the Federal Rules of Civil Procedure that have been adopted by the Supreme Court, pursuant to 28 U.S.C. 2072. Referred to the Committee on the Judiciary. April 30, 2007. (Executive Communication 1377).

110–96. A letter from the Secretary, Department of Health and Human Services, transmitting a draft of proposed legislation entitled the "Medicare Funding Warning Response Act of 2008". Referred jointly to the Committees on Energy and Commerce, Ways and Means, and the Judiciary. February 21, 2008. (Executive Communication 5439).

110–117. A letter from the Chief Justice, Supreme Court of the United States, transmitting amendments to the Federal Rules of Civil Procedure that have been adopted by the Supreme Court, pursuant to 28 U.S.C. 2072. Referred to the Committee on the Judiciary. June 3, 2008. (Executive Communication 6881).

110–118. A letter from the Chief Justice, Supreme Court of the United States, transmitting amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court, pursuant to 28 U.S.C. 2074. Referred to the Committee on the Judiciary. June 3, 2008. (Executive Communication 6879).

110–119. A letter from the Chief Justice, Supreme Court of the United States, transmitting amendments to the Federal Rules of Bankruptcy Procedure that have been adopted by the Supreme Court, pursuant to 28 U.S.C. 2075. Referred to the Committee on the Judiciary. June 3, 2008. (Executive Communication 6880).

Public Laws

A variety of legislation within the Committee's jurisdiction was enacted into law during the 110th Congress. The public and private laws, along with approved resolutions, 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 Law 110–6—To amend the Antitrust Modernization Commission Act of 2002, to extend the term of the Antitrust Modernization Commission and to make a technical correction. (H.R. 742—Approved February 26, 2007).

Public Law 110–22—To amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes. "Animal Fighting Prohibition Enforcement Act of 2007." (H.R. 137—Approved May 3, 2007).

Public Law 110–24—To amend the Ethics in Government Act of 1978 to extend the authority to withhold from public availability a financial disclosure report filed by an individual who is a judicial officer or judicial employee, to the extent nec-

essary to protect the safety of that individual or a family member of that individual, and for other purposes. "Judicial Disclosure Responsibility Act." (H.R. 1130—Approved May 3, 2007).

Public Law 110–34—To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys. "Preserving United States Attorney Independence Act of 2007." (S. 214—Approved June 14, 2007).

Public Law 110–36—To increase the number of Iraqi and Afghani translators and interpreters who may be admitted to the United States as special immigrants, and for other purposes. (S. 1104—Approved April 12, 2007).

Public Law 110–41—To amend title 4, United States Code, to authorize the Governor of a State, territory, or possession of the United States to order that the National flag be flown at half-staff in that State, territory, or possession in the event of the death of a member of the Armed Forces from that State, territory, or possession who dies while serving on active duty. "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007." (H.R. 692—Approved June 29, 2007).

Public Law 110–53—To provide for the implementation of the recommendations of the National Commission on Terrorist Attacks Upon the United States. "Implementing Recommendations of the 9/11 Commission Act of 2007." (H.R. 1—Approved August 3, 2007).

Public Law 110–55—To amend the Foreign Intelligence Surveillance Act of 1978 to provide additional procedures for authorizing certain acquisitions of foreign intelligence information and for other purposes. "Protect America Act of 2007." (S. 1927—Approved August 5, 2007).

Public Law 110–79—Granting the consent and approval of Congress to an interstate forest fire protection compact. (S. 975—Approved August 13, 2007).

Public Law 110–81—To provide greater transparency in the legislative process. "Honest Leadership and Open Government Act of 2007." (S. 1—Approved September 14, 2007).

Public Law 110–108—To amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce. "Internet Tax Freedom Act Amendments Act of 2007." (H.R. 3678—Approved October 31, 2007).

Public Law 110–113—To provide nationwide subpoena authority for actions brought under the September 11 Victim Compensation Fund of 2001. "Procedural Fairness for September 11 Victims Act of 2007." (S. 2106—Approved November 8, 2007).

Public Law 110–151—To amend section 1091 of title 18, United States Code, to allow the prosecution of genocide in appropriate circumstances. "Genocide Accountability Act of 2007." (S. 888—Approved December 21, 2007).

Public Law 110–177—To amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes. "Court Security Improvement Act of 2007." (H.R. 660—Approved January 7, 2008).

Public Law 110–179—To amend title 18, United States Code, with respect to fraud in connection with major disaster or emergency funds. "Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007." (S. 863—Approved January 7, 2008).

Public Law 110–180—To improve the National Instant Criminal Background Check System, and for other purposes. "NICS Improvement Amendments Act of 2007." (H.R. 2640—Approved January 8, 2008).

Public Law 110–182—To extend the Protect America Act of 2007 for 15 days. (H.R. 5104—Approved January 31, 2008).

Public Law 110–199—To reauthorize the grant program for reentry of offenders into the community in the Omnibus Crime Control and Safe Streets Act of 1968, to improve reentry planning and implementation, and for other purposes. "Second Chance Act of 2007." (H.R. 1593—Approved April 9, 2008).

Public Law 110–207—To amend title 36, United States Code, to revise the congressional charter of the Military Order of the Purple Heart of the United States of America, Incorporated, to authorize associate membership in the corporation for the spouse and siblings of a recipient of the Purple Heart medal. "Purple Heart Family Equity Act of 2007." (H.R. 1119—Approved April 30, 2008).

Public Law 110–229—To authorize certain programs and activities in the Department of the Interior, the Forest Service, and the Department of Energy, to implement further the Act approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, to amend the Compact of Free Association Amendments Act of 2003, and for other purposes. "Consolidated Natural Resources Act of 2008." (S. 2739—Approved May 8, 2008).

Public Law 110–239—To amend title 4, United States Code, to encourage the display of the flag of the United States on Father's Day. (H.R. 2356—Approved June 3, 2008).

Public Law 110–241—To amend the Fair Credit Reporting Act to make technical corrections to the definition of willful noncompliance with respect to violations involving the printing of an expiration date on certain credit and debit card receipts before the date of the enactment of this Act. "Credit and Debit Card Receipt Clarification Act of 2007." (H.R. 4008—Approved June 3, 2008).

Public Law 110–242—A bill to make technical corrections to section 1244 of the National Defense Authorization Act for Fiscal Year 2008, which provides special immigrant status for certain Iraqis, and for other purposes. (S. 2829—Approved June 3, 2008).

Public Law 110–251—To assist members of the Armed Forces in obtaining United States citizenship, and for other purposes. "Kendell Frederick Citizenship Assistance Act." (S. 2516—Approved June 26, 2008).

Public Law 110–254—A bill to grant a Federal charter to Korean War Veterans Association, Incorporated. (S. 1692—Approved June 30, 2007).

Public Law 110–257—To remove the African National Congress from treatment as a terrorist organization for certain acts or events, provide relief for certain members of the African National Congress regarding admissibility, and for other purposes. (H.R. 5690—Approved July 1, 2008).

Public Law 110–258—A bill to revise the short title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. (S. 188—Approved July 1, 2008).

Public Law 110–261—To amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes. "FISA Amendments Act of 2008." (H.R. 6304—Approved July 10, 2008).

Public Law 110–286—To impose import sanctions on Burmese gemstones, expand the number of individuals against whom the visa ban is applicable, expand the blocking of assets and other prohibited activities, and for other purposes. "Burma Democracy Promotion Act of 2007." (H.R. 3890—Approved July 29, 2008).

Public Law 110–290—To amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States through fiscal year 2011, and for other purposes. "Regulatory Improvement Act of 2007." (H.R. 3564—Approved July 30, 2008).

Public Law 110–294—A bill to authorize the Edward Byrne Memorial Justice Assistance Grant Program at fiscal year 2006 levels through 2012. (S. 231—Approved July 20, 2008).

Public Law 110–296—To extend the pilot program for volunteer groups to obtain criminal history background checks. "Criminal History Background Checks Pilot Extension Act of 2008." (S. 3218—Approved July 30, 2008).

Public Law 110–298—To establish an awards mechanism to honor exceptional acts of bravery in the line of duty by Federal, State, and local law enforcement officers. "Law Enforcement Congressional Badge of Bravery Act of 2008." (S. 2565—Approved July 31, 2008).

Public Law 110–301—To resolve pending claims against Libya by United States nationals, and for other purposes. "Libyan Claims Resolution Act." (S. 3370—Approved August 4, 2008).

Public Law 110–312—To provide for the continued performance of the functions of the United States Parole Commission. "United States Parole Commission Extension Act of 2008." (S. 3294—Approved August 12, 2008).

Public Law 110–313—A bill to amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, and for other purposes. (S. 3295—Approved August 12, 2008).

Public Law 110–315—To amend and extend the Higher Education Act of 1965, and for other purposes. "College Opportunity and Affordability Act of 2008." (H.R. 4137—Approved August 14, 2008).

Public Law 110–322—To amend the Federal Rules of Evidence to address the waiver of attorney-client privilege and the work product doctrine. (S. 2450—Approved September 19, 2008).

Public Law 110–325—ADA Amendments Act of 2008." (S. 3406—Approved September 25, 2008).

Public Law 110–326—To amend title 18, United States Code, to provide secret service protection to former Vice Presidents, and for other purposes. "Former Vice President Protection Act of 2008." (H.R. 5938—Approved September 26, 2008).

Public Law 110–327—To amend the Improving America's Schools Act of 1994 to make permanent the favorable treatment of need-based educational aid under the antitrust laws. "Need-Based Educational Aid Act of 2008." (H.R. 1777—Approved September 30, 2008).

Public Law 110–336—Library of Congress Sound Recording and Film Preservation Programs Reauthorization Act of 2008. (H.R. 5893—Approved October 2, 2008).

Public Law 110–340—To prohibit the recruitment or use of child soldiers, to designate persons who recruit or use child soldiers as inadmissible aliens, to allow the deportation of persons who recruit or use child soldiers, and for other purposes. "Child Soldiers Accountability Act." (S. 2135—Approved October 3, 2008).

Public Law 110–342—Expressing the consent and approval of Congress to an interstate compact regarding water resources in the Great Lakes-St. Lawrence River Basin. "Great Lakes-St. Lawrence River Basin Water Resources Compact." (S.J. Res. 45—Approved October 3, 2008).

Public Law 110–344—To provide for the investigation of certain unsolved civil rights crimes, and for other purposes. "Emmett Till Unsolved Civil Rights Crime Act of 2007." (H.R. 923—Approved October 7, 2008).

Public Law 110–345—To extend the grant program for drug-endangered children. "Drug Endangered Children Act of 2007." (H.R. 1199—Approved October 7, 2008).

Public Law 110–358—To amend title 18, United States Code, to provide for more effective prosecution of cases involving child pornography, and for other purposes. "Effective Child Pornography Prosecution Act of 2007." (H.R. 4120—Approved October 8, 2008).

Public Law 110–360—To reauthorize the Debbie Smith DNA Backlog Grant Program, and for other purposes. "Debbie Smith Reauthorization Act of 2007." (H.R. 5057—Approved October 8, 2008).

Public Law 110–362—Extending for 5 years the program relating to waiver of the foreign country residence requirement with respect to international medical graduates. (H.R. 5571—Approved October 8, 2008).

Public Law 110–382—To establish a liaison with the Federal Bureau of Investigation in United States Citizenship and Immigration Services to expedite naturalization applications filed by members of the Armed Forces and to establish a deadline for processing such applications. "Military Personnel Citizenship Processing Act." (S. 2840—Approved October 9, 2008).

Public Law 110–384—To direct the United States Sentencing Commission to assure appropriate punishment enhancements for those involved in receiving stolen property where that property consists of grave markers of veterans, and for other purposes. "Let Our Veterans Rest in Peace Act of 2008." (H.R. 3480—Approved October 10, 2008).

Public Law 110–391—To extend the special immigrant nonminister religious worker program and for other purposes. "Special Immigrant Nonminister Religious Worker Program Act." (S. 3606—Approved October 10, 2008).

Public Law 110–400—To require convicted sex offenders to register online identifiers, and for other purposes. "Keeping the Internet Devoid of Sexual Predators Act of 2008." (S. 431—Approved October 13, 2008).

Public Law 110–401—To require the Department of Justice to develop and implement a National Strategy Child Exploitation Prevention and Interdiction, to improve the Internet Crimes Against Children Task Force, to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute child predators. "Combating Child Exploitation Act of 2008." (S. 1738—Approved October 13, 2008).

Public Law 110–402—A bill to extend the authority of the United States Supreme Court Police to protect court officials off the Supreme Court Grounds and change the title of the Administrative Assistant to the Chief Justice. (S. 3296—Approved October 13, 2008).

Public Law 110–403—To enhance remedies for violations of intellectual property laws, and for other purposes. "Prioritizing Resources and Organization for Intellectual Property Act of 2008." (S. 3325—Approved October 13, 2008).

Public Law 110–406—To make improvements in the operation and administration of the Federal courts, and for other purposes. "Judicial Administration and Technical Amendments Act of 2008." (S. 3569—Approved October 13, 2008).

Public Law 110–407—To amend titles 46 and 18, United States Code, with respect to the operation of submersible vessels and semi-submersible vessels without nationality. "Drug Trafficking Vessel Interdiction Act of 2008." (S. 3598—Approved October 13, 2008).

Public Law 110–415—To facilitate the creation of methamphetamine precursor electronic logbook systems, and for other purposes. "Methamphetamine Production Prevention Act of 2008." (S. 1276—Approved October 14, 2008).

Public Law 110–416—To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide grants for the improved mental health treatment and services provided to offenders with mental illnesses, and for other purposes. "Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act of 2008." (S. 2304—Approved October 14, 2008).

Public Law 110–421—To amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to extend the authorization of the Bulletproof Vest Partnership Grant Program through fiscal year 2012. "Bulletproof Vest Partnership Grant Act of 2008." (H.R. 6045—Approved October 15, 2008).

Public Law 110–424—To authorize funding to conduct a national training program for State and local prosecutors. (H.R. 6083—October 15, 2008).

Public Law 110–425—To amend the Controlled Substances Act to address online pharmacies. "Ryan Haight Online Pharmacy Consumer Protection Act of 2008." (H.R. 6353—Approved October 15, 2008).

Public Law 110–431—A bill to authorize funding for the National Crime Victim Law Institute to provide support for victims of crime under Crime Victims Legal Assistance Programs as a part of the Victims of Crime Act of 1984. (S. 3641—Approved October 15, 2008).

Public Law 110–434—To amend chapter 13 of title 17, United States Code (relating to the vessel hull design protection), to clarify the definitions of a hull and a deck. "Vessel Hull Design Protection Amendments of 2008." (H.R. 6531—Approved October 16, 2008).

Public Law 110–435—To amend section 114 of title 17, United States Code, to provide for agreements for the reproduction and performance of sound recordings by webcasters. "Webcaster Settlement Act of 2008." (H.R. 7084—Approved October 16, 2008).

Public Law 110–438—A bill to amend title 11, United States Code, to exempt for a limited period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days. "National Guard and Reservists Debt Relief Act of 2008." (S. 3197—Approved October 20, 2008).

Public Law 110–457—To authorize appropriations for fiscal years 2008 through 2011 for the Trafficking Victims Protection Act of 2000, to enhance measures to combat trafficking in persons, and for other purposes. "William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008." (H.R. 7311—Approved 12/23/08).

Conference Appointments

Members of the Committee were named by the Speaker as conferees on the bills (H.R. 1 and H.R. 4137) which contained legislative language within the Committee's Rule X jurisdiction. Also, Members of the Committee were named by the Speaker as conferees on the bills (H.R. 1585 and H.R. 2419) which were not referred to the Committee but which contained legislative language within the Committee's Rule X jurisdiction.

H.R. 1, the "Implementing Recommendations of the 9/11 Commission Act of 2007"

Summary.—Provide for the implementation of the recommendations of the National Commission on Terrorist Attacks Upon the United States. This legislation is detailed further by the Subcommittee on Immigration in its section of the report.

Legislative History.—H.R. 1, the "Implementing Recommendations of the 9/11 Commission Act of 2007," was introduced by Representative Bennie Thompson (D–MS) on January 5, 2007. The legislation had 205 cosponsors and was jointly referred to the House Committees on Homeland Security; Energy and Commerce; Judiciary; Intelligence (Permanent Select); Foreign Affairs; Transportation and Infrastructure; Oversight and Government Reform; Ways and Means; and Senate Committees on Homeland Security and Governmental Affairs. The legislation was considered pursuant to H. Res. 6 and passed the House on January 9, 2007 by a roll call vote of 299–128 (Roll No. 15).

On July 9, 2007, the Senate Committees were discharged and the Senate insisting upon its amendment, requested a conference and appointed conferees. On July 17, 2007, the House disagreed with the Senate amendment and agreed to a conference. The Speaker appointed the following Committee Members as conferees from the Committee on the Judiciary for consideration of secs. 406, 501, 601, 702, and Title VIII of the House bill, and secs. 123, 501–503, 601–603, 1002, and 1432 of the Senate amendment, and modifications committed to conference: Representatives John Conyers, Jr. (D–MI), Zoe Lofgren (D–CA), and F. James Sensenbrenner (R–WI). The conference Report to accompany H.R. 1 was reported to the House on July 25, 2007 as H. Rept. 110–259. The Senate agreed to the conference report on July 26, 2007 and the House considered the report pursuant to H. Res. 567 the following day, July 27, 2007. The measure passed the House on July 27, 2007 by a roll call vote of 371–40 (Roll no. 757). H.R. 1 was signed into law as Public Law No. 110–53 by the President on August 3, 2007.

On February 28, 2008, the Committee held a hearing on the Foreign Intelligence Surveillance Act. This hearing was classified, and no further information is publicly available.

H.R. 1585, the "National Defense Authorization Act for Fiscal Year 2008"

Summary.—H.R. 1585 authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2008, and for other purposes. Passed the House May 17, 2007 (397 yeas; 27 nays). Passed the Senate, amended, October 1, 2007 (92 yeas; 3 nays). The Senate requested a conference and appointed conferees October 1, 2007. The House agreed to a conference and appointed conferees December 5, 2007 (including from the Committee on the Judiciary). Conference report filed in the House December 6, 2007 (H. Rept. 110–477). The House agreed to the conference report December 12, 2007 (370 yeas; 49 nays). The Senate agreed to the conference report December 14, 2007 (90 yeas; 3 nays). Vetoed by the President December 28, 2007.

H.R. 2419 the "Farm Bill Extension Act of 2007"

Summary.—H.R. 2419 provides for the continuation of agricultural programs through fiscal year 2012, and for other purposes. Passed the House July 27, 2007 (231 yeas; 191 nays). Passed the Senate, amended, December 14, 2007 (79 yeas; 14 nays). The Senate requested a conference December 14, 2007. The Senate appointed conferees February 4, 2008. The House agreed to the conference and appointed conferees April 4, 2008 (including from the Committee on the Judiciary). Conference report filed in the House May 13, 2008 (H. Rept. 110–627). The House agreed to the conference report May 14, 2008 (318 yeas; 106 nays). The Senate agreed to the conference report May 15, 2008 (81 yeas; 15 nays). Vetoed by the President May 21, 2008. Veto overridden in the House May 21, 2008 (316 yeas; 108 nays). Veto overridden in the Senate May 22, 2008 (82 yeas; 13 nays). Became Public Law 110–234 May 22, 2008.

H.R. 4137, the "Higher Education Opportunity Act"

Summary.—Amends the Higher Education Act of 1965 to revise and reauthorize HEA programs.

Legislative History.—H.R. 4137 was introduced by Representatives George Miller (D–CA) on November 9, 2007. The bill was referred to the Committee on Education and Labor, and in addition to the Committees on the Judiciary, Science and Technology, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. The Committee on Education and Labor reported the bill to the House on December 19, 2007 as H. Rept. 110–500, Part I. On December 19, 2007, the Committee was discharged from the bill. The measure was considered by the House on February 7, 2008 pursuant to H. Res. 956 and adopted the measure as amended in the nature of a substitute as agreed to by the Committee of the Whole House on the state of the Union. The legislation passed by a roll call vote of 354–58 (Roll No. 40).

On July 29, 2008, the Senate insisted on its amendment and asked for a conference. Senate conferees were appointed. On the same day, the House disagreed to the Senate amendment and

agreed to a conference. The Speaker appointed the following conferees from the Committee on the Judiciary for consideration of secs. 951 and 952 of the House bill, and secs. 951 and 952 of the Senate amendment, and modifications committed to conference, Representatives John Conyers, Jr. (D–MI); Maxine Waters (D–CA), and Louie Gohmert (R–TX). The conference Report to accompany H.R. 4137 was reported to the House on July 30, 2007 as H. Rept. 110–803. On July 31, 2008, both the House by a roll call vote of 380–49 (Roll No. 544) and the Senate by a roll call vote of 83–8 (Roll No. 194) agreed to the conference report. The measure was signed into law as Public Law No. 110–315 by the President on August 14, 2008.

Summary of Activities of the Committee on the Judiciary

During the 110th 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 agency oversight hearings and legislative issues were handled by the Committee and it's Subcommittees.

ANTITRUST LEGISLATIVE ACTIVITIES

During the 110th Congress, the full Judiciary Committee retained original jurisdiction over antitrust legislation and oversight matters. Antitrust enforcement serves as a bulwark in the free market to prevent market power from collecting in the hands of a few to the detriment of the consumer. U.S. antitrust laws exist to preserve competition (not individual competitors) in the marketplace, with the ultimate goal of reducing prices and increasing choices for consumers. The Federal antitrust laws (primarily the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act) are enforced jointly by the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). Other federal agencies have authority to examine competitive aspects of market transactions within their jurisdiction.

H.R. 971, the "Community Pharmacy Fairness Act of 2007"

Summary.—On October 18, 2007 the Task Force convened a hearing on the "Impact of our Antitrust Laws on Community Pharmacies and their Patients." Testimony was heard from Mike James, Vice President, Government Relations, Association of Community Pharmacists Congressional Network; Peter Rankin, Senior Associate, Charles River Associates; David Wales, Deputy Director, Bureau of Competition, Federal Trade Commission; David Balto, on behalf of the National Association of Community Pharmacists; and Robert Dozier, Executive Director, Mississippi Independent Pharmacists Association.

Legislative History.—H.R. 971 was introduced on February 8, 2007 by Representative Anthony Weiner (D–NY) and was cosponsored by 192 Members. H.R. 971 would allow independent pharmacies to collectively bargain so that they can negotiate with the insurance companies on the reimbursement rates and terms. H.R. 971 allows pharmacies negotiating contracts with health insurers

to receive the same treatment under the antitrust laws as bargaining units recognized under the National Labor Relations Act (NLRA). This would permit pharmacies to be considered employees under the NLRA for purposes of the Act and not subject to treble damages under the antitrust laws. The Act defines independent pharmacies as those that are neither owned nor operated by a publically traded company. Under the reported version of the bill, an independent pharmacy is defined as a pharmacy having less than 10% market share in a PDP or 1% nationally. The Full Committee met on November 7, 2007 in open session and reported the legislation, as amended, favorably to the House. On September 28, 2008 the legislation was report to the House as H. Rept. 110–898. No further action was taken on the measure during the 110th Congress.

H.R. 1650, the "Railroad Antitrust Enforcement Act of 2007"

Summary.—The "Railroad Antitrust Enforcement Act of 2007" would eliminate certain carveouts from the Federal antitrust laws enjoyed by railroad common carriers, thereby subjecting railroad industry practices to the pro-competitive influence of the antitrust laws. The bill will extend to the railroad industry remedies and enforcement mechanisms generally applicable to other industries under the Federal antitrust laws. Those harmed by antitrust violations perpetrated by a rail carrier would not have the full range of remedies available under the Federal antitrust laws. The bill is prospective in effect. There is an additional 180–day grace period for conduct that began pursuant to immunity under the previous law and that is continuing at the date of enactment. Except with respect to conferring antitrust immunity, the bill would fully preserve the Surface Transportation Board (STB), regulatory authority. With respect to reviewing railroad mergers and acquisitions, the STB would retain its public interest authority alongside the Agencies' antitrust authority.

Legislative History.—H.R. 1650 was introduced by Rep. Tammy Baldwin (D–WI) on March 22, 2007. Identical legislation was introduced in the Senate, S. 772 on March 6, 2007 by Senator Herb Kohl (D–WI). H.R. 1650 was co-sponsored by 27 members. On February 25, 2008, the Task Force convened a hearing with the following witnesses: Rep. Tammy Baldwin; Ms. Susan M. Diehl, Senior Vice President of Logistics and Supply Chain Management for Holcim (USA) Inc.; Mr. Terry Huval, Director of Utilities for the Lafayette Utilities System; Mr. G. Paul Moates, a partner in the Washington, D.C. office of Sidley Austin LLP, on behalf of the Association of American Railroads; and Dr. Darren Bush, Associate Professor of Law at the University of Houston Law Center.

On April 30, 2008, the Committee ordered the bill favorably reported as amended by voice vote. On September 18, 2008, the Committee reported the bill to the House as H. Rept. No. 110–860, part 1. No further action was taken on the measure during the 110th Congress.

H.R. 5546, the "Credit Card Fair Fee Act of 2008"

Summary.—On July 19, 2007, the Task Force held an oversight hearing to examine the impact of credit card interchange fees, fees

charged when a consumer uses any payment card at a retailer. Testimony was heard from: Steve Smith, President and Chief Executive Officer of K–VA–T Food Stores, Inc.; John Buhrmaster, President of First National Bank of Scotia, New York; Ed Mierzwinski, Consumer Program Director of U.S. PIRG; Tim Muris, O'Melveny & Meyers; and Mallory Duncan, Senior Vice President and General Counsel of the National Retail Federation.

During this hearing, panelists expressed their concerns that the large credit card companies could charge excessive interchange fees because of market power; that retailers have little ability to negotiate the fees; and that there is a lack of transparency with regard to how the credit card companies calculate their fees. After the hearing, Chairman John Conyers, Jr. (D–MI) and Representative Chris Cannon (R–UT) introduced H.R. 5546, the "Credit Card Fair Fee Act of 2008" on March 6, 2008.

H.R. 5546, the "Credit Card Fair Fee Act of 2008" creates a limited antitrust immunity for providers of a single covered electronic payment system (e.g., credit cards) and merchants to negotiate voluntary agreements and, if necessary, participate in market-based proceedings before a panel of experts to determine the appropriate interchange fee. The bill as reported stripped the three expert panel provisions from the underlying legislation.

Legislative History.—H.R. 5546 was introduced by Chairman John Conyers, Jr. (D–MI) and Rep. Chris Cannon (R–UT) on March 6, 2008. Additional original co-sponsors were Reps. John Boozman (R–AZ), Chris Carney (D–PA), Bill Delahunt (D–MA), Louie Gohmert (R–TX), Ralph Hall (D–TX), Zoe Lofgren (D–CA), John Peterson (R–PA), Todd Platts (R–PA), Bill Shuster (R–PA), John Sullivan (R–OK), Anthony Weiner (D–NY), Peter Welch (D–VT), and Joe Wilson (R–SC). There were 45 cosponsors of the legislation.

On May 15, 2008, the Task Force convened a hearing on H.R. 5546. The witnesses were: Joshua R. Floum, Executive Vice President, General Counsel and Secretary, Visa, U.S.A.; Joshua L. Peirez, Group Executive, Global Public Policy and Associate General Counsel, MasterCard Worldwide; Steve Cannon, Chairman, Constantine Cannon, LLP; Tom Robinson, CEO, Rotten Robbie and Vice Chairman, Government Relations, National Association of Convenience Stores; Ed Mierzwinski, U.S. PIRG; and John Blum, Vice President of Operations, Chartway Federal Credit Union.

On July 16, 2008, the Committee ordered the bill favorably reported as amended by a roll call vote of 19 to 16. On October 3, 2008, the Committee reported the bill to the House as H. Rept. No. 110–913. No further action was taken on the measure during the 110th Congress.

ANTITRUST OVERSIGHT ACTIVITIES

During the 110th Congress, the Antitrust Task Force held a number of hearings on consumer issues such as retail gasoline prices, the impact of credit card exchange fees, community pharmacies, and net neutrality. Additionally, the Antitrust Task Force examined the impact of proposed mergers in the airline industry and the package delivery services. The Task Force began its work with oversight hearings on the findings and recommendations of

both the Antitrust Modernization Commission and the Federal antitrust enforcement agencies.

Hearing on "The Findings and Recommendations of the Antitrust Modernization Commission"

Summary.—On May 8, 2007, the Task Force met to examine the findings and recommendations of the Antitrust Modernization Commission. Deborah Garza, Chair of the Commission, and Jon Yarowsky, Vice-Chair, testified.

The Antitrust Modernization Commission undertook a comprehensive, three-year review of the U.S. antitrust laws, as well as the policies and practices of the Department of Justice's Antitrust Division and the Federal Trade Commission in implementing those laws. The Commission reached three primary conclusions. First, free-market competition should remain the touchstone of the United States' economic policy. The Commission's conclusion in this regard is that robust competition among businesses leads to better quality products and services, lower prices, and higher levels of innovation. Second, the core antitrust laws—Sherman Act Sections 1 and 2 and the Clayton Act Section 7—and their application by the courts and federal enforcement agencies, are sound and help to safeguard competition in today's economy. Third, new or different rules are not needed for industries in which innovation, intellectual property, and technological innovation are central features. The Commission found that unlike some other areas of the law, the core antitrust laws are general in nature and have been applied to many different industries to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement.

Hearing on the "Antitrust Agencies: Department of Justice Antitrust Division and Federal Trade Commission's Bureau of Competition"

Summary.—On September 25, 2007, the Judiciary Committee's Task Force on Antitrust and Competition Policy held an oversight hearing to focus on the management and priorities of each agency, to provide Members of the Task Force an opportunity to examine antitrust issues of topical interest, and to assess ways in which the Committee can provide both agencies with sufficient resources to ensure the efficient and effective application of the antitrust laws to promote competition in America's free market economy. The Honorable Thomas O. Barnett, Assistant Attorney General, Department of Justice Antitrust Division; and The Honorable Deborah Platt Majoras, Chairman, Federal Trade Commission, testified at this hearing.

Hearings on Retail Gas Prices

Summary.—On May 16, 2007, the Task Force convened the first in a series of three hearings on retail gasoline prices. A number of factors affect the price of retail gas, including the price of crude oil, refinery capacity and output, environmental factors, market trading, and others. The May 16, 2007 hearing, "Prices at the Pump: Market Failure and the Oil Industry," focused on competition in the crude oil market and the refinery industry. Testimony was

heard from Representative Bart Stupak (D–MI); Representative Heather Wilson (R–NM); the Honorable Richard Blumenthal, Connecticut State Attorney General; Mark Cooper, Director of Research, Consumer Federation of America; and Dr. John Felmy, Chief Economist, American Petroleum Institute.

In May 2008, the Task Force held a two-part hearing to examine the impact and causes of record retail gas prices. On May 7, 2008, the Task Force convened a hearing, "Retail Gas Prices, Part 1: Consumer Effects," examining the effects of the rising price of retail gasoline on consumers. Witnesses at the hearing included Bill Douglass, C.E.O. of Douglass Distributing Company; David Owen, President, National Association of Small Trucking Companies; Dr. Mark Cooper, Director of Research, Consumer Federation of America; and Lou Pugliaresi, President, Energy Policy Research Foundation, Inc. During this hearing, witnesses discussed the direct economic impact of the rising price of gas, including its effect on consumers' financial stability and discretionary spending. The panel also examine the broader economic effects of high gas prices, from the impact on heavily fuel-dependent industries to trickle-down effects throughout other sectors of the economy.

On May 22, 2008, the Task Force continued its review of retail gas prices with the hearing "Retail Gas Prices, Part 2: Competition in the Oil Industry." Testimony was heard from Steve Simon, Senior Vice President of ExxonMobil Corporation; Peter Robertson, Vice Chairman of the Board of Chevron Corporation; John Hofmeister, U.S. President of Shell Oil Company; John Lowe, Executive Vice President, Exploration and Production for ConocoPhillips; and Robert Malone, Chairman and President of BP America. This hearing examined the reasons underlying the rising price of retail gasoline and the level of competition in the oil industry overall, both on the "upstream," or exploration and production side, as well as the "downstream," or refining and distribution side. The Task Force examined whether any of the major integrated oil companies had engaged in anticompetitive behavior or possibly violated federal antitrust laws during the 2008 summer run-up in retail gasoline prices. The Task Force also consider the role of various competitive factors in the increase in retail gasoline prices, including increased domestic demand for oil, increased worldwide demand for oil, the role of speculators in the rising price of crude oil, and domestic refinery capacity constraints, among others.

Hearing on "Competition and the Future of Digital Music"

Summary.—Technological developments are dramatically changing the ways in which consumers can obtain music. In addition to the traditional offerings of broadcast radio and record stores, consumers can choose from digital music delivered via the Internet or satellite, as well as by broadcast or compact disc and other "hard copy" formats. Questions as to the potential implications of these developments for competition in the digital music marketplace were brought into sharp relief by the announcement that XM Satellite Radio and Sirius Satellite Radio planned to merge. On February 28, 2007, the Task Force met to examine these issues against the backdrop of the proposed XM-Sirius merger. The witnesses at the hearing included: Mel Karmazin, CEO, Sirius Satellite Radio;

David Rehr, President, NAB; Gigi Sohn, Public Knowledge; Mark Cooper, Consumer Federation; and Charles Biggio, Wilson Sonsini.

Hearing on "Competition on the Internet"

Summary.—On July 15, 2008, the full Committee convened this hearing focusing on competition on the Internet, examining competition in online advertising, online search, and privacy, among other issues. Testimony was heard from Michael J. Callahan, Executive Vice President, General Counsel and Secretary of Yahoo, Inc.; Brad Smith, Senior Vice President, General Counsel, and Corporate Secretary, Microsoft Corp.; David Drummond, Senior Vice President, Corporate Development and Chief Legal Officer of Google, Inc.; Professor Frank Pasquale, Associate Professor of Law, Seton Hall Law School; Tim Carter, President & CEO, AsktheBuilder.com; and David Sable, Vice Chairman and Chief Operating Officer, Wunderman. Recent transactions and near-transactions among Google, Inc., Yahoo, Inc., and Microsoft Corp. had raised a number of concerns regarding their possible anticompetitive effects in such areas as online advertising, online search, and web platform interoperability. The hearing examined the state of competition with respect to competition in these various online markets.

Hearing on "Net Neutrality and Free Speech on the Internet"

Summary.—The Task Force convened this hearing on March 11, 2008 to explore how network neutrality principles, government enforcement policies, and private business practices currently protect and inhibit the freedom of speech. Witnesses at this hearing were Damian Kulash, lead singer of the band OK Go; Susan Crawford, Yale University Law School; Michele Combs, Christian Coalition of America; Caroline Fredrickson, American Civil Liberties Union; Christopher Yoo, University of Pennsylvania Law School; and Rick Carnes, Songwriters Guild of America.

Over the past few years, the Internet has become a dominant venue for the expression of ideas and public discourse. From social networking to get-out-the-vote drives, the Internet has become a leading tool for speech and action. Web sites like Facebook, MySpace, LinkedIn, and Monster have changed the way people of all ages connect socially and professionally, and political candidates raise more money online with each election cycle. Newspaper web sites and independent blogs have revolutionized the ways in which news and media are disseminated and consumed, and the Internet has opened up new performance venues to emerging artists and entertainers. Technological innovation on the Internet has made it among the most powerful outlets for creativity and free speech.

Because of the Internet's importance in promoting and facilitating speech, proponents of net neutrality have raised concerns that a lack of competition among broadband access providers allows providers to stifle and censor speech. The nexus between competition, net neutrality, and free speech have surfaced as an issue for the Congress to consider.

Hearing on "Competition in the Airline Industry"

Summary.—On April 24, 2008, the Task Force convened a hearing to examine the impact of the proposed merger between Delta Air Lines and Northwest Airlines and the state of competition in the airline industry. Delta and Northwest announced their plans to merge on April 14, 2008, a $3.6 billion merger agreement that would create the largest airline in the United States. Industry experts speculated that the merger could trigger a round of further consolidation within the industry, possibly involving United, Continental Airlines, US Airways, and American Airlines. Mergers among these large national carriers could enhance consumer welfare by creating financially stable companies offering passengers more flights and destinations within a single, integrated network. At the same time, consolidation in the industry raises anticompetitive concerns, including possible reduction in seat capacity and increases in ticket fares.

Witnesses at the hearing included Richard Anderson, CEO, Delta Air Lines; Douglas Steenland, CEO, Northwest Airlines; R. Thomas Buffenbarger, International President, International Association of Machinists and Aerospace Workers; Douglas Moormann, Vice President, Economic Development for the Cincinnati USA Regional Chamber; Clifford Winston, Senior Fellow, Economic Studies Program, Brookings Institute; and Veda Shook, International Vice President, Association of Flight Attendants—CWA.

Hearing on "Competition in the Package Delivery Industry"

Summary.—On September 9, 2008, the full Committee convened this hearing to examine the state of competition in the domestic package delivery industry. The prior month, DHL had announced plans to outsource all of its "lift" (airport to airport air transportation) to UPS. This would have resulted in a critical component of DHL's most lucrative business segment being controlled by one of its competitors. The package delivery industry (the domestic market for the transportation and delivery of packages, parcels, and certain types of mail) has both an air and ground transportation component. Virtually all air transportation falls within the segment of the industry known as "express delivery," in which 1- or 2-day package delivery is guaranteed. Since 2000, the package delivery market has become increasingly concentrated. As a result of the acquisition of Emery Worldwide by UPS and Airborne Express by DHL, the number of market participants has dwindled from 6 to 4: FedEx, UPS, U.S. Postal Service (USPS), and DHL. Currently, USPS outsources lift for its express delivery service to FedEx, UPS, and ABX. As a result, an additional consequence of the proposed agreement would be to concentrate lift for the express delivery segment of the package delivery industry into the hands of two companies: FedEx and UPS.

Testimony was received from two panels of witnesses. The first panel was Representatives Marcy Kaptur (D–OH), Betty Sutton (D–OH), Mike Turner (R–OH), and Senators Sherrod Brown (D–OH) and George Voinovich (R–OH). Witnesses on the second panel were John Mullen, CEO of DHL Worldwide; Burt Wallace, Senior Vice President, Transportation for UPS; Lieutenant Governor Lee Fisher of Ohio; Captain Dave Ross, President of Teamsters Local

1224; Mayor David Raizk of Wilmington, Ohio; Captain John Prater, International President of the Air Line Pilots Association (ALPA); and antitrust expert David Balto.

COMMITTEE LEGISLATIVE ACTIVITIES

H.R. 1433, the "District of Columbia House Voting Rights Act of 2007"

Summary.—H.R. 1433 would provide the District of Columbia with full representation in the U.S. House of Representatives. The bill permanently expands the U.S. House of Representatives from 435 to 437 seats. The two-seat increase will provide a vote to the District of Columbia and a new, at-large seat through the One Hundred Twelfth Congress to the State next entitled to increase its congressional representation. Based on the 2000 Census, Utah is the State next entitled to increase its congressional representation.

Legislative History.—H.R. 1433 was introduced on March 9, 2007, by Delegate Norton and Representative Davis and referred to the Committee on the Judiciary and the Committee on Oversight and Government Reform. On March 14, 2007, the Committee on the Judiciary held a hearing on H.R. 1433. The hearing witnesses were Viet D. Dinh, former U.S. Assistant Attorney General for Legal Policy at the U.S. Department of Justice; Bruce Spiva, founding partner of Spiva & Hartnett and Chair of the Board of DC Vote; Rick Bress, partner in the Washington, DC, office of Latham & Watkins; and Jonathan Turley, professor of law at George Washington University. On March 15, 2007, the Committee on the Judiciary reported H.R. 1433 favorably by a roll call vote of 21 to 13. On March 22, 2007, the U.S. House of Representatives proceeded with general debate and debate on a motion to commit, with further proceedings on the motion postponed. There was no further House action on H.R. 1433.

H.R. 2102, the "Free Flow of Information Act of 2007"

Summary.—H.R. 2102 ensures that members of the press may utilize confidential sources without causing harm to themselves or their sources. It does this by providing a qualified privilege that prevents a reporter's source material from being revealed except under certain narrow circumstances, such as where it is necessary to prevent an act of terrorism or other significant and specified harm to national security or imminent death or significant bodily harm. The bill thus strikes a balance with respect to promoting the free dissemination of information and ensuring effective law enforcement and the fair administration of justice.

Legislative History.—H.R. 2102, the "Free Flow of Information Act of 2007" was introduced by Rep. Rich Boucher (D–VA) on May 2, 2007. On June 14, 2007, the Committee met in open session to receive testimony from: Jim Taricani, investigative journalist; William Safire, New York Times columnist; Rachel Brand, Assistant Attorney General for Legal Policy, U.S. Department of Justice; Lee Levine, partner with Levine Sullivan Koch & Schulz, L.L.P.; and Professor Randall Eliason, G.W.U. Law School. The bill was markup by the Committee on August 1, 2007 as amended by a voice vote. On October 10, 2007 the legislation was reported to the House

as H. Rept. 110–370. Pursuant to H. Res. 742, the measure was considered by the House on October 16, 2007 and passed the House by a roll call vote of 398–21 (Roll No. 973). H.R. 2102 was placed on the Senate Legislative Calendar on October 18, 2007. No further action was taken on the legislation during the 110th Congress.

H.R. 2128, the "Sunshine in the Courtroom Act of 2007"

Summary.—This legislation would allow the "photographing, electronic recording, broadcasting, or televising" of federal court proceedings.

Legislative History.—H.R. 2128, the "Sunshine in the Courtroom Act of 2007," was introduced on May 3, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on June 4, 2007. The bill was discharged from the Subcommittee on September 20, 2007. The Committee met in open session on September 27, 2007 to hear testimony from: Representative Ted Poe (R–TX); the Honorable Nancy Gertner, U.S. District Court, District of Massachusetts; Susan Swain, President and Co-Chief Operating Office, CSPAN; Barbara Cochran, Radio-Television News Directors Association; Fred Graham, Anchor, Court TV; the Honorable John Tunheim, Chair, Judicial Conference Committee on Court Administration and Case Management; District Judge, U.S. District Court, Minnesota (on behalf of the Judicial Conference of the United States); and John Richter, U.S. Attorney, Western District of Oklahoma (on behalf of the U.S. Department of Justice). October 24, 2007 the Committee on the Judiciary met in open session mark-up and ordered favorably reported H.R. 2128, as amended, by a roll call of 17–11. There was no further action on H.R. 2128.

H.R. 2176, to provide for and approve the settlement of certain land claims of the Bay Mills Indian Community and H.R. 4115, to provide for and approve the settlement of certain land claims of the Sault Ste. Marie Tribe of Chippewa Indians

Summary.—H.R. 2176 would provide for and approve the settlement of certain land claims of the Bay Mills Indian Community ("Bay Mills Tribe"), and H.R. 4115, would provide for and approve the settlement of certain land claims of the Sault St. Marie Tribe of Chippewa Indians (Sault Ste. Marie Tribe).

Legislative History.—H.R. 2176 was introduced by Representative Bart Stupak on May 3, 2007. H.R. 4115 was introduced by Representative John Dingell (D–MI) on November 8, 2007. On March 6, 2008, the Committee received a sequential referral of both bills.

On March 14, 2008, the Committee convened a hearing on H.R. 2176 and H.R. 4115. The witnesses at this hearing were Representative Carolyn Kilpatrick (D–MI); Representative Shelley Berkley (D–MI); Carl Artman, Assistant Interior Secretary for Indian Affairs, Department of the Interior; Chief Fred Cantu, Saginaw Chippewa Tribe of Michigan; Alicia Walker, Chairman, Sault St. Marie Chippewa Tribe; Kathryn Tierney, Tribal Attorney, Bay Mills Indian Community; and Cynthia Abrams, Board Member, National Coalition Against Legalized Gambling, who submitted a statement for the record.

On April 2, 2008, the Committee met and ordered reported H.R. 2176 and H.R. 4115 unfavorably without amendment by a roll call vote of 29–0. On April 4, 2008, both bills were reported to the House as H. Rept. 110–541, Part 2 (H.R. 2176) and H. Rept. 110–542, Part 2 (H.R. 4115). There was no further action on H.R. 4115 during the remaining 110th Congress.

The House considered H.R. 2176 on June 25, 2008 pursuant to H. Res. 1298 and the measure failed passage by a roll call vote of 121–298 (Roll No. 458). There was no further action on H.R. 2176 during the 110th Congress.

H.R. 3678, the "Internet Tax Freedom Act Amendments Act of 2007"

Summary.—H.R. 3678, the "Internet Tax Freedom Act Amendments Act of 2007," would amend the Internet Tax Freedom Act to extend the moratorium on certain taxes relating to the Internet and to electronic commerce from November 1, 2007, until November 1, 2011, and make other clarifications to the law. An oversight hearing on this issue was held by the Subcommittee on Commercial and Administrative Law and is discussed in a subsequent section of this report.

Legislative History.—On September 27, 2007, Chairman John Conyers, Jr. (D–MI) introduced H.R. 3678. The Committee met in open session to consider the legislation and ordered the bill reported favorably, as amended by a roll call vote of 38–0. The report was filed in the House on October 12, 2007 as H. Rept. 110–372. The legislation was considered under suspension of the rules on October 16, 2007 and passed, as amended, by a recorded vote of 405–2 (Roll No. 968).

On October 25, 2007, the bill passed the Senate with an amendment by unanimous consent. The House suspended the rules and agreed to the Senate amendment on October 30, 2007 by a recorded vote of 402–0 (Roll No. 1014). The legislation was signed into law by the President on October 30, 2007 as Public Law 110–108.

H. Res. 1448, that the Committee on the Judiciary shall inquire whether the House should impeach G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana

Summary.—H. Res. 1448 authorized and directed the Committee on the Judiciary to inquire whether the House should impeach G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana.

Legislative History.—H. Res. 1448 was introduced on September 17, 2008 by Chairman John Conyers, Jr. (D–MI) and Ranking Member Lamar Smith (D–TX). Also, on the same day, the House agreed to the resolution without objection and the Committee established a task force to conduct an inquiry of the matter. The following day, September 18, 2008, the Committee appointed members to the task force.

COMMITTEE OVERSIGHT

INVESTIGATION INTO U.S. ATTORNEY REMOVALS AND THE POLITICIZATION OF THE DEPARTMENT OF JUSTICE

As the 110th Congress convened, reports surfaced indicating that a large group of United States Attorneys had been asked to resign their positions under troubling circumstances. The resulting Committee inquiry—led in large part by the Subcommittee on Commercial and Administrative Law—eventually grew to address broader questions about the extent to which core functions of the Department of Justice such as criminal prosecution decisions and hiring of career personnel had been improperly politicized.

Hiring and Firing of U.S. Attorneys and other Department Personnel

The controversy began when reports surfaced of United States Attorneys around the country being forced from office under suspicious circumstances.[1] Several Members of Congress expressed concern about these firings, and on January 17, 2007, Chairman Conyers and Courts, the Internet, and Intellectual Property Subcommittee Chairman Howard Berman wrote to Attorney General Alberto Gonzales requesting information about the matter.

In February and March 2007, both the House and Senate Judiciary Committees held hearings to explore the reasons for the firings and to address concerns that political considerations may have influenced the Administration's decisions. At a March 6, 2007, hearing of the Subcommittee on Commercial and Administrative Law, Principal Associate Deputy Attorney General Will Moschella testified before the Commercial and Administrative Law Subcommittee on this subject, providing both a private briefing and public testimony regarding the reasons for the forced resignations. He claimed that, with one exception, the U.S. Attorneys had been fired because of their poor performance. Under questioning by Chairman Conyers, Mr. Moschella stated that the White House had played only a very modest role in the matter, stating that "because these are political appointees," it would be "unremarkable" to send the list to the White House and "let them know [o]ur proposal and whether they agreed with it."[2]

That same day, the Subcommittee also heard from six of the removed U.S. Attorneys, who appeared under subpoena. These prosecutors described the circumstances of their removal, explaining that they had been given virtually no explanation of why they were being asked to resign, and rejecting the charges of poor performance that the Administration had subsequently leveled against them.[3] Concern about the firings was further heightened when two of the U.S. Attorneys testified that they had received what they felt were inappropriate communications from Members of Congress or their staff about pending prosecution matters. United States Attor-

[1] *See, e.g.*, Thornton and Soto, Lam Asked to Step Down, San Diego Union Tribune, January 12, 2007.

[2] "H.R. 580, Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys," 110th Cong., pg. 24 (2007).

[3] March 6, 2007, Testimony of former United States Attorneys Carol Lam, David Iglesias, Daniel Bogden, Bud Cummins, and John McKay Before the House Judiciary Committee Subcommittee on Commercial and Administrative Law at passim.

ney David Iglesias described such calls from Senator Pete Domenici and Representative Heather Wilson. United States Attorney John McKay also described receiving a "disconcerting" call regarding his handling of election cases from the chief of staff to United States Representative Doc Hastings.[4]

To address these questions, Chairman Conyers and Commercial and Administrative Law Subcommittee Chair Linda Sánchez sought access to documents and interviews with White House and Department of Justice personnel at the center of the firings.[5] That request was followed by a Subcommittee vote authorizing the Chairman to issue subpoenas to compel production of documents and to obtain testimony from witnesses such as Karl Rove, Harriet Miers, Monica Goodling, and others who appeared to have played significant roles in the matter.[6]

As the investigation progressed, it became clear that the Department of Justice would not provide full information about the matter on a voluntary basis. Accordingly, on April 10, 2007, Chairman Conyers issued a document subpoena to Attorney General Gonzales.[7]

Documents obtained from the Department of Justice only raised more questions about the firings. There were multiple drafts of lists of U.S. Attorneys to be fired that had passed between the White House and the Department.[8] None of the documents produced, however, explained exactly how or by whom the removed U.S. Attorneys were placed on the list. Committee staff (working jointly with Senate Judiciary Committee staff) also conducted a series of 11 on-the-record interviews of Department of Justice personnel, but the more the Committee learned, the more questions it raised regarding the true reasons for these removals.

The Committee's investigation established that the "performance-based" reasons offered by the Administration to justify these firings were not true;[9] as respected former Deputy Attorney General James Comey testified on May 3, 2007, the removed U.S. Attorneys were in almost all cases top performers.[10] This only further raised suspicion about the real reasons for the firings. Indeed, based on the Department documents and interviews obtained by the Committee, it became increasingly apparent that at least some of the U.S. Attorneys were removed for various political motives.

Bud Cummins, for example, was apparently removed at least in part simply to make way for Karl Rove's aide Tim Griffin to obtain U.S. Attorney experience to enhance his future employment and

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[4] March 6, 2007, Testimony of former United States Attorney John McKay Before the House Judiciary Committee Subcommittee on Commercial and Administrative Law at 24.

[5] March 8, 2007, Letter from Chairman John Conyers, Jr. and Subcommittee Chair Linda Sánchez to Attorney General Alberto Gonzales; March 9, 2007, Letter from Chairman John Conyers, Jr. and Subcommittee Chair Linda Sánchez to White House Counsel Fred Fielding.

[6] March 21, 2007, Subcommittee Meeting to Consider Subpoena Authorization Concerning the Recent Termination of United States Attorneys and Related Subjects, 110th Cong. (2007).

[7] April 10, 2007, Subpoena Issued by Chairman John Conyers, Jr. to Attorney General Alberto Gonzales.

[8] OAG 20–21, OAG 34–25, DAG 14–17, OAG 45–48. Documents provided by the Department of Justice in response to the Committee's request were marked with Bates numbers that indicated the office from which the document came, as well as a page number assigned to it. For example, "OAG 20" was page 20 of the documents produced by the Office of the Attorney General.

[9] Additional Views of Chairman Conyers and Subcommittee Chair Sánchez Submitted in Support of Contempt Resolution for Harriet Miers and Josh Bolten at 43–51.

[10] Continuing Investigation into the U.S. Attorneys Controversy, 110th Cong., (2007).

political prospects.[11] Of far greater concern, United States Attorney David Iglesias appears to have been removed because New Mexico Republicans had complained about his refusal to bring particular vote fraud prosecutions where he did not think there was an appropriate basis to prosecute, and also because he angered New Mexico Members of Congress who had hoped he would bring other prosecutions ahead of the 2006 elections.[12] In a number of other cases, serious concerns about the role of politics in the firings still remain.[13]

The Department's Liaison to the White House, Monica Goodling, testified before the full Committee on May 23, 2007, under subpoena and limited use immunity granted after she had invoked her Fifth Amendment rights against self-incrimination.[14] At this hearing, Ms. Goodling acknowledged that she had "crossed the line"[15] and considered political factors in hiring career prosecutors and immigration judges and in approving Department personnel for important details to Department leadership offices. This testimony led to investigations by the Department's Office of the Inspector General and Office of Professional Responsibility, and reports finding widespread use of improper political considerations—and in some cases unlawful use—in Department hiring for a diverse array of positions including honors program entry-level positions, career Assistant United States Attorney jobs, summer internships, details to top Department offices, and immigration judgeships.[16]

Ms. Goodling's testimony also confirmed Committee concerns that the Administration had deliberately obscured the role of the White House in this matter, telling Members that Deputy Attorney General McNulty had warned her away from a Senate briefing on the issue because, if she were present, Senators might be encouraged to ask questions about the actions of the White House.[17] Ms. Goodling's testimony provided important information for the Committee's investigation; however, it still did not explain who had identified these U.S. Attorneys for firing or why, as she denied having much information on that subject.

Eventually, the Committee exhausted all sources of information from within the Department of Justice without being able to answer key mysteries about the firings. As Mr. Conyers put it in questioning the Attorney General, there was one obvious place to look for answers: "The breadcrumbs in this investigation have always led to 1600 Pennsylvania Avenue." Accordingly, on June 13, 2007, the Chairman issued subpoenas for White House documents and for the appearance of Harriet Miers regarding these matters.[18]

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[11] Additional Views of Chairman Conyers and Subcommittee Chair Sánchez Submitted in Support of Contempt Resolution for Harriet Miers and Josh Bolten at 36–37.

[12] *Id.* at 24–28.

[13] *Id.* at 29–35.

[14] Continuing Investigation into the U.S. Attorneys Controversy and Related Matters: Hearing Before the H. Comm. on the Judiciary, 110th Cong. (2007)

[15] The Continuing Investigation into the U.S. Attorneys Controversy and Related Matters, 110th Cong. pg 34, (2007).

[16] Joint Report by the Offices of the Inspector General and Professional Responsibility, An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and the Summer Law Intern Program, June 2008; Joint Report by the Offices of the Inspector General and Professional Responsibility, An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General, July 2008.

[17] May 23, 2007 Prepared Statement of Monica Goodling at 3.

[18] June 13, 2007, Subpoenas issued by Chairman John Conyers, Jr. to Harriet Miers and Josh Bolten.

That same day, Senate Judiciary Committee Chairman Leahy issued an identical document subpoena to the White House, as well as a subpoena for the testimony of Karl Rove aide Sara Taylor. Chairman Conyers also subpoenaed White House documents known to be contained on the computer servers of the Republican National Committee, which had been used by White House personnel, apparently to avoid federal recordkeeping requirements.[19]

On July 12, 2007, the Commercial and Administrative Law Subcommittee convened to hear the testimony of Harriet Miers. Ms. Miers refused to appear for the hearing, however, making the unprecedented claim that, as a former aide to President Bush, she was immune from Congressional subpoena.[20] The Administration similarly refused to produce any subpoenaed documents, claiming that all White House records related to the U.S. Attorney removals were covered by executive privilege. The Administration also declined to provide a "privilege log" describing the documents that were being withheld.[21] The RNC also refused to provide most of the subpoenaed documents or a privilege log, claiming that White House orders prevented it from doing so.[22]

On July 25, 2007, after numerous efforts to negotiate a resolution to this matter, the full Judiciary Committee voted 22–17 to recommend that the House of Representatives find Harriet Miers and White House Chief of Staff Josh Bolten, as custodian of White House documents, in contempt of Congress.[23] On February 14, 2008, the full House cited Ms. Miers and Bolten for contempt, and referred them to the U.S. Attorney for the District of Columbia for criminal prosecution, by a roll call vote of 223–32.[24] This was the first vote to cite a person for contempt of Congress in over 25 years.

The U.S. Attorney refused to act on the contempt referral, however, at the direction of Michael Mukasey, who had replaced Alberto Gonzales as Attorney General.[25] In response, Chairman Conyers used the authority granted to him to take the matter to court on behalf of the Committee. On March 10, 2008, the Committee filed a civil action in the U.S. District Court seeking a legal ruling that the Administration's theories of immunity from subpoena and executive privilege are legally unsound.[26]

On July 31, 2008, Judge Bates granted the Committee's motion for partial summary judgment and ruled that, as the Committee had asserted, Harriet Miers was not immune from Congressional subpoena and that she was required to appear and testify before the Committee.[27] Judge Bates also ruled that the Administration had no valid excuse for refusing to produce non-privileged docu-

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[19] July 13, 2008, Subpoena issued by Chairman John Conyers, Jr. to Republican National Committee Chair Mike Duncan.

[20] July 10, 2007, Letter From George T. Manning to Chairman John Conyers, Jr.

[21] June 28, 2007, Letter from White House Counsel Fred Fielding to Chairmen John Conyers, Jr. and Patrick J. Leahy.

[22] July 31, 2007, Letter from Robert Kelner to Chairman John Conyers, Jr.

[23] Meeting to Consider: a Resolution and Report Recommending to the House of Representatives that Former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten be Cited for Contempt of Congress, 110th Cong. (2007).

[24] Roll Call Vote No. 60, H. Res. 982, U.S. House of Representatives, February 14, 2008.

[25] February 29, 2008, Letter from Attorney General Michael Mukasey to Speaker of the House Nancy Pelosi.

[26] *Committee on the Judiciary* v. *Miers,* Civil Action No. 08–0409 (JDB) (United States District Court for the District of Columbia, July 31, 2008).

[27] Memorandum Opinion and Order, *Committee on the Judiciary* v. *Miers,* Civil Action No. 08–0409 (JDB) (United States District Court for the District of Columbia, July 31, 2008).

ments, and that the Administration was obligated to provide a more detailed listing and description of any documents withheld from the Committee's subpoena on executive privilege grounds than it previously had done.[28] The matter is now pending in the United States Court of Appeals for the District of Columbia, and the Judge's order has been stayed during the appeal.[29]

On September 29, 2008, the Department's Office of the Inspector General and Office of Professional Responsibility released their own detailed report on the forced resignation of these U.S. Attorneys.[30] The report confirmed the Committee's initial conclusions that the so-called performance-based reasons offered by the Administration to justify these firings were in large part untrue, and that a number of the firings were politically motivated, concluding that "political partisan considerations were an important factor in the removal of several of the U.S. Attorneys."[31] The report further concluded that inaccurate and misleading statements were made to the Congress and the public on this matter, and that a number of laws may have been violated by both the firings and the statements.[32] Finally, the report describes a widespread refusal by White House witnesses to cooperate with the Department's investigation and the refusal of the White House to make key documents available, and concludes that because of this obstruction, Department investigators "were unable to determine the role the White House played in these removals."[33]

Because of the seriousness of their findings and the limits on their authority to compel White House cooperation, the Department watchdogs called in this report for the appointment of a federal prosecutor to continue the investigation and evaluate whether criminal charges should be brought.[34] Accepting this recommendation, Attorney General Mukasey appointed Norah M. Dannehy, the Acting United States Attorney for the District of Connecticut, to continue the investigation.[35]

Allegations of Selective Prosecution

The Committee also investigated concerns that some U.S. Attorneys who were not removed from their jobs—including those described by Kyle Sampson as "loyal Bushies"[36]—improperly consid-

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[28] Memorandum Opinion and Order, *Committee on the Judiciary* v. *Miers,* Civil Action No. 08–0409 (JDB) (United States District Court for the District of Columbia, July 31, 2008).

[29] October 6, 2008, Opinion and Order Granting Motion for Stay Pending Appeal, *Committee on the Judiciary* v. *Miers,* Appeal No. 08–5357, United States Court of Appeals for the District of Columbia Circuit.

[30] Joint Report of the Department's Offices of the Inspector General and Professional Responsibility, An Investigation Into the Removal of Nine U.S. Attorneys, September 2008.

[31] Joint Report of the Department's Offices of the Inspector General and Professional Responsibility, An Investigation Into the Removal of Nine U.S. Attorneys, September 2008, at 325–26.

[32] *Id.* at 357–58.

[33] *Id.* at 338.

[34] *Id.* at 358.

[35] Statement by Attorney General Michael B. Mukasey on the Report of an Investigation into the Removal of Nine U.S. Attorneys in 2006, Sept. 29, 2008, available at http://www.usdoj.gov/opa/pr/2008/September/08-opa-859.html.

[36] E-mail from Kyle Sampson to Deputy White House Counsel David Leitch, responding to a "Question from Karl Rove," Jan. 9, 2005; *see also* Krugman, Department of Injustice, New York Times, March 7, 2007 ("The bigger scandal, however, almost surely involves prosecutors still in office. The Gonzales Eight were fired because they wouldn't go along with the Bush administration's politicization of justice. But statistical evidence suggests that many other prosecutors decided to protect their jobs or further their careers by doing what the administration wanted them to do: harass Democrats while turning a blind eye to Republican malfeasance.").

ered partisan political factors in carrying out their prosecution duties. These concerns were reinforced and heightened by an academic study published by Professors Donald Shields and John Cragan in February 2007 and updated for presentation at an October 23, 2007, joint hearing of the Crime, Terrorism, and Homeland Security Subcommittee and the Commercial and Administrative Law Subcommittee that found federal prosecutors during the Bush Administration have investigated Democratic officeholders far more frequently than Republican officeholders, and that there was "less than one chance in 10,000" that the over-representation of Democrats was by chance, concluding that selective prosecution of Democrats must have occurred.[37]

The Committee's investigation has generated bipartisan concern about the subject. In summer 2007, the Committee received a bipartisan petition signed by 44 former State attorneys general calling for action.[38] And at the Subcommittees' joint hearing, former Reagan and George H. W. Bush Attorney General Richard Thornburgh stated his concern about "apparent political prosecution" and warned that citizens "may no longer" have "confidence that the Department of Justice is conducting itself in a fair and impartial manner without actual political influence or the appearance of political influence."[39]

Against this background, Committee Majority staff have investigated numerous allegations of selective prosecution that have surfaced around the country. In the early stages of its work, the Committee focused particularly on three cases where concerns about politically-motivated prosecutions have been especially intense: the Georgia Thompson case in Milwaukee, Wisconsin, the prosecution of the Democratic former Governor of Alabama Don Siegelman, and the criminal prosecution of Allegheny County coroner Cyril Wecht in Pittsburgh, Pennsylvania. Staff has also examined several cases brought against a group of judges and a practicing attorney in Jackson, Mississippi, including Mississippi Supreme Court Justice Oliver Diaz and trial attorney Paul Minor. The facts and circumstances of these and other prosecutions, as revealed by a detailed staff investigation, are summarized in a report prepared for Chairman Conyers by Committee Majority staff and released on April 17, 2008.[40]

As part of this investigation concerning selective prosecution and the U.S. Attorney removals, the Committee has pursued testimony from former White House Deputy Chief of Staff Karl Rove, issuing a subpoena for his testimony on May 22, 2008. When Mr. Rove re-

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[37] Shields & Cragan, The Political Profiling of Elected Democratic Officials: When Rhetorical Vision Participation Runs Amok (2007), available at http://www.epluribusmedia.org/columns/2007/20070212_political_profiling.html.

[38] *See* Editorial, Time to Vote Contempt, New York Times, Feb. 14, 2008, ("There are people in jail today, including a former governor of Alabama, who have raised credible charges that they were put there for political reasons."); Horton, A Primer In Political Prosecution, Oct. 24, 2007; Kalson, The Wecht Indictment, July 22, 2007; Cohen, The United States Attorneys Scandal Comes to Mississippi, Oct. 11, 2007; Letter from 44 former State attorneys general to Chairman John Conyers, Jr., H. Comm. on the Judiciary, and Chairman Patrick Leahy, S. Comm. on the Judiciary, July 13, 2007. That attorneys general letter specifically addressed the prosecution of former Alabama Governor Don Siegelman, described below.

[39] Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism, and Homeland Security and on Commercial and Admin. Law, Hearing at 12.

[40] Staff Report on Allegations of Selective Prosecution in Our Federal Criminal Justice System, April 17, 2008.

fused to appear in response to subpoena, the Committee voted to recommend that the full House of Representatives find him in contempt of Congress.

The Committee has also pursued access to documents needed to appropriately complete this investigation. Despite efforts to obtain relevant materials on a voluntary basis,[41] however, and a subpoena issued on June 27, 2008, the Department of Justice has refused to provide any non-public information or documents regarding the Siegelman and Wecht cases, as well as other documents called for by the subpoena.[42] On December 10, 2008, Chairman Conyers sent a letter to the Attorney General to remind him that the Committee was still seeking these materials and to ensure that they be preserved as required by law.

Recent developments have only heightened concern about cases investigated by the Committee. For example, on March 27, 2008, the federal appeals court in Atlanta, Georgia ruled that Don Siegelman should be released from prison pending his appeal, having concluded that "Siegelman has satisfied the criteria set out in the statute, and has specifically met his burden of showing that his appeal raises substantial questions of law or fact" regarding the viability of his conviction.[43]

And more recently, new information has surfaced describing additional acts of apparent misconduct by the Siegelman prosecution team. On November 7, 2008, Chairman Conyers wrote the Attorney General transmitting troubling documents provided by a Department whistleblower; these documents suggested that the Siegelman jury had improperly communicated with the prosecution during trial, contacts that were never disclosed to the defense or the judge.[44] Chairman Conyers also transmitted documents suggesting that the Republican-connected U.S. Attorney, who had agreed to recuse herself from the case at the insistence of the defense, had nevertheless communicated information and a litigation strategy recommendation to the active members of the prosecution team. Commentators have expressed extensive concern about this new information, among them law professor Carl Tobias, who said the e-mails raise "legitimate questions" about the prosecution's conduct.[45] According to a November 26, 2008, filing by the Department in the Siegelman appeal, in response to Mr. Conyers' letter it has reopened its internal investigation of the issue of improper contacts between the prosecution team and members of the jury.[46]

On April 17, 2008, along with the release of the Committee Majority staff's report on this subject, Chairman Conyers, Chair Sánchez, and Representatives Davis and Baldwin requested a full investigation of the Siegelman, Wecht, and other cases by the Office of Professional Responsibility and the Office of the Inspector

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[41] Letters from Chairman John Conyers, Jr. and other members of the H. Comm. on the Judiciary to Attorney General Alberto Gonzales, July 17, 2007, and Sept. 10, 2007.

[42] *Id.*

[43] Order filed March 27, 2008, in *United States* v. *Siegelman*, et al, Appeal No. 07–13163–B, Eleventh Circuit Court of Appeals.

[44] November 7, 2008, Letter from Chairman John Conyers, Jr. to Attorney General Michael Mukasey.

[45] Chander, "House Judiciary Chairman Conyers says Siegelman Case E-mails Raise Questions," Birmingham News, November 14, 2008.

[46] Response to Defendant-Appellant Siegelman's Notice of Supplemental Information Relevant to Issues on Appeal, filed November 26, 2008, in *United States* v. *Siegelman, et al*, Appeal No. 07–13163–B, Eleventh Circuit Court of Appeals.

General; the Office of Professional Responsibility has launched such an investigation.[47]

Committee Hearings and Meetings on U.S. Attorney Removals and Politicization of the Department of Justice

Hearing on H.R. 580, Restoring Check and Balances in the Confirmation of U.S. Attorneys

On March 6, 2007, six of the terminated U.S. Attorneys—Ms. Lam, Mr. Iglesias, Mr. Cummins, Mr. McKay, Mr. Bogden, and Mr. Charlton—and William E. Moschella, Principal Associate Deputy Attorney General, U.S. Department of Justice, testified before the Commercial and Administrative Law Subcommittee. Mr. Moschella also provided private briefings on February 28 and March 5 to Commercial and Administrative Law Subcommittee Members and staff. Other witnesses at the hearing included: Judiciary Committee member Rep. Darrell Issa; Asa Hutchinson, a former Member of the House of Representatives and former U.S. Attorney; John A. Smietanka, former U.S. Attorney; Atlee Wampler, III, President of the National Association of Former United States Attorneys; George J. Terwilliger, III, Former Deputy Attorney General; and T.J. Halstead, Legislative Attorney, Congressional Research Service American Law Division.

Oversight Hearing on Ensuring Executive Branch Accountability

On March 29, 2007, the Commercial and Administrative Law Subcommittee heard testimony assessing the validity of White House assertions concerning executive privilege in the U.S. Attorney controversy. The witnesses included John Podesta, former White House Chief of Staff to President Bill Clinton; Beth Nolan, former White House Counsel to President Bill Clinton; Frederick A.O. Schwarz, Jr., Senior Counsel, Brennan Center for Justice; and Noel J. Francisco, former Associate Counsel to President George W. Bush. Ms. Nolan indicated that she had testified four times before congressional committees on matters directly related to her White House duties, including three times while she was still serving in that position.

Oversight Hearing on the Continuing Investigation into the U.S. Attorneys Controversy

On May 3, 2007, former Deputy Attorney General James B. Comey testified before the Commercial and Administrative Law Subcommittee.

Oversight Hearing on the United States Department of Justice

On May 10, 2007, Attorney General Gonzales appeared before the full Judiciary Committee for an oversight hearing that focused on the U.S. Attorneys controversy.

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[47] May 5, 2008, Letter from H. Marshall Jarrett to Hon. John Conyers Jr. stating that the Office of Professional Responsibility is investigating "allegations of selective prosecution relating to the prosecutions of Don Siegelman, Georgia Thompson, and Oliver Diaz and Paul Minor."

Oversight Hearing on the Continuing Investigation into the U.S. Attorneys Controversy and Related Matters

After a grant of limited use immunity, Monica Goodling, former Senior Counsel to Attorney General Alberto Gonzales and the Department's White House Liaison, appeared before the full Committee on May 23, 2007.

Oversight Hearing on the Continuing Investigation into the U.S. Attorneys Controversy and Related Matters

On June 21, 2007, Deputy Attorney General Paul McNulty testified before the Commercial and Administrative Law Subcommittee.

Hearing on the Continuing Investigation into the U.S. Attorneys Controversy and Related Matters

Former White House Counsel Harriet Miers refused to comply with a subpoena requiring her appearance before the Commercial and Administrative Law Subcommittee on July 12, 2007. Ms. Miers not only failed to provide testimony or documents; she failed even to appear for the hearing. Subcommittee Chair Linda Sánchez proceeded to overrule the White House's claims of immunity and privilege with respect to Ms. Miers, and the ruling was sustained by Subcommittee Members in a roll call vote of 7–5.

Meeting to consider the executive privilege claims asserted by White House Counsel in response to the subpoena for the production of documents issued to Joshua Bolten, White House Chief of Staff, or appropriate custodian of records

On July 17, 2007, Chairman Conyers and Subcommittee Chair Sánchez wrote to White House Counsel Fred Fielding, notifying him that the Commercial and Administrative Law Subcommittee would formally consider the White House's privilege claims with regard to subpoenaed White House documents at a July 19, 2007, meeting, and again urged compliance with the June 13 subpoena.[48] Notwithstanding that letter, Mr. Bolten still did not comply with his subpoena. The Commercial and Administrative Law Subcommittee then met on July 19, Subcommittee Chair Sánchez ruled against the privilege claims with respect to Mr. Bolten's refusal to produce any documents pursuant to the subpoena issued to him, and that ruling was upheld by a 7–3 vote.

Meeting to consider a resolution and report recommending to the House of Representatives that former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten be found in contempt of Congress

On July 25, 2007, the full Committee, by a roll call vote of 22–17, recommended that the House find Harriet Miers and Josh Bolten in contempt of Congress.

[48] July 17, 2007, Letter from Chairman John Conyers, Jr. and Subcommittee Chair Linda Sánchez to White House Counsel Fred Fielding.

Oversight Hearing on Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System, Parts I and II

On October 23, 2007, the Crime, Terrorism, and Homeland Security Subcommittee and the Commercial and Administrative Law Subcommittee held a joint hearing exploring several cases of alleged selective prosecution, including the prosecutions of former Democratic Alabama Governor Don Siegelman, Wisconsin state government employee Georgia Thompson, and prominent Pittsburgh Democrat Cyril Wecht. Testimony was received from former Attorney General Richard Thornburgh, Professor Donald C. Shields, and former Alabama U.S. Attorney Doug Jones. Part II of the hearing was held on May 14, 2008, at which testimony was received from Representative Paul W. Hodes (D–NH), consultant Allen Raymond, attorney Paul Twomey, and Professor Mark C. Miller.

Oversight Hearing on the Politicization of the Justice Department and Allegations of Selective Prosecution

Former White House Deputy Chief of Staff Karl Rove refused to comply with a subpoena requiring his appearance before the Commercial and Administrative Law Subcommittee on July 10, 2008, failing to appear for the hearing to answer questions. Subcommittee Chair Sánchez proceeded to overrule the claims of immunity and privilege with respect to Mr. Rove, and the ruling was sustained by Subcommittee Members in a roll call vote of 7–1.

Oversight Hearing on the Continuing Investigation into the U.S. Attorneys Controversy and Related Matters

Department of Justice Inspector General Glenn Fine testified before the Committee on October 3, 2008, regarding the joint investigation by his office and the Department's Office of Professional Responsibility into the U.S. Attorney removals and related matters.

ADDITIONAL OVERSIGHT CONCERNING USE AND ABUSE OF EXECUTIVE AUTHORITY

In addition to its work on the U.S. Attorney firings and improper politicization in the Justice Department, the Committee focused significant attention on other oversight activities concerning use and abuse of Executive authority in the Bush Administration—including signing statements, clemency power, and warrantless surveillance. On signing statements, the Committee helped commission two GAO studies that have provided the first actual documentation of failure of the Executive Branch to execute statutory provisions to which the President objected in signing statements.[49] On warrantless surveillance, after a series of hearings and review of classified and unclassified documents, 23 Committee members issued a comprehensive statement concerning the legality of the

[49] *See* GAO Informal Opinion B–308603 (June 18, 2007); GAO Informal Opinion B–309928 (December 20, 2007).

Administration's program and the issue of retroactive immunity for telecommunications carriers.[50]

Committee hearings in this area included the following:

Oversight Hearing on Presidential Signing Statements under the Bush Administration

On January 31, 2007, the Committee held its first hearing in the 110th Congress. The hearing focused on presidential signing statements and their use during the Bush Administration. Witnesses included former Representative Mickey Edwards; John Elwood, Deputy Assistant Attorney General in the Office of Legal Counsel; American Bar Association President Karen Mathis; Harvard law professor Charles Ogletree; and Georgetown University law professor Nicholas Rosenkranz.

Oversight Hearing on the Use and Misuse of Presidential Clemency Power for Executive Branch Officials

On July 11, 2007, the Committee held an oversight hearing focusing on the presidential clemency power. Witnesses included former Ambassador Joseph C. Wilson IV; Roger Adams from the Justice Department's Office of the Pardon Attorney; attorney David Rivkin, Jr.; Ohio State University law professor Douglas Berman; and Tom Cochran, Assistant Federal Public Defender for the Middle District of North Carolina.

Oversight Hearing on Warrantless Surveillance and the Foreign Intelligence Surveillance Act: The Role of Checks and Balances in Protection of Americans' Privacy Rights

On September 5, 2007, the Committee heard testimony regarding warrantless surveillance and the Foreign Intelligence Surveillance Act from witnesses including: former Representative Bob Barr; former CIA Assistant General Counsel Suzanne Spaulding; University of Virginia law professor Robert Turner; and Morton Halperin, Director of U.S. Advocacy at the Open Society Institute.

Oversight Hearing on Warrantless Surveillance and the Foreign Intelligence Surveillance Act: The Role of Checks and Balances in Protection of Americans' Privacy Rights, Part II

On September 18, 2007, the Committee continued its September 5, 2007, consideration of testimony on warrantless surveillance and FISA. Witnesses included Director of National Intelligence Mike McConnell and Assistant Attorney General for National Security Kenneth Wainstein.

Classified Oversight Hearings on the Foreign Intelligence Surveillance Act

On February 28, 2008, and March 5, 2008, the Committee held hearings on the Foreign Intelligence Surveillance Act. These hearings were classified, and no further information is publicly available.

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[50] *See* "Statement of Undersigned Members of House Judiciary Committee Concerning the Administration's Terrorist Surveillance Program and the Issue of Retroactive Immunity (March 12, 2008).

Oversight Hearing on Revelations by Former White House Press Secretary Scott McClellan

On June 20, 2008, the Committee heard testimony from Scott McClellan, former White House Press Secretary under President George W. Bush.

Oversight Hearing on Executive Power and its Constitutional Limitations

On July 25, 2008, the Judiciary Committee held a hearing focusing on the power of the Executive Branch. The first panel of witnesses included Representatives Maurice Hinchey (D–NY), Walter Jones (R–NC), Dennis Kucinich (D–OH), and Brad Miller (D–NC). The second panel included former Representatives Elizabeth Holtzman and Bob Barr; former Salt Lake City, Utah Mayor Ross C. "Rocky" Anderson, founder and president of High Roads for Human Rights; Northwestern University law professor Stephen Presser; former Associate Deputy Attorney General Bruce Fein; author and former Los Angeles County prosecutor Vincent Bugliosi; George Mason University law professor Jeremy Rabkin; Elliott Adams, president of the board at Veterans for Peace; and Frederick A.O. Schwarz, Jr., senior counsel at the Brennan Center for Justice.

OVERSIGHT HEARINGS OF EXECUTIVE BRANCH AGENCIES

In addition to the oversight hearings described above, the Committee also held a number of oversight hearings on Executive Branch agencies, including the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security.

In addition to the hearing with Attorney General Alberto Gonzales described above, which focused largely on the U.S. Attorney controversy and related matters, the Committee held two other oversight hearings on the Department of Justice. During those hearings, the Committee learned from Attorney General Michael Mukasey, among other things, that he would not authorize a criminal investigation into the CIA's use of waterboarding because the CIA had relied on the Department's legal advice. Mr. Mukasey also expressed reluctance to provide the Committee with all Office of Legal Counsel opinions on issues of national security and presidential power, claiming that they pertain to the deliberative process of the Executive Branch.

The Committee also held three oversight hearings on the FBI, all with FBI Director Robert S. Mueller III. In these hearings, the Committee learned more about the incident in which then Deputy Attorney General Jim Comey dispatched Director Mueller to Attorney General John Ashcroft's hospital room on March 10, 2004, when White House Counsel Alberto Gonzales and White House Chief of Staff Andrew Card attempted to get an ill Mr. Ashcroft to sign off on the Administration's warrantless surveillance program. The Committee also learned that Director Mueller had taken notes of these events, a redacted version of which he produced in response to the Committee's July 26, 2007 request.

Additionally, the Committee learned that Director Mueller had removed his agents from engaging in CIA enhanced interrogation techniques because it was not the FBI's protocol to use coercion in its interrogations or questioning. He further explained that the FBI contacted the Defense Department and the Justice Department regarding CIA interrogation techniques the FBI thought might be inappropriate. The Committee also learned that the FBI was in discussions with the National Academy of Sciences to do an independent review of the scientific evidence obtained in the anthrax investigation (Amerithrax).

As part of the Committee's oversight of the FBI, the Committee also held a hearing on the Inspector General's March 2007 Report on the FBI's use of National Security Letters (NSLs). From that hearing, and the report itself, the Committee learned that the FBI had inaccurately reported to Congress the number of NSLs it had issued, and had engaged in illegal uses of NSLs, including using so-called "exigent letters"—emergency requests for telephone and other data—in non-emergencies without even a pending investigation, as a means to bypass normal NSL procedures. Following the release of the IG report, the FBI has reportedly abandoned this improper use of exigent letters.

Oversight Hearing on "The Inspector General's Independent Report on the FBI's Use of National Security Letters"

On March 20, 2007, the Committee held a hearing regarding a March 2007 report by the Inspector General of the Justice Department, on the FBI's use of National Security Letters. Witnesses included Glenn Fine, Justice Department Inspector General, and Valerie Caproni, FBI General Counsel.

Oversight Hearing on the United States Department of Justice

On May 10, 2007, the Committee held an oversight hearing on the Department of Justice. The sole witness was Attorney General Alberto Gonzales.

Oversight Hearing on the Federal Bureau of Investigation

On July 26, 2007, the Committee held an oversight hearing on the Federal Bureau of Investigation. The witness was FBI Director Robert S. Mueller III.

Oversight Hearing on the Department of Justice

On February 7, 2008, newly-confirmed Attorney General Michael B. Mukasey appeared at an oversight hearing on the Department of Justice.

Oversight Hearing on the Department of Homeland Security

On March 5, 2008, the Committee conducted its first-ever full-Committee oversight hearing on the Department of Homeland Security since Congress created the agency in 2005. Secretary Michael Chertoff testified before the Committee to discuss several areas over which the Committee has jurisdiction, including immigration, border security, and criminal enforcement by DHS.

Oversight Hearing on the Federal Bureau of Investigation

On April 23, 2008, the Judiciary Committee held an oversight hearing on the Federal Bureau of Investigation. FBI Director Robert S. Mueller III was the sole witness.

Oversight Hearing on the Department of Justice

Attorney General Michael B. Mukasey testified again before the Committee at its July 23, 2008 oversight hearing on the Department of Justice.

Oversight Hearing on the Federal Bureau of Investigation

On September 16, 2008, the Committee heard testimony again from FBI Director Robert S. Mueller III.

OTHER COMMITTEE OVERSIGHT HEARINGS

Oversight Hearing on Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools

On October 16, 2007, the Committee held a hearing on concerns that improper race-related factors had tainted the administration of justice following events at a public high school in Jena, Louisiana, involving six African American students who became known as The Jena 6. The day after African American students at the high school had sat together under a tree where white students had usually congregated, three nooses were found hanging from the tree. Tensions escalated, and a fight broke out. No one was seriously injured; one white student received medical attention, but was able to participate in a school program later that same day. The white students received only brief school suspensions; the African American students were not only expelled, but were arrested and charged as adults with felony offenses, including attempted murder. No charges were brought against the white students involved in the fight, or against the noose-hangers. These events garnered national attention.

At the hearing, the Committee heard testimony from: Lisa Krigsten, Counsel to the Assistant Attorney General in the Civil Rights Division; Donald Washington, U.S. Attorney for the Western District of Louisiana; Richard Cohen, President and C.E.O. of the Southern Poverty Law Center; the Reverend Alfred C. Sharpton, President, National Action Network; Harvard Law Professor Charles Ogletree; and the Reverend Brian Moran, Pastor of the Jena Antioch Baptist Church and President of the NAACP Jena Chapter. The hearing focused on the events and their community impacts, the federal guidelines for prosecuting juveniles as adults, and the role of the Department of Justice's Community Relations Service.

Oversight Hearing on Sex Crimes and the Internet

On October 17, 2007, the Committee held a hearing on combating the use of the Internet to facilitate the commission of sex crimes against children. Witnesses at the hearing included: Alicia Kozakiewicz; Representatives Earl Pomeroy (D–N), Nick Lampson (D–TX), Marilyn Musgrave (R–CO), Christopher P. Carney (D–PA), Debbie Wasserman Schultz (D–FL), and Cathy McMorris Rodgers

(R–WA); Michael A. Mason, Executive Assistant Director of the FBI's Criminal Cyber Response and Services Branch; Laurence E. Rothenberg, Deputy Assistant Attorney General in the Office of Legal Policy; Flint Waters of the Wyoming Internet Crimes Against Children Task Force; Michelle Collins, Director of the Exploited Child Division at the National Center for Missing and Exploited Children; Grier Weeks of Protect, Inc.; John Ryan, General Counsel of AOL; and Elizabeth Banker, Assistant General Counsel of Yahoo! Inc.

Oversight Hearing on Establishing Consistent Enforcement Policies in the Context of Online Wagers

On November 14, 2007, the Committee held a hearing to examine the selective nature of the federal government's enforcement efforts in the area of online gambling. The hearing also considered the Treasury Department's proposed regulations implementing the Unlawful Internet Gambling Enforcement Act of 2006, and examined the impact of the federal ban on online gambling on the intellectual property industry. Testimony was received from Representatives Shelley Berkley (D–NV) and Bob Goodlatte (R–VA); Catherine Hanaway, U.S. Attorney for the Eastern District of Missouri; Valerie Abend, Assistant Secretary at the Department of the Treasury; New York University law professor Joseph Weiler, Director of the Jean Monnet Center for International and Regional Economic Law and Justice; Annie Duke of the Poker Players Alliance; Thomas McClusky, Vice President of Government Affairs at the Family Research Council; and Michael Colopy, Vice President for Communications at Aristotle Inc.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[51] augmented the federal gambling laws by requiring U.S. payment systems to identify and block unlawful Internet gambling transactions. Unlike other gambling laws, it is specific to Internet gambling. It contains exemptions for certain activities related to fantasy sports, and is silent on the legality of various forms of Internet use by the horse racing industry.

In a case brought by the Government of Antigua and Barbuda, the World Trade Organization (WTO) ruled that the UIGEA violated U.S. obligations.[52] The WTO also held that the U.S. was not entitled to assert a "morals" defense because it maintains a discriminatory policy with respect to Internet wagers, declining to prosecute U.S. companies such as off-track betting parlors and Internet betting operators for offering online gambling services but prosecuting offshore companies for doing so. The WTO ruled that Antigua could suspend its intellectual property obligations as a retaliatory measure.

In October 2007, the Treasury Department issued proposed UIGEA implementing regulations.[53] Despite calls for postponing the new regulations, amid widespread concern that the regulations were vague, and costly for financial institutions to implement, and

[51] 31 U.S.C. §§ 5361–5367.

[52] Appellate Body Report, United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services, available at http://www.wto.org/english/tratop__e/dispu__e/cases__e/ds285__e.htm.

[53] The comment period ended on December 12, 2007, 72 Fed. Reg. 56680.

that compliance could impair efficiency of the nation's payment system and unduly hamper its ability to compete with foreign-based enterprises, Treasury issued a final rule in November 2008.[54]

Oversight Hearing on Ensuring Legal Redress for American Victims of State-Sponsored Terrorism

On June 17, 2008, the Committee held a hearing to examine the nature of the claims by U.S. nationals—U.S. POWs and civilians—against the Government of Iraq for harm suffered under the government of Iraq during the 1991 Gulf War, which the Bush Administration has blocked. Testimony was received from Representatives Bruce Braley (D–IA) and Joe Sestak (D–PA), sponsors of legislation to settle those claims by holding the Government of Iraq liable for a portion of damages awarded; from former Ambassador John Norton Moore and attorney Dan Wolf, counsel for the plaintiffs in two of the cases involved; and Capt. Lawrence Randolph Slade and George Charchalis, plaintiffs in those two cases.

Under international law, sovereign nations have generally been immune from liability in the courts of other nations. As the level of international interactions has increased, various exceptions have been recognized; Congress enacted the Foreign Sovereign Immunities Act of 1978 (FSIA) in an effort to codify these exceptions as they were then recognized, and has amended the law since then in an effort to reflect later developments. One such exception allows a U.S. national who is a victim of a terrorist act such as torture, extrajudicial killing, or hostage taking to bring civil suit against a foreign state involved in committing or facilitating the terrorist act, if the foreign state is designated as a state sponsor of terrorism by the State Department at the time the act occurred, or is later so designated because of the act.[55] In such cases, any commercial property of the foreign state located in the U.S. may be attached in satisfaction of a judgment.[56] In 1998, in response to a contrary court ruling,[57] Congress enacted legislation to clarify its intent to create a private right of action.[58]

The Executive Branch has resisted, in both the Clinton and Bush Administrations, using frozen assets of foreign states to satisfy judgments, variously citing treaty obligations to protect foreign diplomatic and consular properties, a desire to maintain the frozen assets for diplomatic leverage, and the fear that allowing the attachment of frozen assets would subject U.S. assets in foreign states to similar treatment. In conjunction with the 2003 war against Iraq, President Bush took a series of actions to place Iraq's U.S. assets out of reach to victims of terrorism committed by the Iraqi government during the first Gulf War. He placed the assets into a Development Fund for Iraq, dedicated for post-war reconstruction;[59] and

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[54] Agencies Issue Final Rule to Implement Unlawful Internet Gambling Enforcement Act, Release, U.S. Department of the Treasury, Nov. 12, 2008, available at http://www.ustreas.gov/press/releases/hp1266.htm.

[55] P.L. 104–132, Title II, § 221 (April 23, 1996); 110 Stat. 1241; 28 U.S. C. 1605(a)(7).

[56] 28 U.S. C. 1610(b)(2).

[57] *Flatow* v. *Islamic Republic of Iran*, 999 F. Supp. 1 (D.D.C. 1998).

[58] P.L. 104–208, Title I, § 101(c) (Sept. 30, 1996), 110 Stat. 3009–172; codified at 28 U.S.C. § 1605 note.

[59] E.O. 13290, 68 Fed. Reg. 14,305–08 (March 24, 2003). Assets that had previously been ordered attached in satisfaction of judgments against Iraq were excluded from the Executive Order, as was Iraq's diplomatic and consular property.

prohibited attachment of any assets in the Development Fund;[60] and declared, based on general authority Congress had recently granted him to exempt Iraq from laws governing terrorist-supporting states,[61] that the terrorism exception to FSIA would not apply to Iraq.[62]

In the FY 2008 National Defense Authorization Act, Congress amended FSIA to enable victims whose claims against state sponsors of terrorism had been dismissed for lack of a federal cause of action to re-file their claims and enforce judgments by attaching the defendant state's assets.[63] President Bush vetoed the bill, solely on the basis of this provision, and insisted that it be revised to permit him to waive the provision as to Iraq. The same day he signed the revised bill into law,[64] he exercised his waiver authority.[65] The Bush Administration has made no apparent efforts to persuade the Iraqi government to help the American victims of Iraqi terrorism obtain relief, as Congress urged in adding the waiver provision.

The legislation sponsored by Representatives Braley and Sestak, introduced in response to the veto and waiver, was approved by the Committee by voice vote on July 30, 2008, and passed the House by voice vote on September 15, 2008. No further action occurred before the 110th Congress adjourned.

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[60] E.O. 13303, 68 Fed. Reg. 31, 931 (May 28, 2003).

[61] Emergency Wartime Supplemental Appropriations Act for FY2003, P.L. 108–11, § 1503 (April 16, 2003).

[62] Memorandum for the Secretary of State (Presidential Determination No. 2003–23)(May 7, 2003), available at http://whitehouse.gov/news/releases/2003/05/20030507-13.html.

[63] P.L. 110–181, § 1083.

[64] P.L. 110–181, § 1083(d).

[65] White House Memorandum of Justification for Waiver of Section 1083 of the National Defense Authorization Act (January 28, 2008), available at http://www.whitehouse.gov/news/releases/2008/01/20080128-12.html.

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW [1]

LINDA T. SÁNCHEZ, California, *Chairwoman*

JOHN CONYERS, JR., Michigan
HENRY C. "HANK" JOHNSON, JR., Georgia
ZOE LOFGREN, California
WILLIAM D. DELAHUNT, Massachusetts
MELVIN WATT, North Carolina
STEVE COHEN, Tennessee

CHRIS CANNON, Utah
JIM JORDAN, Ohio
RIC KELLER, Florida
TOM FEENEY, Florida
TRENT FRANKS, Arizona

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	50
Legislation reported favorably to the full Committee	8
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	0
Legislation pending before the full Committee	3
Legislation reported to the House	5
Legislation discharged from the Committee	0
Legislation pending in the House	1
Legislation passed by the House	5
Legislation pending in the Senate	4
Legislation vetoed by the President	0
Legislation enacted into public law	1
Legislation enacted into public law as part of another bill	—
Legislation on which hearings were held.	15
Days of legislative hearings	15
Days of oversight hearings	29

LEGISLATIVE ACTIVITIES

ADMINISTRATIVE LAW

H.R. 3564, Regulatory Improvement Act of 2007

Summary.—The Administrative Conference of the United States (ACUS or Conference) was an independent, nonpartisan agency devoted to analyzing the administrative law process and providing guidance to Congress. Although reauthorized on October 30, 2004,[66] it was not appropriated funds. In light of the fact that the Conference's authorization expired on September 30, 2007, H.R. 3564, the "Regulatory Improvement Act of 2007," was introduced to reauthorize the Conference. As enacted, the measure authorizes $3.2 million for each of fiscal years 2009 through 2011.

Legislative History.—On September 18, 2007, Subcommittee on Commercial and Administrative Law Ranking Member Chris B. Cannon (R–UT) (for himself and with Subcommittee Chairwoman Linda Sánchez (D–CA)) introduced H.R. 3564, the "Regulatory Im-

[1] Subcommittee chairmanship and assignments approved January 26, 2007, and February 28, 2007.

[66] Federal Regulatory Improvement Act of 2004, Pub. L. No. 108–401, 118 Stat. 2255 (2004).

provement Act of 2007," which authorizes appropriations for ACUS for four additional years. On September 19, 2007, the Subcommittee on Commercial and Administrative Law held a hearing on H.R. 3564. Witnesses included: Professor Jody Freeman, Harvard Law School; Mort Rosenberg, Congressional Research Service; Curtis Copeland, Congressional Research Service; and Professor Jeffrey S. Lubbers, Washington College of Law, American University, with additional material submitted by the American Bar Association, and correspondence from Justices Stephen Breyer and Antonin Scalia. On September 19, 2007, the Subcommittee ordered the bill favorably reported without amendment by voice vote. On October 10, 2007, the Committee ordered the bill favorably reported without amendment by voice vote. On October 18, 2007, the Committee reported H.R. 3564 as H. Rept. No. 110–390 (2007). On October 22, 2007, the House passed the bill under suspension of the rules by voice vote. Thereafter, the Senate, on June 27, 2008, by unanimous consent passed the bill with an agreed amendment by Senator Coburn to modify the measure's authorization of appropriations. On July 14, 2008, the House, under suspension of the rules, agreed to the Senate amendment by voice vote. The bill was signed into law by the President on July 30, 2008 as Public Law No. 110–290.

H.R. 5593, the "Congressional Review Act Improvement Act"

Summary.—The Congressional Review Act (CRA) is a congressional review mechanism of agency rules. The CRA requires all agencies promulgating a rule[67] to submit a report to both Houses of Congress and to the Comptroller General at the Government Accountability Office (GAO). This report would contain a copy of the rule, a concise general statement describing the rule (including whether it is a major rule[68]), and the proposed effective date of the rule.[69] H.R. 5593 amends the CRA to reduce administrative burdens and duplicative paperwork by repealing the requirement that agencies submit copies of final rules and reports thereon to both the House and Senate. The bill requires the House and Senate to receive a weekly list of all final rules published in the Federal Register from the Comptroller General and to have such list printed in the Congressional Record with a statement of referral for each rule. Agencies would still be required to submit copies of final rules and reports thereon to the House and Senate that were not printed in the Federal Register. The bill does not affect the authority of Congress under the CRA to disapprove an agency rule.

Legislative History.—On March 11, 2008, Subcommittee Chair Linda Sánchez introduced H.R. 5593, "Congressional Review Act Improvement Act," with Chairman John Conyers, Ranking Member Lamar Smith, and Subcommittee Ranking Member Chris Cannon as original cosponsors. The Subcommittee met in open session on

[67] The term rule "means the whole or part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 804(3).

[68] A major rule is defined as a rule that will likely have an annual effect on the economy of $100 million or more, increase costs or prices for consumers, industries or state and local governments, or have significant adverse effects on the econonmy.

[69] 5 U.S.C. §§ 801–808. On March 29, 1996, President Bill Clinton signed the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104–121, 110 Stat. 857–874. Subtitle E of that Act established the procedures for congressional review of agency rules.

April 24, 2008 and ordered H.R. 5593 favorably reported, without amendment, by voice vote, a quorum being present. On April 31, 2008, the Committee met in open session and ordered the bill H.R. 5593 favorably reported without amendment, by voice vote, a quorum being present. H.R. 5593 passed the House by voice vote on the suspension calendar on June 9, 2008.

BANKRUPTCY

H.R. 3609, the "Emergency Home Ownership and Mortgage Equity Protection Act of 2007"

Summary.—During the 110th Congress, the nation's mortgage foreclosure crisis approached "heights not seen since the Great Depression."[70] The societal and economic costs of home foreclosures devastated American families, their neighbors, communities and municipalities across the United States. Foreclosures depress home values across entire communities. A single foreclosure "could impose direct costs on local government agencies totaling more than $34,000."[71]

Unfortunately, a loophole in the current bankruptcy law has exacerbated the problem by not allowing American families facing foreclosure to modify their home mortgages as part of their bankruptcy reorganization. Under Chapter 13 bankruptcy (a form of bankruptcy relief whereby an individual must repay his or her debts out of future earnings), a homeowner cannot address the problems that most likely triggered the foreclosure, i.e., exploding adjustable rate mortgages, prepayment penalties, and hidden fees. Although Chapter 13 prohibits home mortgages from being modified, virtually every other type of debt—secured and unsecured—can be modified, including mortgages secured by vacation homes and investment properties.

Legislative History.—On September 25, 2007, the Subcommittee on Commercial and Administrative Law held a hearing on "Straightening Out the Mortgage Mess: How Can We Protect Home Ownership and Provide Relief to Consumers in Financial Distress?" Witnesses included: the Honorable Marilyn Morgan, United States Bankruptcy Court for the Northern District of California; Steve Bartlett, President and CEO, Financial Services Roundtable, Washington, D.C.; Eric Stein, President, Center for Community Self-Help on behalf of the Center for Responsible Lending; and John Rao with the National Consumer Law Center, Inc. on behalf of the National Association of Consumer Bankruptcy Attorneys.

On September 20, 2007, Rep. Brad Miller (D–NC) introduced H.R. 3609, the "Emergency Home Ownership and Mortgage Equity Protection Act of 2007," to address the shortcoming in current law by allowing bankruptcy judges to modify the terms of certain home mortgages for primary residences, under specified circumstances.

On October 4, 2007, the Subcommittee ordered H.R. 3609 reported favorably without amendment by a roll call vote of 5 to 4.

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[70] Nelson D. Schwartz, Can the Mortgage Crisis Swallow a Town?, N.Y. Times, Sept. 4, 2007.

[71] William C. Apgar et al., The Municipal Cost of Foreclosures: A Chicago Case Study, Homeownership Preservation Foundation Housing Finance Policy Research Paper No. 2005–1, at 1 (Feb. 27, 2005).

On October 30, 2007, the Subcommittee held a hearing on "Straightening Out the Mortgage Mess: How Can We Protect Home Ownership and Provide Relief to Consumers in Financial Distress?—Part II." Witnesses included: William E. Brewer, Jr., Esq. on behalf of the National Association of Consumer Bankruptcy Attorneys; David G. Kittle, Chairman-Elect, Mortgage Bankers Association; Mark M. Zandi, Ph.D., Chief Economist, Moody's Economy.com, Inc.; and Richard Levin on behalf of the National Bankruptcy Conference.

On November 7, 2007 the Committee commenced its markup of the measure, which was concluded on December 12, 2007. The bill was ordered to be reported favorably, as amended, by a roll call vote of 17 to 15. No report was filed.

On January 29, 2008, the Subcommittee held a hearing on the "Growing Mortgage Foreclosure Crisis: Identifying Solutions and Dispelling Myths." Witnesses included: Former Secretary of the U.S. Department of Housing and Urban Development Jack Kemp; Wade Henderson, President and CEO of the Leadership Conference on Civil Rights; David G. Kittle, Chairman-Elect, Mortgage Bankers Association; Mark M. Zandi, Ph.D., Chief Economist, Moody's Economy.com, Inc.; Faith Schwartz, Executive Director, HOPE NOW Alliance; John Dodds, Director, Philadelphia Unemployment Project; and James H. Carr, Chief Operating Officer, National Community Reinvestment Corporation.

No further action was taken on the measure during the 110th Congress.

H.R. 4044, a bill to amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days; S. 3197, the "National Guard and Reservists Debt Relief Act of 2008"

Summary.—The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Bankruptcy Act) was signed into law by President George W. Bush on April 20, 2005.[72] The 2005 Bankruptcy Act effected the most comprehensive overhaul of bankruptcy law in more than 25 years, particularly with respect to consumer bankruptcy. These consumer bankruptcy amendments included, for example, the establishment of a means testing mechanism to determine a debtor's ability to repay debts. Under this test, a Chapter 7 bankruptcy case is presumed to be an abuse if it appears that the debtor has income in excess of certain thresholds.

Legislative History.—On November 1, 2007, Rep. Janice Schakowsky (D–IL) introduced H.R. 4044, a bill to amend the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to exempt from the means test in bankruptcy cases, for a limited period, qualifying reserve-component members who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 60 days. The bill would have exempted certain qualifying National Guard members and reserve

[72] Pub. L. No. 109–8, 119 Stat. 23 (2005).

component members of the Armed Services from the means test's presumption of abuse. This bipartisan legislation was intended to respond to the fact that some who serve in the National Guard and the Reserves encounter financial difficulties during or in the wake of their service and that they merit relief from the additional proof requirements of the means test.

On April 1, 2008, the Subcommittee on Commercial and Administrative Law held a hearing on H.R. 4044. Witnesses included: Representatives Janice Schakowsky (D–IL) and Dana Rohrabacher (R–CA); Raymond C. Kelley, National Legislative Director of AMVETS; Professor Jack Williams on behalf of the American Bankruptcy Institute; and Ed Boltz, Esq. on behalf of the National Association of Consumer Bankruptcy Attorneys. On April 24, 2008, the Subcommittee ordered the bill favorably reported, with an amendment, by voice vote. On April 30, 2008 and on June 11, 2008, the Committee met in open session and ordered the bill favorably reported on June 11, 2008, with an amendment, by voice vote. On June 20, 2008, the Committee reported the bill, as amended, as H. Rept. No. 110–726. On June 23, 2008, the House passed the bill, as amended, under suspension of the rules by voice vote. The bill was received in the Senate on the following day and referred to the Committee on the Judiciary.

Although no further action on this measure was taken, Senator Dick Durbin (D–IL), on June 26, 2008, introduced S. 3197, the "National Guard and Reservists Debt Relief Act of 2008," a bill that was substantially identical to H.R. 4044, as ordered to be reported by the House Committee on the Judiciary. On September 30, 2008, the Senate passed S. 3197 with an amendment on unanimous consent. On October 2, 2008, the House began its consideration of the bill and, on the following day, the House passed the bill under suspension of the rules by a roll call vote of 411 to 0. On October 20, 2008, the measure was signed into law by the President as Public Law No. 110–438.

H.R. 7328, the "Homeowners' Protection Act of 2008"

Summary.—As of December 2008, reports indicated that a record ten percent of all American homeowners with mortgages were either facing foreclosure or otherwise delinquent on their payments.[73] That same month, Credit Suisse released its estimate that 8.1 million families could lose their homes to foreclosure by the end of 2012 and that if the recession becomes severe, which seems increasingly possible every day, the number of foreclosures could rise to 10.2 million.[74] Further, the chief regulator of national banks acknowledged that most U.S. mortgages modified in a voluntary effort to keep struggling borrowers in their homes and stem foreclosures fell back into delinquency within six months.[75] Voluntary mortgage modifications do not work in part because many mortgages have been securitized, which makes reaching an agreement among all those who have an interest in a mortgage extremely dif-

[73] Kathleen M. Howley, Mortgage Delinquencies, Foreclosures Rise to Record, Bloomberg.com (Dec. 5, 2008).

[74] Credit Suisse, Foreclosure Update: Over 8 Million Foreclosures Expected, Fixed Income Research (Dec. 4, 2008).

[75] Alison Vekshin, Majority of Modified Loans Fail Again, Regulator Says, Bloomberg.com (Dec. 8, 2008).

ficult. The problem is further compounded by the fact that some investors have sued while others have threatened to sue servicers if they modify these loans.

Legislative History.—On December 10, 2008, Chairman John Conyers, Jr. (for himself and Representatives William Delahunt (D–MA) and Jerrold Nadler (D–NY)) introduced H.R. 7328, the "Homeowners' Protection Act of 2008." The bill was not further considered prior to the end of the 110th Congress.

U.S. ATTORNEYS INVESTIGATION

Hearing on H.R. 580, "Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys"

Summary.—On March 9, 2006, the Republican-led Congress at the behest of the Bush administration amended the USA PATRIOT Act with respect to interim appointment of U.S. Attorneys.[76] The amendment eliminated judicial input in the interim appointment process and, perhaps more importantly, conferred unprecedented authority that could permit U.S. Attorneys appointed on an interim basis to serve indefinitely without Senate confirmation. Documents from the Justice Department indicated that some Administration officials had considered the use of this authority to replace fired U.S. Attorneys with party loyalists. Representative Howard Berman (D–CA) introduced H.R. 580, which sought to restore the interim appointment process to the procedure in place prior to the 2005 amendment.

The Subcommittee held a hearing on March 6, 2007 in order to further probe the U.S. Attorney firings, the rationale for the 2005 amendment to the USA PATRIOT Act, the merits of H.R. 580, and other related matters. Witnesses at the hearing included: Carol C. Lam, former United States Attorney for the Southern District of California; David C. Iglesias, former United States Attorney for the District of New Mexico; H.E. Cummins III, former United States Attorney for the Eastern District of Arkansas; John McKay, former United States Attorney for the Western District of Washington; Daniel Bogden, former United States Attorney for the District of Nevada; Paul K. Charlton, former United States Attorney for the District of Arizona; William E. Moschella, Principal Associate Deputy Attorney General, Department of Justice; John A. Smietanka, partner with Smietanka, Buckleitner, Steffes & Gezon and former Untied States Attorney for the Western District of Michigan; T.J. Halstead, Legislative Attorney, American Law Division, Congressional Research Service; Atlee W. Wampler III, President of the National Association of Former United States Attorneys; Representative Darrell Issa (R–CA); former Representative Asa Hutchinson (R–AR); and George Terwilliger, former Deputy Attorney General of the Department of Justice.

Legislative History.—After the hearing on H.R. 580 on March 6, 2007, the Committee met in open session on March 15, 2007 and ordered the bill H.R. 580 favorably reported with an amendment, by voice vote, a quorum being present. H.R. 580, as amended by the Committee, is intended to clarify that section 546 of title 28 of

[76] USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109–177, tit. V, § 502, 120 Stat. 246 (2006).

the United States Code is the exclusive means for appointing an individual to temporarily preform the functions of a United States Attorney for a district in which the office of United States Attorney is vacant. It specifies that such individual may serve until the earlier of either: (1) the qualification of a United States Attorney appointed by the President pursuant to section 541 of title 28 of the United States Code; or (2) the expiration of 120 days after appointment by the Attorney General of the individual as interim United States Attorney. Upon the expiration of 120 days, and if no permanent United States Attorney has been appointed with Senate confirmation, the district court for such district may appoint a United States Attorney to serve until the vacancy is filled.

On March 26, 2007, H.R. 580 as amended passed in the House on the suspension calendar by a recorded vote of 329–78. On May 22, 2007, the House passed companion legislation (S. 214 as amended) on the suspension calendar by a recorded vote of 306–114. S. 214 as amended became Public Law No. 110–34.

STATE TAXATION AFFECTING INTERSTATE COMMERCE

H.R. 3359, the "Mobile Workforce State Income Tax Fairness and Simplification Act of 2007"

Summary.—H.R. 3359, the "Mobile Workforce State Income Tax Fairness and Simplification Act of 2007," would provide for a uniform law setting at 60 work days within a calendar year before businesses are required to withhold state income taxes on its employees and employees are liable for paying those taxes. The legislation exempts certain individuals (professional athletes, entertainers, and certain public figures) from the threshold, and allows states immediately to impose state income taxes on those individuals.

Legislative History.—Representative Hank Johnson (D–GA) introduced H.R. 3359 on August 3, 2007. On November 1, 2007, the Subcommittee held a hearing on the legislation. Witnesses who testified at the hearing included: Mr. Harley Duncan, Executive Director of the Federation of Tax Administrators; Mr. Douglas Lindholm, President and Executive Director of the Council on State Taxation; Ms. Dee Nelson, a payroll manager at Afognak Native Corp., Alutiiq LLC, and Subsidiaries, and representing the American Payroll Association; and Mr. Walter Hellerstein, a professor at the University of Georgia Law School. The Subcommittee took no further action on H.R. 3359 prior to the end of the 110th Congress.

H.R. 3396, the "Sales Tax Fairness and Simplification Act"

Summary.—H.R. 3396, the "Sales Tax Fairness and Simplification Act," would convey the sense of the Congress that the Streamlined Sales and Use Tax Agreement ("SSUTA") meets the minimum simplification requirements to warrant Congressional approval for States that implement the SSUTA to require remote sellers to collect sales and use taxes. Notably, H.R. 3396 would (1) authorize Member States to require the collection and remittance of sales and use taxes by remote sellers only after at least ten States, comprising at least twenty percent of the total population of all states imposing a sales tax, have become Member States and, (2)

would provide for an exemption from the requirement for remote sellers to collect and remit sales and use taxes if the remote seller and its affiliates collectively had gross remote annual taxable sales nationwide of less than $5,000,000 in the calendar year preceding the date of such sale or if the seller and its affiliates collectively meet the $5,000,000 threshold, but have less than $100,000 in gross remote taxable sales nationwide. H.R. 3396 also imposes minimum simplification requirements for the SSUTA, including a centralized, multi-state registration; uniform definitions of products and product based exemptions; uniform rules for sourcing; single, state level administration of sales taxes; and, reasonable seller compensation for expenses incurred by a seller for collecting and remitting sales and use taxes.

Legislative History.—Representative William Delahunt (D–MA) introduced H.R. 3396 on August 3, 2007. On December 6, 2007, the Subcommittee held a hearing on the legislation. Witnesses who testified at the hearing included: Ms. Joan Wagnon, Secretary of Revenue for the State of Kansas, and President of the Streamlined Sales Tax Governing Board; Mr. Wayne Zakrzewski, Vice President and Associate General Counsel of Tax for J.C. Penney Corporation, Inc., and appearing on behalf of the National Retail Federation; Mr. George Isaacson, Senior Partner at Brann & Isaacson, and appearing on behalf of the Direct Marketing Association; and Honorable Steven J. Rauschenberger, Past President of the National Conference of State Legislatures. The Subcommittee took no further action on H.R. 3396 prior to the end of the 110th Congress.

H.R. 3679, the "State Video Tax Fairness Act of 2007"

Summary.—H.R. 3679, the "State Video Tax Fairness Act of 2007," would prohibit states from imposing discriminatory taxes on any television service provider. This would include services provided by satellite and cable television companies. H.R. 3679 also defines "discriminatory tax" as "any form of direct or indirect tax that results in different net State charges being imposed on substantially equivalent multichannel video programming services based on the means by which those services are delivered."

Legislative History.—Chairman John Conyers, Jr. (D–MI) introduced H.R. 3679 on September 27, 2007. On February 14, 2008, the Subcommittee held a hearing on the legislation. Witnesses who testified at the hearing included: Mr. Mike Palkovic, Executive Vice President of Operations at DirecTV; Mr. Howard J. Symons, an attorney at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., and representing the National Cable and Telecommunications Association; Ms. Kristina Rasmussen, the Director of Government Affairs at the National Taxpayers Union; and Mr. David Quam, Director of Office of Federal Relations for the National Governors Association. On July 24, 2008, the Subcommittee marked up H.R. 3679, and ordered it to be favorably reported, as amended, by voice vote. The bill as amended added the word "technology" to "Internet protocol" to conform with the description in certain state tax laws of this method of delivering multichannel video programming services. The bill as amended also clarified when a state tax law or taxation system will constitute a "discriminatory tax" under the Act, to eliminate any possible ambiguity that state tax discrimination is

impermissible in all its forms. The bill as amended also contained a grandfather clause that limits the scope of this Act to provide that the Act will not apply to any state tax law or taxation system in effect prior to January 1, 2008. The six states most affected by this provision are Florida, Kentucky, North Carolina, Ohio, Tennessee, and Utah. The Committee took no further action on H.R. 3679 prior to the end of the 110th Congress.

H.R. 5267, the "Business Activity Tax Simplification Act of 2008"

Summary.—H.R. 5267, the "Business Activity Tax Simplification Act of 2008," would prohibit state taxation of interstate commerce of out-of-state transactions involving all forms of property, including intangible personal property and services (currently, only sales of tangible personal property are protected), and would prohibit state taxation of an out-of-state entity unless such entity has a physical presence in the taxing state. H.R. 5267 would effectively eliminate the current economic presence standard followed by most state governments for decades by prohibiting a State from imposing a business activity tax on any person unless such person has a physical presence in the State. "Physical presence" is established only if the business activities within the state include any of the following: the person has employees in a State; the person uses a third party to provide services that enhance or maintain the person's market in a State, unless the third party performs market-enhancing services for at least one other business; or the person leases or owns tangible personal property or real property in a State. H.R. 5267 also provides that "physical presence" does not include de minimis physical presence, defined to include a presence in a state for up to 14 days in a taxable year (or a greater number of days if provided by State law) or presence in a state to conduct limited or transient business activity. H.R. 5267 would also amend Public Law 86–272 by striking references to "tangible personal property," thereby extending the prohibition on the imposition by States of net income taxes where the only business activity of a company is the solicitation in connection with all sales and transactions, not just sales of tangible personal property.

Legislative History.—Representative Rick Boucher (D–VA) introduced H.R. 5267 on February 7, 2008. On June 24, 2008, the Subcommittee held a hearing on the legislation. Witnesses who testified at the hearing included: Representative Rick Boucher (D–VA), who introduced H.R. 5267; Representative Bob Goodlatte (R–VA), who introduced earlier versions of H.R. 5267 in prior Congresses; Mr. Mark Ducharme, Vice President and CFO of Monterey Boats; Mr. R. Bruce Johnson, Commissioner of the Utah State Tax Commission; Mr. Michael Petricone, Vice President of Technology Policy at the Consumer Electronics Association; and Mr. David C. Quam, Director of Office of Federal Relations at the National Governors Association. The Subcommittee took no further action on H.R. 5267 prior to the end of the 110th Congress.

H.R. 5793, the "Cell Tax Fairness Act of 2008"

Summary.—H.R. 5793, the "Cell Tax Fairness Act of 2008," would impose on states a five-year moratorium on any new discriminatory taxes on mobile services, mobile service providers, and

mobile service property. H.R. 5793 sets forth the rules of construction to determine whether a new tax is discriminatory, sets the burden of proof a party seeking relief must meet when bringing proceedings under the Act, and allows for specific relief for that party.

Legislative History.—Representative Zoe Lofgren (D–CA) introduced H.R. 5793 on April 15, 2008. On September 18, 2008, the Subcommittee held a hearing on the legislation. Witnesses who testified at the hearing included: Honorable Gail W. Mahoney, Commissioner of Jackson County, Michigan, and testifying on behalf of the National Association of Counties; Honorable James Clayborne, Illinois State Senator; Mr. Scott Mackey, Esq., an attorney at Kimbell Sherman Ellis; and Mr. Tillman L. Lay, Esq., an attorney at Spiegel & McDiarmid LLP, and testifying on behalf of the U.S. Conference of Mayors, the National League of Cities, the Government Finance Officers Association, and the National Association of Telecommunications Officers and Administrators. The Subcommittee took no further action on H.R. 5793 prior to the end of the 110th Congress.

Legislative Hearing on the "Internet Tax Freedom Act"

Summary.—The Internet Tax Freedom Act (ITFA) was enacted on October 21, 1998 as Public Law No. 105–277. The ITFA placed a 3-year moratorium on the ability of State and local governments to (1) impose new taxes on Internet access, or (2) impose any multiple or discriminatory taxes on electronic commerce. The ITFA also grandfathered the State and local access taxes that were "generally imposed and actually enforced prior to October 1, 1998." This initial Internet tax moratorium expired on October 21, 2001. The Internet Tax Nondiscrimination Act was then enacted on November 28, 2001 as Public Law No. 107–75. It provided for a 2-year extension of the prior moratorium, through November 1, 2003. The Internet Tax Nondiscrimination Act of 2003 was enacted on December 3, 2004, as Public Law No. 108–435. It extended the moratorium for an additional 4 years through November 1, 2007. Taxes on Internet access that were in place before October 1, 1998, were protected by a grandfather clause.

Legislative History.—On July 26, 2007, the Subcommittee held a hearing on proposed legislation amending the Internet Tax Freedom Act. The Subcommittee reviewed the issues concerning the ITFA through two legislative bills (H.R. 743 and H.R. 1077). Witnesses who testified at the hearing included: Representative John Campbell (R–CA); Representative Anna G. Eshoo (D–CA); Mr. David C. Quam, Director of Office of Federal Relations at the National Governors Association; and Ms. Meredith Garwood, Vice President Tax Policy at Time Warner Cable. The Subcommittee took no further action on H.R. 743 or H.R. 1077.

FEDERAL ARBITRATION ACT

H.R. 3010, the "Arbitration Fairness Act of 2007"

Summary.—H.R. 3010, the "Arbitration Fairness Act of 2007," would amend the Federal Arbitration Act to require that agreements to arbitrate employment, consumer, franchise, or civil rights

disputes may be valid and enforceable only if they were made voluntarily and after the dispute had arisen. H.R. 3010 would expand exemptions from the FAA to include "employment dispute", "consumer dispute", and "franchise dispute". H.R. 3010 also would require a court rather than an arbitrator to decide whether the Federal Arbitration Act applies to disputes over contracts which include arbitration clauses. Notably, H.R. 3010 would apply to claims and disputes arising on or after the date of enactment of the legislation.

Legislative History.—Representative Hank Johnson (D–GA) introduced H.R. 3010 on July 12, 2007. On October 25, 2007, the Subcommittee held a hearing on the legislation. Witnesses who testified at the hearing included: Ms. Laura MacCleery, Director of Public Citizen's Congress Watch Division; Mr. Richard Naimark, Senior Vice President of the American Arbitration Association; Honorable Roy E. Barnes, of the The Barnes Law Group, LLC; Mr. Ken Connor, an attorney with Wilkes & McHugh, P.A.; Ms. Deborah Williams, a franchisee from Maryland; Ms. Cathy Ventrell-Monsees, an attorney with the Law Offices of Cathy Ventrell-Monsees, on behalf of the National Employment Lawyers Association; Peter Rutledge, a professor at the Catholic University of America, Columbus School of Law; and Mr. Theodore G. Eppenstein, Esq., an attorney with Eppenstein and Eppenstein. On July 15, 2008, the Subcommittee marked up H.R. 3010, and ordered it to be favorably reported, by voice vote. The Committee took no further action on H.R. 3010 prior to the end of the 110th Congress.

H.R. 5312, the "Automobile Arbitration Fairness Act of 2008"

Summary.—H.R. 5312, the "Automobile Arbitration Fairness Act of 2008," would amend the Federal Arbitration Act to require that agreements to arbitrate motor vehicle consumer sales or lease contracts may be valid and enforceable only if they were made after the dispute had arisen. H.R. 5312 would extend to consumers what motor vehicle dealers received in 2002 with the enactment of legislation requiring consent by both parties to a motor vehicle franchise contract to arbitrate a dispute. Leading up to the passage of that legislation, the National Automobile Dealers Association, the primary group supporting that legislation, stated that it would not oppose future legislation limiting the use of mandatory binding arbitration agreements. H.R. 5312 would provide that any party to the arbitration agreement may request a written decision from the arbitrator. H.R. 5312 also would provide that the amendments made by this legislation will apply only to contracts made, modified, or renewed on or after the date of enactment of this legislation.

Legislative History.—Representative Linda Sánchez introduced H.R. 5312 on February 7, 2008. On March 6, 2008, the Subcommittee held a hearing on the legislation. Witnesses who testified at the hearing included: Ms. Rosemary Shahan, President of Consumers for Automobile Reliability and Safety; Ms. Erika Rice, a consumer from Ohio; Mr. Richard Naimark, Senior Vice President of the American Arbitration Association; and Mr. Hallen Rosner, Esq., an attorney with Rosner & Mansfield, LLP. On July

15, 2008, the Subcommittee marked up H.R. 5312, and ordered it to be favorably reported, by voice vote. The Committee took no further action on H.R. 5312 prior to the end of the 110th Congress.

H.R. 6126, the "Fairness in Nursing Home Arbitration Act of 2008"

Summary.—H.R. 6126, the "Fairness in Nursing Home Arbitration Act of 2008," would amend the Federal Arbitration Act to make certain pre-dispute arbitration agreements between the operators of long-term care facilities and their residents invalid or unenforceable. In a pre-dispute arbitration agreement, the parties agree to arbitrate a potential dispute rather than seek redress through the courts. H.R. 6126 would apply to agreements entered into or modified on or after the date of the legislation's enactment. Under current law, the operators of long-term care facilities can include clauses in contracts with residents that provide for mandatory arbitration if a dispute should arise. H.R. 6126 effectively requires arbitration to be consented to by both parties.

Legislative History.—Representative Linda Sánchez introduced H.R. 6126 on May 22, 2008. On June 10, 2008, the Subcommittee held a hearing on H.R. 6126. Witnesses who testified at the hearing included: Mr. William J. Hall, MD, who appeared on behalf of AARP; Ms. Linda Stewart, RN, a nurse from Texas; Mr. Gavin J. Gadberry, Esq., an attorney with Underwood, Wilson, Berry, Stein and Johnson, PC, who appeared on behalf of the American Health Care Association and the National Center for Assisted Living; and Mr. Ken Connor, an attorney with Wilkes & McHugh, P.A. On July 15, 2008, the Subcommittee marked up H.R. 6126, and ordered it to be favorably reported, by a roll call vote of 5 to 4. On July 30, 2008, the Committee marked up H.R. 6126, and ordered it favorably reported, by a roll call vote of 17 to 10. The legislation was reported to the House on September 26, 2008 (H. Rept. No. 110–894).

TORT REFORM ISSUES

H.R. 5913, the "Protecting Americans from Unsafe Foreign Products Act"

Summary.—Because of the difficulties associated with serving process on and establishing jurisdiction over foreign manufacturers, many Americans harmed by defective foreign-made products never get their day in court. H.R. 5913 was introduced to eliminate the unfair competitive advantage enjoyed by foreign manufacturers and ensure that they are held accountable for injuries consumers suffer as a result of defective products.

The legislation would amend current law to facilitate service of process on foreign manufacturers by permitting service on the manufacturer wherever they reside, are found, have an agent, or transacts business. Service of process and personal jurisdiction is proper so long as one of the following two criteria is met: (1) the manufacturer knew or reasonably should have known that the product or component would be imported for or use in the U.S.; or (2) the manufacturer had contacts with the U.S. whether or not such contacts occurred in the place where the injury occurred.

Given the increase of imported products that do not meet U.S. standards for heath, safety, and quality, and the fact that neither the Consumer Product Safety Commission nor the Food and Drug Administration have effectively prevented the importation of defective products, more consumers have become endangered. The purpose of this legislation is to improve accountability of foreign manufacturers and promote consumer safety.

Legislative History.—On April 29, 2008, Subcommittee Chair Linda Sánchez introduced H.R. 5913, "Protecting Americans from Unsafe Foreign Products Act," with Chairman John Conyers, Rep. Zoe Lofgren, Rep. Steve Cohen, and Rep. Raúl Grijalva as original cosponsors. The Subcommittee held a hearing on the legislation on May 1, 2008. Witnesses at the hearing included: Professor Ralph Steinhardt, George Washington School of Law; Richard Schlueter, Esq., Childers Buck & Schlueter, LLP; Ed Mierzwinski, Consumer Program Director, U.S. Public Interest Research Group; and Victor Schwartz, Esq., Institute for Legal Reform of the U.S. Chamber of Commerce. There was no further consideration of H.R. 5913 in the 110th Congress.

H.R. 5884, the "Sunshine in Litigation Act of 2008"

Summary.—H.R. 5884, the "Sunshine in Litigation Act of 2008," would amend 28 U.S.C. § 111 by adding a new section 1660 entitled "Restrictions on protective orders and sealing of cases and settlements." Section 1660's main provision would prohibit a federal court from entering a protective order under Rule 26(c) of the Federal Rules of Civil Procedure "restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records," unless the court finds that: (1) the "order would not restrict the disclosure of information which is relevant to the protection of public health or safety," or (2) "the public interest in the disclosure of the potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question" and "the requested . . . order is no broader than necessary to protect the privacy interests asserted." H.R. 5884 would also prohibit court from entering an order enforcing a settlement agreement in case involving "public health or safety" that prohibits a party from disclosing the existence of the agreement or evidence offered in the case. Introduction of H.R. 5884 was prompted by concerns that federal courts too often restrict the disclosure of health and safety information produced in personal injury and other suits without considering the public interest.

Legislative History.—H.R. 5884 was introduced by Representative Robert Wexler (D–FL) on April 23, 2008. The Full Committee referred the bill to the Subcommittee for a hearing. The Subcommittee held a hearing on July 31, 2008. Four witnesses testified: the Honorable Joseph F. Anderson, Jr., United States District Court Judge, United States District Court for the District of South Carolina; John P. Freeman, Distinguished Professor Emeritus of Law, University of South Carolina School of Law; the Honorable Mark R. Kravitz, United States District Court Judge, United States District Court for the District of Connecticut, who testified

on behalf of the Judicial Conference of the United States; and Richard D. Meadow, Partner, The Lanier Law Firm. H.R. 5884 was not considered further prior to the end of the 110th Congress.

CLAIMS ISSUES

H.R. 4854, the "False Claims Act Correction Act of 2007"

Summary.—On June 19, 2008, the Subcommittee held a joint legislative hearing with the Subcommittee on Courts, the Internet, and Intellectual Property on H.R. 4854, the "False Claims Act Correction Act of 2007." The witnesses at the hearing included: Albert Campbell, a qui tam relator; Shelley Slade, Esq., an attorney with Vogel, Slade & Goldstein, LLP; Peter B. Hutt, II, Esq., an attorney with Akin Gump Strauss Hauer & Feld, LLP; and James B. Helmer, Jr., the President of Helmer, Martins, Rice & Popham Co., L.P.A.

On July 16, 2008, the Committee marked up H.R. 4854, and ordered it favorably reported, by a voice vote. H.R. 4854 was not considered further prior to the end of the 110th Congress.

OVERSIGHT ACTIVITIES

ADMINISTRATIVE LAW, PROCESS, AND PROCEDURE

Executive Order 13422

Summary.—In 1993, President Clinton issued Executive Order (EO) 12866, which governs White House review of agency rules.[77] The EO provides for centralized review of agency rulemaking in the Office of Management and Budget, but affirms the primacy of agencies' rulemaking authority. In January 2007, President George W. Bush, "[w]ith little fanfare,"[78] issued EO 13422, which made significant amendments to EO 12866.[79] EO 13422 instituted greater specificity and market analysis requirements for rules, required heightened scrutiny of guidance documents, required greater emphasis on cost-benefit analysis in the rulemaking process, and facilitated a greater role for political appointees in this process.

At the request of the Committee, the Congressional Research Service (CRS) reviewed EO 13422 and issued a report.[80] CRS concluded, inter alia, that the executive order represented "a clear expansion of presidential authority over rulemaking agencies" and that it "can be viewed as part of a broader statement of presidential authority presented throughout the Bush Administration—from declining to provide access to executive branch documents and information to presidential signing statements indicating that certain statutory provisions will be interpreted consistent with the President's view of the 'unitary executive.'" Similarly, the New

[77] Exec. Ord. No. 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

[78] Lisa Heinzerling, Deregulatory Review, Georgetown Law Faculty Blog, http://gulcfac.typepad.com/georgetown_university_law/2007/01/deregulatory_re.html (visited Jan. 24, 2007). A commentator similarly noted, "On Jan. 18, while the headlines in the U.S. focused on the war in Iraq, the new Democratic Congress, and actress Lindsay Lohan's alcohol problem, the Bush administration rewrote the book on federal regulation." Cindy Skrzycki, Bush Gains Power on Rules After Losing Congress, Bloomberg.com, at http://bloomberg.com/apps/news?pid=206700001&refer=columnist.

[79] Exec. Ord. No. 13422, 72 Fed. Reg. 2,763 (Jan. 23, 2007).

[80] Curtis W. Copeland, Changes to the OMB Regulatory Review Process by Executive Order 13422, Congressional Research Service Report for Congress, RL 33862, at 14 (Feb. 5, 2007).

York Times noted that the directive gave "the White House much greater control over the rules and policy statements that the government develops to protect public health, safety, the environment, civil rights and privacy."[81] Critics of the new executive order questioned whether it was an attempt to establish standards for rulemaking that are inconsistent with statutory requirements.[82] Paul Krugman, in a New York Times commentary noted, for example, that EO 13422 "will make it even easier for political appointees to overrule the professionals, tailoring government regulations to suit the interests of companies that support the G.O.P."[83] On the other hand, OMB's General Counsel, Jeffrey Rosen, explained: "Simply put: what we are doing here is 'good government.' We are building upon a process that has been used by presidents of both parties to try to institutionalize best practices."[84] Proponents of EO 13422 argue that it represents "long overdue action to constrain the growing burden of federal regulation on the economy."[85]

On February 13, 2007, the Subcommittee on Commercial and Administrative Law held a hearing on the issues presented by EO 13422, entitled "Amending Executive Order 12866: Good Governance or Regulatory Usurpation?" Witnesses included: Steven D. Aitken, Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Professor Sally Katzen of the University of Michigan Law School; Curtis W. Copeland, Specialist in American National Government at the Congressional Research Service; Paul Noe, a partner with C&M Capitolink LLC; and Professor Peter L. Strauss of Columbia University School of Law.

Rulemaking Process and the Unitary Executive Theory

Summary.—Over the course of the George W. Bush Administration, the Office of Information and Regulatory Affairs (OIRA) returned to the role it had during the Reagan Administration, even describing itself in an annual report as the "gatekeeper for new rulemakings."[86] The Administrator of OIRA explained that one of his office's functions is "to protect people from poorly designed rules," and that OIRA review is a way to "combat the tunnel vision

[81] Robert Pear, Bush Directive Increases Sway on Regulation, N.Y. Times, Jan. 30, 2007, at A1.

[82] See, e.g., Press Release, Public Citizen, New Executive Order Is Latest White House Power Grab (Jan. 18, 2007), at http://www.citizen.org/pressroom/release.cfm?ID=2361; Garrett Epps, The Power of King George, Salon.com (Feb. 1, 2007) (describing EO 13422 as a "power grab" by the Bush Administration), at http://www.salon.com/opinion/feature/2007/02/01/presidential_power/.

[83] Paul Krugman, Op-Ed., The Green-Zoning of America, N.Y. Times, Feb. 5, 2007, at A25.

[84] Cindy Skrzycki, Bush Gains Power on Rules After Losing Congress, Bloomberg.com, at http://bloomberg.com/apps/news?pid=206700001&refer=columnist. In another statement to the press, Mr. Rosen noted, "This is a class good-government measure that will make federal agencies more open and accountable." Robert Pear, Bush Directive Increases Sway on Regulation, N.Y. Times, Jan. 30, 2007, at A1. Paul Noe, a former OIRA advisor, similarly noted, "The executive order promotes better-informed and more accountable regulatory decisions." Cindy Skrzycki, Bush Gains Power on Rules After Losing Congress, Bloomberg.com, at http://bloomberg.com/apps/news?pid=206700001&refer=columnist.

[85] Bruce Bartlett, Regulatory Respite, Wash Times, Feb. 7, 2007.

[86] Curtis Copeland, Federal Rulemaking: The Role of the Office of Information and Regulatory Affairs, Congressional Research Service Report for Congress RLS 32397, at 21 (May 28, 2004) (quoting Office of Management and Budget, Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, Dec. 2002).

that plagues the thinking of single-mission regulators."[87] This return to the gatekeeper perspective of OIRA's role has implications for an array of OIRA's functions.[88] At the request of the Committee, the Congressional Research Service (CRS) reviewed the actions of OIRA and noted various instances of its heightened role in the rulemaking process:

- The development of a detailed economic analysis circular and what agency officials described as a perceptible "stepping up the bar" in the amount of support required from agencies for their rules, with OIRA reportedly more often looking for regulatory benefits to be quantified and a cost-benefit analysis for every regulatory option that the agency considered, not just the option selected;
- The issuance of 21 letters returning rules to the agencies between July 2001 and March 2002—three times the number of return letters issued during the last six years of the Clinton Administration. However, OIRA returned only two rules in 2003, one rule in 2004, one rule in 2005, no rules in 2006, and one rule in 2007. OIRA officials indicated that the pace of return letters declined after 2002 because agencies had gotten the message about the seriousness of OIRA reviews;
- The issuance of 13 "prompt letters" between September 2001 and December 2003 suggesting that agencies develop regulations in a particular area or encouraging ongoing efforts. However, OIRA issued two prompt letters in 2004, none in 2005, one in 2006, and none in 2007;
- The increased use of "informal" OIRA reviews in which agencies share preliminary drafts of rules and analyses before final decisionmaking at the agencies—a period when OIRA says it can have its greatest impact on the rules, but when OIRA says that some of the transparency requirements in Executive Order 12866 do not apply;
- Extensions of OIRA review for certain rules for months or years beyond the 90–day time limit delineated in the executive order;
- Using a general statutory requirement that OIRA provide Congress with "recommendations for reform" to request the public to identify rules that it believes should be eliminated or reformed;
- A leadership role for OIRA in the development of electronic rulemaking, which has led to the development of a centralized rulemaking docket, but which some observers believe can lead to increased presidential influence over the agencies;
- The development of an OMB bulletin on peer review that, in its original form, some believed could have led to a centralized system within OMB that could be vulnerable to political manipulation or control;

[87] John Graham, Administrator, OIRA, Remarks to the Board of Trustees, The Keystone Center, at Washington, DC (June 18, 2002), at http://www.whitehouse.gov/omb/inforeg/keystone_speech061802.html.

[88] See, e.g., Interim Report on the Administrative Law, Process and Procedure Project for the 21st Century, Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 109th Cong. 56 (2006) available at http://judiciary.house.gov/Media/PDFS/Printers/109th/31505.pdf.

• The development of a proposed bulletin standardizing agency risk assessment procedures that the National Academy of Sciences concluded was "fundamentally flawed," and that OIRA later withdrew; and

• the development of a "good guidance practices" bulletin that standardizes certain agency guidance practices.

According to CRS, these initiatives "represent the strongest assertion of presidential power in the area of rulemaking in at least 20 years."[89]

Other developments also appeared to illustrate the Administration's heightened involvement in the rulemaking process. For example, the Environmental Protection Agency (EPA) may have weakened some of its limits on smog-forming ozone "after an unusual last-minute intervention by President Bush, according to documents released by the EPA."[90] Although the EPA's Clean Air Scientific Advisory Committee supported the EPA's proposed ozone standard rule, OIRA Administrator Dudley "urged the EPA to consider the effects of cutting ozone further on 'economic values and on personal comfort and well-being.'"[91] President Bush intervened and he "decided on a requirement weaker than what the EPA wanted."[92] Another example concern's the Administration apparent effort to delay final approval of a regulation first initiated four years ago that would have protected the endangered right whale from being killed by commercial ships.[93]

On May 6, 2008, the Subcommittee on Commercial and Administrative Law held a hearing entitled, "Rulemaking Process and the Unitary Executive Theory." Witnesses included: Susan E. Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget; Dr. Curtis W. Copeland, Specialist in American National Government, Congressional Research Service; Professor Peter L. Strauss, Columbia Law School; Dr. Rick Melberth, Director of Regulatory Policy, OMB Watch; and James L. Gattuso, Esq., Senior Fellow in Regulatory Policy, Roe Institute for Economic Policy Studies at The Heritage Foundation. The hearing highlighted various ways where the current Administration may have expanded its control over the rulemaking process. In particular, the hearing identified various manifestations of the Administration's enhanced role in rulemaking, including its increased use of return letters, quality assessments, peer reviews, and cost-benefit risk assessments. The ramifications of these efforts were considered as well as the impact of President Bush's Executive Order 13422, which substantially increased the Administration's control of the rulemaking process.

Oversight Hearing on the "Congressional Review Act"

Summary.—The Congressional Review Act (CRA) is a congressional review mechanism of agency rules. The CRA requires all

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[89] Id.

[90] Juliet Eilperin, Ozone Rules Weakened at Bush's Behest, Wash. Post., Mar. 14, 2008, at A1.

[91] Id. (quoting OIRA Administrator Susan Dudley).

[92] Cindy Skrzycki, It's Not a Backroom Deal If the Call Is Made in the Oval Office, Wash. Post, Apr. 8, 2008, at D2.

[93] H. Josef Hebert, Delay in Ruling on Endangered Right Whales Criticized, Wash. Post, Apr. 30, 2008.

agencies promulgating a rule[94] to submit a report to both Houses of Congress and to the Comptroller General at the Government Accountability Office (GAO) that contains a copy of the rule, a concise general statement describing the rule (including whether it is a major rule[95]), and the proposed effective date of the rule.[96] The CRA authorizes Congress, pursuant to a joint resolution of disapproval, to disapprove an agency rule that it determines to be too burdensome, excessive, inappropriate, duplicative, or otherwise objectionable. For a joint resolution of disapproval to become law, it must pass both Houses of Congress and be signed by the President. If a joint resolution is enacted into law, the rule is deemed not to have had any effect at any time.[97] Additionally, the CRA prohibits an agency from reissuing a rule that is substantially the same as the disapproved rule. Such a resolution must be introduced within the specified review period, which is at least 60 days.[98]

In more than 12 years, the disapproval mechanism established by the CRA has yielded only one congressional disapproval, the OSHA disapproval, which was the result of a confluence of unusual factors.[99] These factors include: "the White House and both Houses of Congress in the hands of the same political party, a contentious rule promulgated in the waning days of an outgoing administration, longstanding opposition to the rule by some in Congress and by a broad coalition of business interests, and encouragement of repeal by the President."[100]

Because of the burdens of implementing the CRA and its infrequent use, the Subcommittee held a hearing on November 6, 2007 that explored possible approaches to reforming the CRA. Witnesses at the hearing included: the Honorable John V. Sullivan, Parliamentarian, House of Representatives; Morton Rosenberg, Congressional Research Service; and Professor Sally Katzen, George Mason University School of Law.

BANKRUPTCY

Executive Compensation in Chapter 11 Cases

Summary.—In recent years, there have been numerous high profile Chapter 11 cases where workers made major concessions with regard to their job security, compensation, pensions, and health benefits, while the chief executives received high incentive and retention bonuses. The poential inequity of such disparate pay packages is further heightened where the company's financial difficulties stem from bad decisions made by management. "All too often," as one bankruptcy judge recently observed, executive retention

[94] The term rule "means the whole or part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 804(3).

[95] A major rule is defined as a rule that will likely have an annual effect on the economy of $100 million or more, increase costs or prices for consumers, industries or state and local governments, or have significant adverse effects on the economy.

[96] 5 U.S.C. §§ 801–808. On March 29, 1996, President Bill Clinton signed the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104–121, 110 Stat. 857–874. Subtitle E of that Act established the procedures for congressional review of agency rules.

[97] 5 U.S.C. § 801(f) (2007).

[98] 5 U.S.C. § 801(a)(3)–(4) (2007).

[99] Id.

[100] Morton Rosenberg, Congressional Review of Agency Rulemaking: An Update and Assessment of the Congressional Review Act After Ten Years, Congressional Research Service Report for Congress, RL 30116, at 1 (May 8, 2008).

plans "have been widely used to lavishly reward—at the expense of the creditor body—the very executives whose bad decisions or lack of foresight were responsible for the debtor's financial plight." [101]

In response to these abuses, Senator Edward Kennedy (D–MA) proposed an amendment intended to cap executive compensation in Chapter 11 cases, which was passed as part of comprehensive bankruptcy reform legislation enacted into law in 2005.[102] These reforms, however, may have had limited effect, as demonstrated by recent court decisions.[103] Given these continuing problems, House Judiciary Committee Chairman John C. Conyers, Jr. introduced legislation in the last Congress intended to reform executive compensation in corporate bankruptcies.[104] The issue of executive compensation in Chapter 11 cases had not been the subject of an oversight hearing before the House Judiciary Committee for at least the last four Congresses.

On April 17, 2008, the Subcommittee on Commercial and Administrative Law held an oversight hearing on "Executive Compensation in Chapter 11 Bankruptcy Cases: How Much Is Too Much?" Witnesses included: Damon Silvers, Associate General Counsel for the American Federation of Labor and Congress of Industrial Organizations; Antoinette Muoneke, a flight attendant with United Airlines on behalf of the Association of Flight Attendants; Mark S. Wintner, a partner with Stroock & Stroock & Lavan, LLP; and Richard Levin on behalf of the National Bankruptcy Conference. The hearing provided an opportunity to consider this issue from the perspective of labor and management as well as that of the National Bankruptcy Conference.[105] It also provided an opportunity for the Subcommittee to determine whether the current law adequately addresses this issue.

Implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Summary.—The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Act)[106] was signed into law by President George W. Bush on April 20, 2005. The Act is the most comprehensive overhaul of the Bankruptcy Code in more than 25 years, particularly with respect to its consumer bankruptcy reforms. These consumer bankruptcy amendments included, for example, the establishment of a means testing mechanism to determine a debtor's ability to repay debts and a requirement that consumer debtors receive credit counseling prior to filing for bankruptcy relief.

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[101] In re U.S. Airways, Inc., 329 B.R. 793, 797 (Bankr. E.D. Va. 2005).

[102] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109–8, § 331, 119 Stat. 23, 102–03 (2005).

[103] Cf. In re Dana Corp., 2006 WL 3479406 (Bankr. S.D.N.Y. Nov. 30, 2006); In re Dana Corp., 351 B.R. 96 (Bankr. S.D.N.Y. 2006).

[104] H.R. 5113, 109th Cong. (2006).

[105] The National Bankruptcy Conference is a nonpartisan organization comprised of the nation's leading bankruptcy scholars and practitioners. It was informally organized in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments. National Bankruptcy Conference, Mission Statement, http://www.nationalbankruptcyconference.org/mission.cfm.

[106] Pub. L. No. 109–8, 119 Stat. 23 (2005). Pursuant to section 1501 of the Act, most of its provisions became effective on October 17, 2005.

Over the two years since its enactment, consumer advocates have become increasingly concerned that some of the 2005 Act's requirements are unduly burdensome for debtors in dire financial distress.[107] Their concerns are heightened by the growing inability of many Americans to meet their repayment obligations on subprime mortgages.[108] For example, foreclosures in the United States for the month of March 2007 increased by 47 percent over the prior year.[109] These advocacy groups warned that "primarily low-income subprime mortgage borrowers face often insurmountable bankruptcy hurdles to hold onto their homes."[110] Based on a survey conducted by the National Association of Consumer Bankruptcy Attorneys (NACBA),[111] 81 percent of bankruptcy attorneys surveyed agreed that it is more difficult "for people facing foreclosure to file [bankruptcy] to save their homes than before bankruptcy law changes were enacted in 2005."[112]

To assess the value and benefit to consumers of pre-filing credit counseling, House Judiciary Committee Chairman John Conyers, Jr., along with other Members of Congress, requested the Government Accountability Office in 2005 to examine: (1) the process by which credit counseling and financial training providers are approved; (2) the content and results of the counseling and education sessions; (3) the fees charged; and (4) the availability of and challenges to accessing services.[113] In response to this request, the GAO made several findings of possible concern. Although the GAO found that the providers generally complied with the Act, it was unable to "find evidence that agencies that provided prefiling credit counseling discouraged clients from filing for bankruptcy and very few clients appeared to be entering into repayment plans administered by these agencies."[114] The GAO also noted that "it is not clear whether the prefiling requirement is serving its intended purpose . . . of helping consumers make an informed choice about bankruptcy and its alternatives."[115] It continued, "Anecdotal evidence suggests that by the time that most consumers receive the

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[107] Press Release, National Association of Consumer Bankruptcy Attorneys, Consumer Federation of America & Center for Responsible Lending, Consumer Groups: Fix Bankruptcy Laws So Hundreds of Thousands of Americans Can Avoid Home Foreclosures in Subprime Mortgage Crisis (Apr. 12, 2007) (on file with the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary).

[108] See, e.g., Ruth Simon, More Borrowers Fall Behind on Home Loans, WalL St. J., Apr. 11, 2007 (noting that the mortgage-delinquency rate is at its "highest level" since 2000 and that delinquencies were "also up sharply for home-equity loans and lines of credit").

[109] Press Release, RealtyTrac, Inc., Foreclosure Activity Increases 7 Percent in March -Foreclosure Filings Up 47 Percent From Year Ago; Nevada, Colorado, California Post Highest Foreclosure Rates (Apr. 18, 2007). For March 2007, the national foreclosure rate was reported to be one foreclosure filing for every 775 U.S. households. Id. According to this report, "The five states with the most foreclosure filings in March—California, Florida, Texas, Michigan and Ohio—together accounted for 50 percent of the nation's total." Id.

[110] Press Release, National Association of Consumer Bankruptcy Attorneys, Consumer Federation of America & Center for Responsible Lending, Consumer Groups: Fix Bankruptcy Laws So Hundreds of Thousands of Americans Can Avoid Home Foreclosures in Subprime Mortgage Crisis (Apr. 12, 2007) (on file with the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary).

[111] NACBA is a nonprofit organization with more than 2,500 consumer bankruptcy attorneys nationwide. Id. at 4.

[112] Id. The survey, conducted from April 2 to 9, 2007 by NACBA of its members, received responses from 640 attorneys, representing 26 percent of NACBA's membership. Id.

[113] Letter from Rep. John Conyers Jr. (D–MI) et al. to David M. Walker, Comptroller General of the United States (Oct. 18, 2005) (on file with the Comm. on the Judiciary).

[114] U.S. Government Accountability Office Report, Bankruptcy Reform: Value of Credit Counseling Is Not Clear, GAO-Pub. No. 07–203, at 3 (Apr. 2007).

[115] Id.

prefiling counseling, their financial situations are dire, leaving them with no viable alternative to bankruptcy."[116] The GAO noted that there was a dearth of data on "the outcomes of counseling sessions."[117] Such data, it observed, "could help program managers and policymakers determine how well the prefiling requirement is serving its intended purpose."[118]

On May 1, 2007, the Subcommittee on Commercial and Administrative Law held an oversight hearing on the "Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Are Consumers Really Being Protected Under the Act?" Witnesses included: Henry J. Sommer, President of the National Association of Consumer Bankruptcy Attorneys; Shirley Jones Burroughs, a chapter 13 debtor; Yvonne Jones, Director of Financial Markets and Community Investment at the United States Government Accountability Office; and Steve Bartlett, President and CEO, Financial Services Roundtable.

Medical Debt

Summary.—In recent years, the cost of healthcare in the United States has "risen precipitously."[119] Healthcare spending accounts for 16 percent of the national Gross Domestic Product, which reflects a 13.8 percent increase from 2000.[120] By 2015, these costs are projected to be $4 trillion.[121] Correlatively, health insurance premiums have increased by 73.8 percent since 2000, while median income increased only 11.6 percent.[122] The United States, however, does not provide health care for all of its citizens unlike many other industrialized nations. Medicare and Medicaid cover only the elderly and indigent. In addition, some families earn "too much money to qualify for public health insurance but too little to afford a private policy" and as a result they are "caught in a Catch 22 that puts many U.S. workers at risk of financial ruin."[123] As a result, many go without insurance. Approximately 45 million or 15 percent of Americans did not have health insurance in 2005, reflecting a 3 percent increase over the previous year.[124]

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[116] Id.
[117] Id.
[118] Id.
[119] Cindy Zeldin & Mark Rukavina, Borrowing To Stay Healthy: How Credit Card Debt Is Related to Medical Expenses, Dēmos/The Access Project, at 2 (2006).
[120] Id.
[121] Lisa Baertlein, Health Care Crisis Squeezes Working Families, Wash. Post, May 23, 2007.
[122] Cindy Zeldin & Mark Rukavina, Borrowing To Stay Healthy: How Credit Card Debt Is Related to Medical Expenses, Dēmos/The Access Project, at 2 (2006).
[123] Lisa Baertlein, Health Care Crisis Squeezes Working Families, Wash. Post, May 23, 2007. For example,

Volunteer Cindy Holland has no medical insurance, and her husband's health benefits as a full-time paramedic do not extend to family members and their three children go without.

John Holland, like most Americans, gets his health insurance through his job as a paramedic with a private ambulance company, which pays half the expense.

When Cindy, 36, shopped for coverage for herself and their children, she found it would cost about $1,000 a month, excluding dental insurance.

"It would kill us financially to do the insurance—if we want to keep a roof over our head and food in my kids. You end up rolling the dice," said Cindy, a California native who works a pair of part-time jobs on top of firefighting.

[124] Id. On January 24, 2007, House Judiciary Chairman John Conyers, Jr. introduced H.R. 676, the "United States National Health Insurance Act." The Act establishes a program that would provide Americans with free health care that includes all medically necessary care, such as primary care and prevention, prescription drugs, emergency care, and mental health services. The measure prohibits an institution from participating in the program unless it is a public or

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Even the insured face economic distress. According to one recent study, "29 percent of low- and middle-income households with credit card debt reported that medical expenses contributed to current level of credit card debt." [125] The study suggests that "medical debt among the insured results from a variety of causes and the interaction of a number of factors, including the adequacy of people's insurance plans, the nature of their medical needs, the cost of their treatments, and their financial resources." [126] In particular, the study identified several reasons why the insured accrued debt, including the cost of premiums and deductibles, coverage caps, and uninsured medical conditions.[127]

A 2005 study demonstrated a significant connection between medical debt and financial hardship.[128] The study, which surveyed 1,692 low and moderate income people in various locales around the nation, [129] found that one-quarter of the respondents stated that they had housing problems as a result of their medical debt.[130] These problems included: (1) the inability to qualify for a mortgage; (2) the inability to make rent or mortgage payments; (3) being rejected from renting a home; and (4) being forced to move to less expensive housing.[131] Some of the respondents reported that they were evicted or were rendered homeless because of medical debt.[132] The financial ramifications of medical debt represent only part of the problem. Research shows that "privately insured adults with medical debt are more likely than those without debt to skip recommended treatments, leave drug prescriptions unfilled, and postpone care due to cost[.]" [133]

On July 17, 2007, the Subcommittee on Commercial and Administrative Law held a hearing on "Working Families in Financial Crisis: Medical Debt and Bankruptcy." Witnesses included: Professor Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School; Dr. David Himmelstein, Associate Professor of Medicine, Harvard Medical School, and a primary care physician at Cambridge Hospital in Cambridge, Massachusetts; Donna Smith, a former chapter 7 debtor; Mark Rukavina, Executive Director, The

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nonprofit institution and gives patients the freedom to choose among participating physicians and institutions.

[125] Cindy Zeldin & Mark Rukavina, Borrowing To Stay Healthy: How Credit Card Debt Is Related to Medical Expenses, Dēmos/The Access Project, at 1 (2006). This study also found: Within that group, 69 percent had a major medical expense in the previous three years. Overall, 20 percent of indebted low- and middle-income households reported both having a major medical expense in the previous three years and that medical expenses contributed to their current level of credit card debt. Id. Another study, which surveyed 383 people living in Missouri, found that "[m]edical bills can cripple hardworking families." Sidney D. Watson et al., Living in the Red—Medical Debt and Housing Security in Missouri, Survey Findings and Profiles of Working Families, The Access Project, at 1 (2007).

[126] Carol Pryor et al., The Illusion of Coverage: How Health Insurance Fails People When They Got Sick, The Access Project, at 5 (2007).

[127] Id. at 5–6; see also Mark Rukavina et al., Not Making the Grade: Lessons Learned from the Massachusetts Student Health Insurance Mandate, The Access Project (May 2007) (finding mandatory health insurance coverage for students attending institutions of higher learning in Massachusetts was inadequate as the program allowed unreasonable levels of cost-sharing).

[128] Robert W. Seifert, Home Sick—How Medical Debt Undermines Housing Security, The Access Project (Nov. 2005).

[129] These locales were Bridgeport, Connecticut; Des Moines, Iowa; Phoenix, Arizona; Providence, Rhode Island; St. Louis, Missouri; Tulsa, Oklahoma; and West Palm Beach, Florida. Id. at 27.

[130] Id. at 1.

[131] Id.

[132] Id.

[133] Carol Pryor et al., The Illusion of Coverage: How Health Insurance Fails People When They Got Sick, The Access Project, at 3 (2007).

Access Project; Clifford J. White, III, Director, Executive Office for United States Trustees; and Professor Todd Zywicki, George Mason University School of Law.

Treatment of Employees and Retirees under Chapter 11

Chapter 11, in essence, is a statutorily orchestrated mechanism by which parties, "having divergent, if not mutually exclusive, interests are given an opportunity to work out their economic differences with the shared goal of maximizing the return for all."[134] As one writer observed, "Much bankruptcy law and analysis searches for an 'equitable' resolution of issues as a way of placing some flex in the joints of what is perceived to be an otherwise rigid statutory scheme."[135] Chapter 11 offers: (1) Immediate relief from the forces which threaten to destroy the debtor beyond repair, in combination with provisions to keep it in operation while the salvage job is assayed and undertaken; and (2) a legal framework in which non-consenting creditors and other parties can be bound by the desires of a majority of their peers, or otherwise prevented from fractious disruption of the debtor's affairs.[136]

In recent years, there have been numerous news reports about the financial collapse of such corporate giants as Enron, WorldCom, Global Crossing, Delta Airlines, Delphi Corporation and Northwest Airlines. In 2002 alone, the ten largest companies filing for bankruptcy employed nearly 445,000 employees.[137] In many of these cases, workers made major concessions with regard to their job security, compensation, pensions, and health benefits. As the Wall Street Journal observed, once bankruptcy intervenes "workers have to get in line with other unsecured creditors for severance benefits, unused vacation pay, expenses and commissions—a process that can leave them with mere pennies on the dollars that they're owed."[138] Pensions funded by a company's stock are typically rendered worthless once bankruptcy intervenes.[139]

In contrast, the chief executives of these debtors often received extravagant incentive and retention bonuses. The inequity of such disparate pay packages is further heightened where the company's financial difficulties stem from bad decisions made by management. "All too often," as one bankruptcy judge observed, executive retention plans "have been widely used to lavishly reward—at the expense of the creditor body—the very executives whose bad deci-

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[134] Susan Jensen-Conklin, Do Confirmed Chapter 11 Plans Consummate? The Results of a Study and Analysis of the Law, 97 COMM. L. J. 297, 299 (1992).

[135] Thomas H. Jackson, Of Liquidation, Continuation, and Delay: An Analysis of Bankruptcy Policy and Nonbankruptcy Rules, 60 Am. Bankr. L. J. 399, 399 (1986).

[136] Paul F. Festersen, Equitable Poers in Bankruptcy Rehabilitation: Protection of the Debtor and the Doomsday Principle, 46 Am. Bankr. L. J. 311, 311 (1972).

[137] Shawn Young, In Bankruptcy, Getting Laid Off Hurts Even Worse—WorldCom's Ex-Employees Suffer Loss of Severance, End of Health Insurance—Moving into the Garage, Wall St. J., Sept. 20, 2002, at A1.

[138] Id.

[139] See, e.g., Andrew Countryman, New Pension Rules Change Little in Post-Enron Era, Chi Trib., Nov. 3, 2002 ("Perhaps the must enduring legacy of the Enron affair is the decimated 401(k) accounts of thousands of Enron workers); Simon Romero, Winnick Offers Restitution, N.Y. Times (Oct. 2, 2002), (reporting that several thousand employees of Global Crossing lost their retirement money when the company's stock collapsed as a result of insider fraud); Shawn Young, In Bankruptcy, Getting Laid Off Hurts Even Worse—WorldCom's Ex-Employees Suffer Loss of Severance, End of Health Insurance—Moving into the Garage, Wall St. J. (Sept. 20, 2002), at A1 (reporting that WorldCom employees' stock-backed pensions became "essentially worthless" in the wake of a "massive accounting scandal" and the company's subsequent bankruptcy).

sions or lack of foresight were responsible for the debtor's financial plight."[140]

With respect to the rejection of collective bargaining agreements pursuant to Bankruptcy Code section 1113, several issues are presented. First, there is a split among the federal circuits as to what constitutes sufficient grounds for rejecting a collective bargaining agreement within the meaning of section 1113. Under that provision, a court may approve the rejection of a collective bargaining agreement if it is "necessary to permit the reorganization of the debtor."[141] The Third Circuit interprets this phrase to mean "necessary to prevent liquidation,"[142] whereas the Second Circuit applies "a more debtor-friendly" standard,[143] that focuses on the "debtor's ultimate long-term economic health."[144] As a result, the Second Circuit is often the venue sought by reorganizing debtors to file for relief under Chapter 11 because of its more employer favorable standard. It is "among the reasons that Delphi, a Michigan company, filed for bankruptcy in New York."[145] As one commentator observed: "In case after case, bankruptcy courts have applied Congressional intent favoring long-term rehabilitation to sweep aside wage and benefits concessions won at the bargaining table."[146]

Second, Chapter 11 may also restrict other options available to workers. For example, the Second Circuit in In re Northwest Airlines Corp., earlier this year held that a labor union may be enjoined from striking in response to the rejection of its collective bargaining agreement pursuant to Bankruptcy Code section 1113.[147]

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[140] In re U.S. Airways, Inc., 329 B.R. 793, 797 (Bankr. E.D. Va. 2005). While Bankruptcy Code section 503 restricts the use of key employee retention plans, the Chapter 11 bar has already pursued alternatives to avoid its restrictions. If, for example, the compensation package is intended to incentivize management, the arrangement may then be scrutinized under Bankruptcy Code section 363's "more liberal business judgment review." In re Global Home Products, LLC, 2007 WL 689747, at *5 (Bankr. D. Del. Mar. 6, 2007). Section 363(b) allows a Chapter 11 debtor to use property of the bankruptcy estate that is not in the ordinary course of the debtor's business, providing parties in interest, such as creditors, receive notice of the undertaking and have an opportunity to object. 11 U.S.C.A. § 363(b) (2006).Where there is a legitimate business justification for the undertaking, such as giving the debtor's officers an incentive package or performance bonus, the courts will defer to the debtor. See, e.g., Dai-Ichi Kangyo Bank, Ltd. V. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp., 242 B.R. 147, 159 (D. Del. 1999) (citing "a sound business purpose" may justify an employee incentive plan); In re Global Home Products, LLC, 2007 WL 689747, at *5 (Bankr. D. Del. Mar. 6, 2007); In re U.S. Airways, Inc., 329 B.R. 793, 795 (Bankr. E.D. Va. 2005). The court in U.S. Airways, for example, found that with respect to the debtor's management employees (below the officer level), the proposed severance payments were appropriate. In re U.S. Airways, Inc., 329 B.R. at 801.

[141] 11 U.S.C.A. § 1113(b)(1) (2006).

[142] Wheeling Pittsburgh Steel Corp. v. United Steelworkers, 791 F.2d 1074, 1088 (3rd Cir. 1986) (noting that "it appears from the legislators" remarks that they placed the emphasis in determining whether and what modifications should be made to a negotiated collective bargaining agreement on the somewhat shorter term goal of preventing the debtor's liquidation").

[143] Commentary, Samuel J. Gerdano, The Future of Collective Bargaining Under Bankruptcy—The Brave New World Facing the Old Economy Industries, American Bankruptcy Institute (Mar. 2006) at http://www.abiworld.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=41342 (last visited Sept. 4, 2007).

[144] Alan N. Resnick & Henry J. Sommer, 7 Collier on Bankruptcy ¶ 1113.06[2][b] (15th ed. rev'd 2007); see, e.g., Truck Drivers Local 807, Int'l Brotherhood of Teamsters, Chauffeurs, Warehouseman & Helpers of America v. Carey Transp. Inc., 816 F.2d 82, 89 (2nd Cir. 1987) ("Thus, in virtually every case, it becomes impossible to weigh necessity as to reorganization without looking into the debtor's ultimate future and estimating what the debtor needs to attain financial health.").

[145] Commentary, Samuel J. Gerdano, The Future of Collective Bargaining Under Bankruptcy—The Brave New World Facing the Old Economy Industries, American Bankruptcy Institute (Mar. 2006) at http://www.abiworld.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=41342 (last visited Sept. 4, 2007).

[146] Id.

[147] 483 F.3d 160 (2d Cir. 2007).

This is apparently "the first federal appeals court to deny workers the right to strike following contract rejection in bankruptcy." [148]

On September 6, 2007, the Subcommittee on Commercial and Administrative Law held a hearing on "American Workers in Crisis: Does the Chapter 11 Business Bankruptcy Law Treat Employees and Retirees Fairly?" Witnesses included: Kim Townsend, United Auto Workers Local 138; Michael L. Bernstein, Arnold & Porter; Fred Redmond, International Vice President for Human Affairs, United Steelworkers; Captain John Prater, President, Air Line Pilots Association, International; Greg Davidowitch, President, United Master Executive Council, Association of Flight Attendants—CWA; and Richard L. Trumka, Secretary-Treasurer of the AFL–CIO.

United States Trustee Program

Summary.—The United States Trustee Program is charged with supervising the administration of bankruptcy cases and private trustees.[149] Its mission is to protect and preserve the integrity of our nation's bankruptcy system by regulating the conduct of parties, ensuring compliance with applicable laws and procedures, bringing civil actions to address bankruptcy abuse, securing the just and efficient resolution of bankruptcy cases, and referring bankruptcy crimes for prosecution. The Program is itself overseen by the Executive Office for United States Trustees (EOUST), which provides policy and management direction to United States Trustees. The Program operates through a system of 21 regions nationwide, except for North Carolina and Alabama.[150]

Specific responsibilities of United States Trustees include appointing and supervising private trustees who administer Chapter 7,[151] 12,[152] and 13 [153] bankruptcy estates; taking legal action to enforce the requirements of the Bankruptcy Code and to ferret out fraud and abuse; referring matters for investigation and criminal prosecution when appropriate; ensuring that bankruptcy estates are administered promptly and efficiently, and that professional fees are reasonable; appointing and convening creditors' commit-

[148] Press Release, Association of Flight Attendants—CWA, AFL–CIO, The Potential Impact of the Northwest Airlines Injunction on the Labor Movement, at 1 (on file with the H. Comm. on the Judiciary).

[149] 28 U.S.C.A. §§ 581–89a (2006).

[150] Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99–554, 28 U.S.C.A. § 581 n. (2006). With respect to North Carolina and Alabama, the bankruptcy system is administered by a bankruptcy administrator appointed by the Judicial Conference. Id.

[151] Under Chapter 7, a debtor's non-exempt assets are collected and liquidated to satisfy the claims of creditors. The United States Trustee appoints a private trustee who serves as a fiduciary for the debtor's creditors and administers the Chapter 7 bankruptcy estate. An eligible debtor may receive a discharge from his or her unsecured debts under Chapter 7, except for certain debts prohibited from discharge under the Bankruptcy Code.

[152] Chapter 12 permits an eligible family farmer to reorganize the farm's financial obligations while continuing his or her farming operations. The United States Trustee typically appoints a standing trustee who serves as a fiduciary for the debtor's creditors and oversees the fulfillment of debtor's obligations under a repayment plan. Upon completion of the plan payments, the Chapter 12 debtor is eligible to receive a discharge.

[153] Chapter 13 is used primarily by individual consumers to reorganize their financial affairs pursuant to a repayment plan approved by the court. To be eligible for Chapter 13 relief, a consumer must have regular income and may not have more than a certain amount of debt. A standing trustee appointed by the United States Trustee serves as a fiduciary for the debtor's creditors and oversees the fulfillment of the debtor's obligations under a repayment plan. Upon completion of the plan payments, the Chapter 13 debtor is eligible to receive a discharge.

tees in Chapter 11 business reorganization cases;[154] and reviewing disclosure statements and retention applications for professional persons retained to represent certain interested parties in bankruptcy cases.

On October 2, 2007, the Subcommittee on Commercial and Administrative Law held an oversight hearing on the "United States Trustee Program: Watchdog or Attack Dog?" Witnesses included: Clifford White, III, Director, Executive Office for United States Trustees; the Honorable A. Jay Cristol, United States Bankruptcy Judge for the Southern District of Florida; the Honorable Eugene Wedoff, United States Bankruptcy Judge for the Northern District of Illinois; Paul Uyehara, an attorney with the Community Legal Services Language Access Project in Philadelphia, Pennsylvania, on behalf of the National Association of Consumer Bankruptcy Attorneys; and Mary Powers, a former United States Trustee Program trial attorney. The hearing provided an opportunity to consider the work and responsibilities of the United States Trustee Program, particularly in light of recent criticisms concerning its enforcement efforts in the area of consumer bankruptcy.

Bankruptcy Trustee Compensation

Summary.—Bankruptcy trustees supervise the administration of chapter 7 cases on behalf of, and as a fiduciary for, the chapter 7 estate. Their principal function is to collect and liquidate the property of the estate and to distribute the proceeds to the estate's creditors. Trustees are indispensable to the functioning of the bankruptcy system. Most chapter 7 cases are handled by trustees with only minimal involvement by the bankruptcy court. Despite their importance, trustees receive only a $60 per-case fee as compensation for their services in most cases. Serious questions have been raised as to whether this minimal compensation is adequate to attract and retain qualified trustees.

On September 16, 2008, the Subcommittee held a hearing on the subject of chapter 7 bankruptcy trustee compensation. The hearing provided an opportunity for Subcommittee members to hear testimony on the adequacy of trustee compensation, the effect of compensation levels on the functioning of the bankruptcy system, and proposals to increase trustee compensation. Four witnesses testified: Edward Crane, former President, National Association of Bankruptcy Trustees; Robert Furr, President, National Association of Bankruptcy Trustees; the Honorable Margaret D. McGarity, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of Wisconsin; and Jack Williams, Professor of Law, Georgia State University College of Law, and Scholar-in-Residence, American Bankruptcy Institute.

Viability of Chapter 11

Summary.—The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the 2005 Act) was signed into law by President George W. Bush on April 20, 2005.[155] Although much of the

[154] Chapter 11 provides an individual or business entity the opportunity to reorganize financial liabilities while remaining in business. The debtor, typically with the participation of its creditors, prepares a reorganization plan to repay all or part of its debts.

[155] Pub. L. No. 109–8, 119 Stat. 23 (2005).

debate concerning the 2005 Act's amendments focused on consumer bankruptcy,[156] there were a number of significant amendments to Chapter 11 of the Bankruptcy Code. After nearly three years since the enactment of these amendments, some question whether these amendments have worked as intended and whether they have had an adverse impact on a debtor's ability to reorganize, especially in light of recently filed cases. There are concerns that the 2005 Act has made it more difficult for business debtors in Chapter 11 to reorganize.[157] In sum, they claim that these "changes that, for the most part, will adversely affect the ability of businesses to reorganize." [158]

With respect to the 2005 Act's amendments to the Bankruptcy Code exempting certain types of financial contracts from the Code, some fear that these "financial safe harbors are indeed a 'bankruptcy opt-out clause' for a certain class of capitalists because their money is more important than everyone else's." [159] They argue that the 2005 Act's expanded exemption for credit derivatives from the Bankruptcy Code was done "with little or no consideration of the larger implications of credit derivatives for chapter 11 policy." [160] Concerns have also been raised about the 2005 Act's amendments to Bankruptcy Code section 365 dealing with nonresidential leases.[161] Others fear that the financial impact of the administrative expense priority for reclamation creditors "on certain types of debtors (for example, retailers) is likely to be substantial, as administrative expense claims must be paid in full in cash as a condition to confirming a plan." [162] Commentators assert that the 2005 Act's amendments to Chapter 11 "were particularly hard on retailers." [163] And, there are many in the bankruptcy community who believe that external developments have weakened Chapter 11's viability as a venue for a successful reorganization. These developments include the growing trend for businesses to be highly leveraged, the decreasing quality of new issue loans,[164] the increasing

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[156] See, e.g., Susan Jensen, A Legislative History of the Bankruptcy Abuse and Consumer Protection Act of 2005, 79 Am. Bankr. L. J. 485, 486 (2005).

[157] See, e.g, Harvey R. Miller, Chapter 11 in Transition—From Boom to Bust and Into the Future, 81 Am. Bankr. L. J. 375, 378 (2007) ("The changes in the Bankruptcy Law, which culminated in the 2005 amendments, make bankruptcy unappealing to most debtor organizations."); Richard Levin & Alesia Ranney-Marinell, The Creeping Repeal of Chapter 11: The Significant Business Provisions of the Bankruptcy Abuse Protection and Consumer Protection Act, 79 Am. Bankr. L. J. 603 (2005).

[158] Richard Levin & Alesia Ranney-Marinell, The Creeping Repeal of Chapter 11: The Significant Business Provisions of the Bankruptcy Abuse Protection and Consumer Protection Act, 79 Am. Bankr. L. J. 603, (2005).

[159] Rhett G. Campbell, Financial Markets Contracts and BAPCPA, 79 Am. Bankr. L. J. 697, 712 (2005).

[160] Stephen J. Lubben, Credit Derivatives and the Future of Chapter, 81 Am. Bankr. L. J. 405, (2007).

[161] Richard Levin & Alesia Ranney-Marinell, The Creeping Repeal of Chapter 11: The Significant Business Provisions of the Bankruptcy Abuse Protection and Consumer Protection Act, 79 Am. Bankr. L. J. 603, 624 (2005).

[162] Id. at 605. Especially with respect to larger debtors, the authors also expressed concern that this provision will require the debtor to establish a " system to monitor reclamation demands and to segregate or track reclaimed goods," and that this, "even if possible, will create a substantial administrative burden in terms of time and expense that they will not be equipped to handle." Id.

[163] Pallavi Gogoi, Bankrupt Retailers: Pushed to the Brink—Changes in the law have sharply reduced retailers' ability to reorganize, driving many to liquidate quickly, Business Week, Aug. 11, 2008.

[164] Harvey R. Miller, Chapter 11 in Transition—From Boom to Bust and Into the Future, 81 Am. Bankr. L. J. 375, 378 (2007) (noting that the "total amount of below investment grade debt has materially increased since 2000 while the riskiest debt has increased the most").

use of state law authorized asset-backed securitizations that make assets "bankruptcy-remote," and the exponential rise in credit default swaps.[165]

On September 26, 2008, the Subcommittee on Commercial and Administrative Law held an oversight hearing on "Lehman Brothers, Sharper Image, Bennigan's, and Beyond: Does Chapter 11 Bankruptcy Still Work?" Witnesses included: Professor Jay Westbrook, University of Texas, School of Law; Professor Barry E. Adler, New York University School of Law; and Lawrence Gottlieb, Esq., Cooley Godward Kronish LLP. The hearing examined—in light of the 2005 amendments to Chapter 11 of the Bankruptcy Code and other developments—whether Chapter 11 was working as Congress intended. As part of this examination, the hearing focused on certain recently filed high profile bankruptcy business cases, including those filed by Lehman Brothers and retailers.

PRIVACY

Privacy and Civil Liberties Oversight Board and the Privacy Officer for the U.S. Department of Homeland Security

Summary.—In 2002, the National Commission on Terrorist Attacks Upon the United States was established to "examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001."[166] The Commission made three privacy-related recommendations,[167] one of which pertained to the establishment of a board to protect our citizens' privacy:

> At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.[168]

In response to this recommendation, the Privacy and Civil Liberties Oversight Board was created as part of the Intelligence Reform and Terrorism Prevention Act of 2004.[169] Pursuant to the Act,

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[165] Stephen J. Lubben, Credit Derivatives and the Future of Chapter, 81 Am. Bankr. L. J. 405 (2007).

[166] Intelligence Authorization Act for Fiscal Year 2003, Pub. L. No. 107–306, title VI, §§ 602(1), (5), 604, 116 Stat. 2383, 2408–13 (2002).

[167] The other privacy-related recommendations were as follows:

As the President determines the guidelines for information sharing among government agencies and by those agencies with the private sector, he should safeguard the privacy of individuals about whom information is shared.

The burden of proof for retaining a particular governmental power should be on the executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the executive's use of the powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use. Id. at 394–95.

With respect to its first recommendation, the Commission explained that this recommendation related to another Commission recommendation for agencies to "open up the sharing of information" among themselves and with the private sector and to have the President take responsibility for determining what information can be shared and the conditions under which it can be shared. As part of the President's determinative process, the Commission suggested that the protection of privacy rights should be considered as a "key element." Id. at 395.

As to its second recommendation, the Commission noted that while the provisions of the USA PATRIOT Act facilitating the sharing of information among intelligence agencies "appear, on balance, to be beneficial," the Commission cited "concerns regarding the shifting balance of power to the government" relating to the Act. Accordingly, it observed that a "full and informed debate" on the Act "would be healthy." Id. at 395.

[168] Id. at 395.

[169] Pub. L. No. 108–458, § 1061, 118 Stat. 3638, 3684 (2004).

the Board was established within the Executive Office of the President and its five members were appointed by the President, who then serve at the pleasure of the President.[170] The Act specified the Board's functions. For the purpose of providing advice to the President or to Federal agencies, the Board is required to review proposed regulations and executive branch policies "related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines."[171] In addition, the Board must review the implementation of laws, regulations, and policies pertaining to efforts to protect the Nation from terrorism.[172] The Board must also advise the President and any Federal agency "to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such regulations and executive branch policies."[173] Further, the Board, as part of its oversight responsibilities, must review "the information sharing practices of the departments, agencies, and elements of the executive branch to determine whether or not such practices appropriately protect privacy and civil liberties and adhere to the information sharing guidelines . . . and to other applicable laws, regulations, and executive branch policies regarding the protection of privacy and civil liberties.[174] Finally, the Board must annually report to Congress "on the Board's major activities during the preceding period."[175]

On April 20, 2007, the Board issued its first report to Congress. The 42-page report provided background on organizational matters as well as the Board's outreach and education efforts. It also included a section discussing issue identification and prioritization. Shortly after the Board issued its report, Lanny Davis, one of the Board members, resigned on May 14, 2007.[176] In his letter of resignation, Mr. Davis explained: "My reasons for resignation are based on my respectful disagreement with administration officials and most members of the Board over (1) the scope of the Board's oversight responsibilities; and (2) the interpretation of an ambiguous statute and the degree of the Board intended by congress under that statute."[177] With regard to his first reason, Mr. Davis cited the Board's "refusal to include a more lengthy and critical section in the congressional report concerning FBI abuses of National Security Letters."[178] In substantiation of his second reason, Mr.

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[170] Id. at § 1061(b), (e), 118 Stat. 3684–87. The chair and vice chair are confirmed by the Senate. Id. at § 1061(e)(1)(B), 118 Stat. 3686.

[171] Pub. L. No. 108–458, § 1061(c)(1)(A), 118 Stat. 3638, 3684 (2004).

[172] Id. at § 1061(c)(1)(B), 118 Stat. 3684–85.

[173] Id. at § 1061(c)(1)(C), 118 Stat. 3685. In providing advice on proposals to retain or enhance a particular governmental power, the Board must consider whether the department, agency, or element of the executive branch concerned has explained:

(i) that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties;

(ii) that there are adequate guidelines and oversight to properly confine the use of the power; and

(iii) that the need for the power, including the risk presented to the national security if the Federal Government does not take certain actions, is balanced with the need to protect privacy and civil liberties. Id. at § 1061(c)(1)(D), 118 Stat. 3685.

[174] Id. at § 1061(c)(2)(B), 118 Stat. 3685.

[175] Id. at § 1061(c)(4), 118 Stat. 3685.

[176] Letter from Lanny J. Davis to the Privacy and Civil Liberties Oversight Board Members (May 14, 2007) (on file with the CAL Subcommittee).

[177] Id. at 1.

[178] Id.

Davis cited the "extensive 'redlining' of the Board's report to the congress by administration officials, and the majority of the Board's willingness to accept most of these proposed edits and deletions."[179] In the 110th Congress, legislation was introduced in both the House and Senate that would strengthen the independence of the Board and to equip it with greater authorities.[180]

Since the September 11th terrorist attacks, Congress has sought to balance two competing goals: keeping the nation secure and protecting the privacy rights of our nation's citizens. The desire to achieve and maintain this balance was reflected in the debate concerning the creation of DHS. In 2002, the Subcommittee held a hearing on various privacy and administrative law issues presented by the anticipated creation of the Department.[181] Among the matters considered were issues concerning how the new Department would ensure the privacy of personally identifiable information as it "establishes necessary databases that coordinate with other agencies of the Government."[182] Concerns were expressed on a bipartisan basis about the agency's ability to collect, manage, share, and secure personally identifiable information.[183] In response to persuasive testimony received at the hearing, the Judiciary Committee, on a bipartisan basis, successfully amended legislation creating the Department to require the appointment of a privacy officer.[184] The first statutorily-mandated privacy office was signed into law as part of the Homeland Security Act of 2002 on November 25, 2002.[185] The current DHS Chief Privacy Officer was appointed by Secretary Michael Chertoff on July 23, 2006.

On July 24, 2007, the Subcommittee on Commercial and Administrative Law held a hearing on "Privacy in the Hands of the Government: The Privacy and Civil Liberties Oversight Board and the Privacy Officer for the U.S. Department of Homeland Security." Witnesses at the hearing included: Lanny Davis, former member of the Privacy and Civil Liberties Oversight Board; Alan Charles Raul, Vice Chair, Privacy and Civil Liberties Oversight Board; Hugo Teufel III, Chief Privacy Officer, U.S. Department of Homeland Security; and Linda Koontz, Director, Information Management Issues, U.S. Government Accountability Office. The hearing

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[179] Id. at 2.

[180] H.R. 1, 110th Cong. (2007); S. 4, 110th Cong. (2007).

[181] Administrative Law, Adjudicatory Issues, and Privacy Ramifications of Creating a Department of Homeland Security: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary, 107th Congress (2002).

[182] Id. at 2.

[183] See, e.g., id. at 4 (statements of Rep. Mark Green (R–WI) and Rep. Maxine Waters (D–CA)).

[184] H. Rept. No. 107–609, at 9–10 (2002).

[185] Pub. L. No. 107–296, § 222, 116 Stat. 2135, 2155 (2002). Section 222 provides:

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters. Id.

provided an opportunity to review the work and performance of the principals charged with protecting the privacy of our Nation's citizens at the Privacy and Civil Liberties Oversight Board and the Department of Homeland Security.

ARBITRATION

The Federal Arbitration Act

Summary.—The Subcommittee has jurisdiction over the Federal Arbitration Act, Title 9 of the United States Code. Title 9 was adopted as a means to put arbitration agreements on the same footing as other contracts, and as a way to avoid the costly and time consuming litigation process. Arbitration law establishes alternative dispute resolution procedures for certain types of disputes with an eye towards keeping those disputes out of court, thereby facilitating efficient adjudication. The Act supersedes all state laws in conflict with the spirit of the Act. In order to facilitate settlements by arbitration, Title 9 provides a strong presumption that courts will enforce determinations arrived at under this process. Avenues for judicial review of arbitration determinations do exist and occasionally have been utilized by the parties. The Supreme Court has upheld arbitration clauses in a wide array of contracts by recognizing Congress' expansive powers under the Commerce Clause.

Although businesses initially used arbitration to resolve disputes voluntarily among each other, businesses have expanded the use of arbitration into their interactions with consumers and employees. Anecdotally and empirically, businesses have exploited their greater bargaining power by drafting arbitration clauses and inserting them within their contracts. These binding clauses can disadvantage consumers, employees, and franchisees. Because of the prevalence of arbitration clauses, individuals may have little choice but to accept an arbitration clause mandated by a business, an employer, or a franchisor. Ironically, during the passage of the Federal Arbitration Act, Congress did not intend to allow binding arbitration agreements on individuals if the contracts were between parties of unequal bargaining power.[186]

Because arbitration avoids the public court system in favor of a private industry of arbitration groups, individuals lose some of the benefits and rights associated with traditional litigation. These benefits and rights include lower initial financial hurdles, pretrial discovery, formal civil procedure rules, proximity to the resolution forum, access to counsel, class action options, and fairness. Arbitration clauses may even negate the protection of some federal statutes.

On June 12, 2007, the Subcommittee held an oversight hearing on the Federal Arbitration Act. Witnesses at the hearing included Mr. F. Paul Bland, Jr., an attorney with Public Justice; Ms. Jordan Fogel, a homeowner from Texas; Mr. Mark J. Levin, Esq., an attorney with Ballard Spahr Andrews and Ingersoll, LLP; and Mr. David S. Schwartz, a professor at the University of Wisconsin Law

[186] Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 414 (1967) (Black, J. dissenting) (citing Hearing on S. 4213 and S. 4214 Before the Subcomm. of the S. Comm. on the Judiciary, 67th Cong., 9–11 (1923)).

School. The hearing provided an opportunity for the Subcommittee to review the use of arbitration and to determine whether mandatory binding arbitration clauses in consumer contracts are an equitable use of the arbitration process.

Oversight Hearing on the National Football League's System for Compensating Retired Players: An Uneven Playing Field?

Summary.—Recently, the National Football League (NFL) and National Football League Players Association (NFLPA) have been criticized for their treatment of injured retired football players. A number of high-profile incidents have contributed to this increased scrutiny, including the Fourth Circuit's decision to award the estate of Mike Webster, the former star center for the Pittsburgh Steelers, more than $1.1 million in disability payments to which the NFL's retirement plan claimed he was not entitled;[187] the suicide of former Eagles safety Andre Waters and the subsequent assessment by a leading neuropathologist that brain damage sustained during Waters' football career led to his depression;[188] former New York Giants linebacker Harry Carson's use of his Hall of Fame induction speech to request that the NFL improve its treatment of retired players;[189] and the heated public spat about disability and pension benefits between then-NFLPA President Gene Upshaw and many of the retired players.[190]

As part of its review of arbitration provisions, the Subcommittee examined the complex process that NFL retirees must navigate in order to obtain disability benefits. The retirement plan provides, in certain circumstances, for an arbitrator to ultimately determine whether a retired player should receive medical benefits.[191] Arbitration, a process in which the parties to a dispute have a third-party decide the outcome of the dispute, has been used as a means of dispute resolution for thousands of years.[192] It is commonly designated in collective agreements between employers and employees as the way to resolve disputes where the parties select a neutral third party (an arbiter) to hold a formal or informal hearing on the disagreement.[193] The practice of arbitration is governed by both federal and state law. While the Federal Arbitration Act,[194] by its own terms, is not applicable to employment contracts, federal courts are increasingly applying the law in labor disputes.[195]

On June 26, 2007, the Subcommittee held a hearing to determine whether arbitration should have a more prominent role in the com-

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[187] Jani v. Bert Bell/Pete Rozelle NFL Player Ret. Plan, 2006 U.S. App. LEXIS 30594 (4th Cir. 2006).

[188] Alan Schwarz, Expert Ties Ex-Player's Suicide to Brain Damage from Football, N.Y. Times, Jan. 18, 2007, at D1.

[189] Pro Football Hall of Fame, Harry Carson's Enshrinement Speech Transcript, Aug. 5, 2006, available at http://www.profootballhof.com/history/release.jsp?release_id=2177.

[190] Greg Johnson, A Break-Neck Place, L.A. Times, June 6, 2007, at D1. For example, after Pro Football Hall of Fame member Joe DeLamielleure complained about the modest union-provided health and pension benefits awarded to some NFL retirees, NFLPA President Gene Upshaw said, "A guy like DeLamielleure says the things he said about me, you think I'm going to invite him to dinner? No. I'm going to break his . . . damn neck." Id.

[191] Bert Bell/Pete Rozelle NFL Player Retirement Plan: Plan Document § 8.3(b–c) (2001).

[192] See Jean R. Sternlight, Creeping Mandatory Arbitration: Is it Just?, 57 Stan. L. Rev. 1631, 1635 (Apr. 2005).

[193] Cornel University Law School, Legal Information Institute: Collective Bargaining, available at http://fatty.law.cornell.edu/wex/index.php/Collective_bargaining.

[194] Federal Arbitration Act, ch. 213, 43 Stat. 883 (1925) (codified as amended at 9 U.S.C. § 1, et seq.).

[195] Id.

plicated disability benefits procedure and whether an arbitrator should ultimately decide whether a retired player should receive benefits. Witnesses at the hearing included: Mike Ditka, retired National Football League (NFL) player and coach; Harry Carson, retired NFL player; Curt Marsh, retired NFL player; Brent Boyd, retired NFL player; Dennis Curran, a representative from the NFL; Douglas Ell, a representative from the National Football League Players Association (NFLPA) and counsel to the Bert Bell/Pete Rozelle NFL Players Retirement Plan; Cyril V. Smith, partner at Zuckerman Spaeder LLP and counsel for the estate of Mike Webster; and Martha Jo Wagner, employee benefits partner at Venable LLP.

STATE TAXATION AFFECTING INTERSTATE COMMERCE

Oversight Hearing on the "Internet Tax Freedom Act: Internet Tax Moratorium"

Summary.—The Internet Tax Freedom Act (ITFA), which was enacted on October 21, 1998 during the 105th Congress,[196] established an Internet tax moratorium that was originally intended to foster the growth of the Internet and electronic commerce. Although commonly misunderstood as a moratorium on all taxes related to an Internet transaction, ITFA does not prohibit states from requiring in-state consumers to pay sales and use taxes on goods purchased online, nor does it prevent states from requiring out-of-state sellers with a substantial physical presence in the state to collect and remit sales and use taxes.[197] Instead, the primary purposes of ITFA were to establish a three-year moratorium to prevent state and localities from imposing new taxes on Internet access,[198] to ensure that multiple states could not tax the same electronic commerce transaction, and to ensure that commerce over the Internet would not be singled out for new discriminatory tax treatment.[199] ITFA also allowed state and local Internet access taxes levied prior to ITFA's enactment to be protected by a grandfather clause.[200] Subsequent laws extended the temporary moratorium, revised definitions, and expanded or extended certain grandfather protections until November 1, 2007.[201]

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[196] The Internet Tax Freedom Act comprises Titles XI and XII of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (H.R. 4328, Pub. L. No. 105–277, 112 Stat. 2681, 719–728 (1998)). It can be found at 47 U.S.C. 151 note Sec. 1100.

[197] Any imposed tax must be consistent with the guidance given by the Supreme Court in Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), and Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

[198] Simply defined, Internet access is the service by which users connect to the Internet, such as by dial-up, cable modem, Wi-Fi, and wireless cell phone. However, the definition of "Internet access" in ITFA has led to differing interpretations.

[199] ITFA prohibits states and localities from levying different rates of taxes on similar goods or services whether procured through electronic commerce or through other means, such as from a brick-and-mortar business.

[200] New Mexico, North Dakota, Ohio (on commercial use only), South Dakota, Texas (on monthly charges over $25), and Wisconsin currently impose a sales tax (or equivalent tax) on Internet access. Tax Cybrary: State Summaries, available at http://www.vertexinc.com/taxcybrary/internet/state_by_state.asp. In addition, Hawaii levies its general excise tax, New Hampshire its communications services tax (imposed on all two-way communications equipment), and Washington State its business and occupation tax (a gross receipts tax levied on business) on Internet access.

[201] The Internet Tax Nondiscrimination Act (Pub. L. No. 107–75, 115 Stat. 703 (2001)) extended the moratorium until November 1, 2003. The Internet Tax Nondiscrimination Act (Pub.

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On May 22, 2007, the Subcommittee held an oversight hearing to examine significant issues concerning ITFA. With the impending expiration of the Internet tax moratorium, the Subcommittee considered whether the moratorium should be extended permanently, temporarily, or simply be allowed to lapse.[202] Furthermore, the Subcommittee weighed whether to continue granting grandfather protection to states and localities that had previously imposed and collected taxes on Internet access.[203] The Subcommittee also considered definitions in ITFA that have been the source of some apprehension and legal uncertainty for state and local governments, providers of Internet access service, telecommunications companies, and other entities. Witnesses at the hearing included: David C. Quam, Director of Federal Relations at the National Governors Association; Mark Murphy, Fiscal Policy Analyst for the American Federation of State, County and Municipal Employees; Jerry Johnson, Vice Chairman of the Oklahoma Tax Commission; Scott Mackey, Partner at Kimbell Sherman Ellis; and John Rutledge, Senior Fellow at the Heartland Institute.

Legislation to address the expiring tax moratorium was introduced on September 27, 2007 as H.R. 3678, the "Internet Tax Freedom Act Amendments Act of 2007."

PRODUCT LIABILITY

Oversight Hearing on Protecting the Playroom: Holding Foreign Manufacturers Accountable for Defective Products

Summary.—Given the increase of imported products that do not meet U.S. standards for heath, safety, and quality, and the fact that the Consumer Product Safety Commission has been largely ineffective in preventing the importation of defective products, consumers have been exposed to unnecessary harm. When consumers are injured by foreign-made products, current law leaves them little recourse in receiving compensation from a foreign manufacturer.

Consumers seeking to hold foreign manufacturers accountable face a number of daunting barriers. First, a consumer must establish personal jurisdiction, an increasingly difficult task given the uncertainty of the law. A consumer must then navigate the complex service of process requirements when serving a manufacturer in a foreign country. This may include translating materials into the language of that country. Even if the consumer succeeds in having the matter heard and winning a favorable judgment, col-

L. No. 108–435, 118 Stat. 2615 (2004)) extended the moratorium until November 1, 2007 and reimposed the moratorium retroactively to November 1, 2003.

[202] The past Congresses have only enacted temporary moratoriums. The 108th Congress reimposed the temporary moratorium retroactive to the end of the prior moratorium (November 1, 2003). However, the 107th Congress did not make the temporary moratorium retroactive to the end of the prior moratorium (October 21, 2001). Therefore, about a five-week period existed when there was no moratorium in place.

[203] ITFA exempted from the moratorium taxes on Internet access that were "generally imposed and actually enforced prior to October 1, 1998." § 1104(a)(1) of ITFA. The grandfathering protection has been extended through Pub. L. Nos. 107–75 and 108–435. However, grandfather protection ended for pre-November 2003 enforced Internet access taxes (primarily on DSL services) on November 1, 2005 and for Wisconsin's Internet access taxes on November 1, 2006. See footnote 5 for the jurisdictions which currently tax Internet access. Also, according to a GAO report, eliminating grandfather protection could cost state and local governments an estimated $120 million per year. Internet Access Tax Moratorium: Revenue Impacts Will Vary by State, GAO–06–273 (Jan. 2006).

lecting compensation may be difficult as most countries resist enforcing U.S. judgments.

On November 15, 2007, the Subcommittee held a hearing that probed these barriers and explored ways in which the law could be changed so that U.S. consumers could hold foreign manufacturers accountable for injuries suffered as a result of defective products. Witnesses at the hearing included: Professor Andrew Popper, American University Washington College of Law; Pamela Gilbert, Esq., Cuneo, Gilbert & LaDuca, LLP; Thomas Gowan, Esq., The Locks Law Firm; and Victor Schwartz, Esq., Institute for Legal Reform, of the U.S. Chamber of Commerce.

DEPARTMENT OF JUSTICE MATTERS

Oversight Hearing on the Implementation of the U.S. Department of Justice's Special Counsel Regulations

Summary.—When the independent counsel law expired after June 30, 1999, the Attorney General promulgated specific regulations concerning the appointment of outside, temporary counsels.[204] According to the regulations, such "special counsels" are to be appointed by the Attorney General to conduct investigations and possible prosecutions of certain sensitive criminal matters where the Department may have a conflict of interest and where the circumstances determine that it would be in the public interest.[205] The regulations specify that a special counsel must be selected from *outside* the government.[206] According to Justice Department drafters of the regulations, this is a critical safeguard for a fair and independent investigation because a Special Counsel would have "no vested interest in the Department of Justice, no long-term job at stake and no political identification with or antipathy toward the Administration."[207] Although a special counsel comes from outside of the government, he or she shall have the full power and prosecutorial functions of any U.S. Attorney.

Soon after the special counsel regulations were issued, Attorney General Janet Reno appointed former Senator John Danforth on September 9, 1999 as a special counsel to investigate whether law enforcement personnel used excessive force or other improper conduct in the Branch Davidian incident near Waco, Texas.[208] At the conclusion of a 14-month investigation, Senator Danforth found no evidence of illegal acts by federal agents in the 51-day standoff with the Branch Davidians.[209]

Despite several opportunities to do so, Attorney Generals in the Bush Administration have yet to utilize the special counsel regulations. Some prominent examples where the Bush Administration refused to appoint a special counsel under the regulations are the following: the investigation of the alleged unauthorized disclosure

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[204] Jack Maskell, Independent Counsel Law Expiration and the Appointment of "Special Counsels," Congressional Research Service Report for Congress, RL 31246, at 4 (Jan. 15, 2002).

[205] 28 CFR § 600.1(a)–(b).

[206] 28 CFR § 600.3. (emphasis added).

[207] H.R. 2083, the "Special Counsel Act of 1999": Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 106th Cong. (1999) (statement of James K. Robinson, Assist. Attorney General, Criminal Div., U.S. Dep't of Justice).

[208] Jack Maskell, Independent Counsel Law Expiration and the Appointment of "Special Counsels," Congressional Research Service Report for Congress, RL 31246, at 4 (Jan. 15, 2002).

[209] Dan Eggen, FBI Resisted Waco Investigation, Says Special Counsel, Wash. Post, June 1, 2001.

of a CIA employee's identity, the CIA's destruction of detainee interrogation videotapes, and the investigation into the firings of U.S. Attorneys.

In order to review Department of Justice's utilization of the Special Counsel regulations and to consider whether legislation in this area would be appropriate, the Subcommittee held a hearing on February 26, 2008. Witnesses at the hearing included: Patrick Fitzgerald, former "special counsel,"[210] U.S. Attorney, Northern District of Illinois; Carol Elder Bruce, former Independent Counsel, Partner, Venable LLP; Professor Neal Katyal, Georgetown University Law School; Barry Coburn, Partner, Coburn & Coffman PLLC; and Lee A. Casey, Partner, Baker Hostetler.

Oversight Hearing on Deferred Prosecution: Should Corporate Settlement Agreements Be Without Guidelines?

Summary.—In a deferred prosecution agreement (DPA) or nonprosecution agreement (NPA), a corporation against which the government has sufficient evidence to file criminal charges enters into an agreement with the government to period of probation, subject to specific conditions. A DPA differs from an NPA in that a DPA typically includes a formal charging document—an indictment or a complaint—and the agreement is normally filed with the court, while in the NPA context, there is typically no charging document and the agreement is normally maintained by the parties rather than filed with a court. The obligations imposed pursuant to the agreements usually include payment of a substantial monetary penalty, implementation of stringent corporate governance and compliance measures, cooperation with the government's ongoing investigation (often requiring waivers of the corporation's attorney-client privilege and work-product protection), waivers of speedy trial rights and statute of limitations defenses, and agreement to external oversight by an independent monitor approved by the government.

Since at least 1993, DPAs and NPAs have been used in a variety of cases involving a range of crimes, including security and commodities fraud, Foreign Corrupt Practices Act violations, health care fraud, and money laundering and tax offenses. The use of DPAs and NPAs has grown exponentially in the wake of the demise of Arthur Anderson, LLP in 2002, where a criminal conviction had substantial collateral consequences.

On March 11, 2008, the Subcommittee conducted an oversight hearing of DPAs and NPAs. Because there were minimal guidelines on corporate settlement agreements until the eve of the Subcommittee's hearing, the Subcommittee examined how agreements should be structured and how independent monitors should be selected. Specifically, the Subcommittee explored New Jersey U.S. Attorney Christopher Christie's appointment of John Ashcroft, his former Attorney General, to serve as an independent corporate monitor and collect fees potentially between $28 and $52 million. Witnesses at the hearing included: John Ashcroft, former Attorney

[210] While Patrick Fitzgerald was given the title "Special Counsel," he was not appointed as a Special Counsel under the Department of Justice's regulations. Letter from James B. Comey, Acting Attorney General, U.S. Dep't of Justice, to Patrick J. Fitzgerald, U.S. Attorney, Northern District of Illinois (Feb. 6, 2004) (on file with the Committee on the Judiciary).

General, The Ashcroft Group, LLC; David Nahmias, U.S. Attorney, Northern District of Georgia; Timothy Dickinson, Partner, Paul Hastings LLP; Professor Brandon Garrett, University of Virginia School of Law; and George Terwilliger, Partner, White & Case LLP.

Oversight Hearing on the Executive Office for United States Attorneys

Summary.—The Subcommittee has oversight jurisdiction over five components of the Justice Department, including the Executive Office for United States Attorneys (EOUSA). The U.S. Attorneys serve as the nation's principal litigators under the direction of the Attorney General. There are 93 U.S. Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. U.S. Attorneys are appointed by, and serve at the discretion of, the President of the United States, with advice and consent of the United States Senate. One U.S. Attorney is assigned to each of the judicial districts, with the exception of Guam and the Northern Mariana Islands, where a single U.S. Attorney serves both districts. Each U.S. Attorney is the chief federal law enforcement officer of the U.S. within his or her particular jurisdiction.

EOUSA was created on April 6, 1953, by AG Order No. 8–53 to serve as a close liaison between the Justice Department in Washington, D.C. and the 93 U.S. Attorneys.[211] It is the responsibility of EOUSA to provide support to the U.S. Attorney offices throughout the country in the following areas: general executive assistance and direction; policy development; administrative management direction and oversight; operations; and coordination with other components within the Justice Department and other federal agencies.

On June 25, 2008, the Subcommittee conducted an oversight of EOUSA that examined, among other things, the operation of EOUSA in the aftermath of the U.S. Attorneys controversy, the March 2008 decision to eliminate the public corruption and environmental crimes section in the U.S. Attorney's Office for the Central District of California, the Administration's FY 2009 budget request for U.S. Attorneys, the increase in immigration prosecutions relative to the prosecutions of other crimes, and the Justice Department's record on terrorism prosecutions. Witnesses at the hearing included: Kenneth E. Melson, Director, Executive Office for United States Attorneys; Richard L. Delonis, President, National Association of Assistant United States Attorneys; Professor Jonathan Turley, George Washington Law School; and Heather Williams, First Assistant to the Federal Public Defender, District of Arizona.

U.S. Attorneys Investigation

At the beginning of the 110th Congress, reports appeared that several U.S. Attorneys had been asked to resign by the Justice Department under suspicious circumstances.[212] Because of concerns

[211] Department of Justice Website, http://www.usdoj.gov/usao/eousa/index.html.

[212] See, e.g., David Johnston, Dismissed U.S. Attorneys Received Strong Evaluations, N.Y. Times, Feb. 25, 2007, at A19; Dan Eggen, Justice Department Fires 8th U.S. Attorney; Dispute Over Death Penalty Cited, Wash. Post, Feb. 24, 2007, at A2; Dan Eggen, Fired Prosecutor Dis-

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that the U.S. Attorneys may have been dismissed for improper partisan reasons, the Subcommittee initiated an investigation into the firings. The investigation eventually grew to address broader questions about the extent to which core functions of the Justice Department such as criminal prosecution decisions and hiring of career personnel may have been improperly politicized. A more detailed description of the investigation can be found in the full Judiciary Committee's oversight activities report.

Meeting to Consider a Resolution to Authorize Issuance of Subpoenas to Former United States Attorneys

On March 1, 2007, the Subcommittee approved by voice vote, a quorum being present, a resolution authorizing the Chairman of the Judiciary Committee to issue subpoenas to Carol C. Lam, former United States Attorney for the Southern District of California; David C. Iglesias, former United States Attorney for the District of New Mexico; H.E. Cummins III, former United States Attorney for the Eastern District of Arkansas; and John McKay, former United States Attorney for the Western District of Washington, for the purpose of securing their appearance and testimony.

Meeting to Consider Resolutions to Authorize Issuance of Subpoenas to Former United States Attorneys

On March 6, 2007, the Subcommittee approved by voice vote, a quorum being present, resolutions authorizing the Chairman of the Judiciary Committee to issue subpoenas to Daniel Bogden, former United States Attorney for the District of Nevada and Paul K. Charlton, former United States Attorney for the District of Arizona, for the purpose of securing their appearance and testimony.

Meeting to Authorize Issuance of Subpoenas Concerning the Recent Termination of United States Attorneys and Related Subjects

By voice vote, a quorum being present, the Subcommittee authorized Chairman Conyers on March 21, 2007 to issue subpoenas to J. Scott Jennings, Special Assistant to the President, Office of Political Affairs; William Kelley, Deputy White House Counsel; Harriet Miers, former White House Counsel; Karl Rove, Deputy Chief of Staff and Senior Advisor to the President; Joshua Bolton, White House Chief of Staff; and Fred Fielding, White House Counsel, in order to obtain testimony and documents.

Oversight Hearing on Ensuring Executive Branch Accountability

Summary.—Critics contend that in a wide variety of areas, the Bush Administration has failed to provide the Congress and the public with important information about their operations. As a result, the Bush Administration has been criticized for lacking sufficient transparency and accountability. In response to requests for

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putes Justice Dept. Allegation; He Calls Testimony 'Unfair'; Meanwhile, Senate Panel Votes to Limit Attorney General's Power, Wash. Post, Feb. 9, 2007, at A6; Marisa Taylor & Greg Gordon, U.S. Attorneys' Selection Is Questioned, Seattle Times, Jan. 28, 2007, at A8 (noting that the Attorney General "is transforming the ranks of the nation's top federal prosecutors by firing some and appointing conservative loyalists from the Bush Administration's inner circle who critics say are unlikely to buck Washington, D.C."); Onell R. Soto & Kelly Thornton, Lam to Resign Feb. 15 as Speculation Swirls; Some See Politics at Play in Ouster of U.S. Attorney, San Diego Union-Trib., Jan. 17, 2007, at A1.

information about the U.S. Attorneys controversy being investigated by the Subcommittee, the White House adopted an extremely restrictive view and refused to produce any information about communications or conduct inside the White House (though assertedly not involving the President) on this matter or to permit White House officials to provide information to Congress through testimony under oath or even through interviews with a transcript. This is despite the fact that information already available shows that White House officials were directly and deeply involved in the controversy.

On March 29, 2007, the Subcommittee reviewed the White House's assertions concerning efforts to resist the provision of testimony and documents to Congress in the U.S. Attorneys controversy. Witnesses at the hearing included: John Podesta, President and Chief Executive Officer of the Center for American Progress and former White House Chief of Staff to President Bill Clinton; Beth Nolan, a partner with Crowell & Moring and former White House Counsel to President Bill Clinton; Frederick A.O. Schwarz, Jr., Senior Counsel at the Brennan Center for Justice; and Noel J. Francisco, a partner at Jones Day and former Associate Counsel to President George W. Bush.

Meeting to Consider a Resolution to Authorize Issuance of Subpoenas to James Comey

On May 1, 2007, the Subcommittee approved by voice vote, a quorum being present, a resolution authorizing the Chairman of the Judiciary Committee to issue a subpoena to James Comey, former Deputy Attorney General, for the purpose of securing his appearance and testimony.

Oversight Hearing on The Continuing Investigation into the U.S. Attorneys Controversy (James Comey)

On May 3, 2007, former Deputy Attorney General James Comey testified before the Subcommittee regarding his knowledge of the U.S. Attorney firings, performance of particular U.S. Attorneys, and related matters.

Oversight Hearing on: The Continuing Investigation into the U.S. Attorneys Controversy and Related Matters (Paul McNulty)

On June 21, 2007, Deputy Attorney General Paul McNulty testified before the Subcommittee regarding his knowledge of the U.S. Attorney firings, performance of particular U.S. Attorneys, and related matters.

Meeting to Consider a Resolution to Authorize Issuance of Subpoena to the Republican National Committee

On July 12, 2007, the Subcommittee approved by voice vote, a quorum being present, a resolution authorizing the Chairman of the Judiciary Committee to issue a subpoena to Republican National Committee (RNC), for the purpose of securing documents.

Oversight Hearing on: The Continuing Investigation into the U.S. Attorneys Controversy and Related Matters (Harriet Miers)

Former White House Counsel Harriet Miers refused to comply with a subpoena requiring her appearance before the Subcommittee on July 12, 2007. Ms. Miers not only failed to provide testimony or documents, but she also failed to appear for the hearing. Subcommittee Chair Linda Sánchez proceeded to overrule the claims of immunity and privilege with respect to Ms. Miers, and the ruling was sustained by Subcommittee Members in a recorded vote of 7–5.

Meeting to consider the Executive Privilege claims asserted by White House Counsel in response to the subpoena for the production of documents issued to Joshua Bolten, White House Chief of Staff, or appropriate custodian of records

The Subcommittee met on July 19, 2007 to consider the executive privilege claims asserted by White House Counsel Fred Fielding in response to the subpoena for the production of documents issued to Joshua Bolten, White House Chief of Staff, or appropriate custodian of records. Subcommittee Chair Linda Sánchez ruled against the privilege claims with respect to Mr. Bolten's refusal to produce any documents pursuant to the subpoena issued to him, and that ruling was upheld by a 7–3 vote.

Joint Hearing on Allegations of Selective Prosecution: The Erosion of Public Confidence in Our Federal Justice System

On October 23, 2007, the Subcommittee held a joint hearing with the Subcommittee on Crime, Terrorism, and Homeland Security exploring several cases of alleged selective prosecution, including the prosecutions of former Democratic Alabama Governor Don Siegelman, Wisconsin state employee Georgia Thompson, and prominent Democrat Cyril Wecht in Pittsburgh. Witnesses at the hearing included: former Attorney General Richard Thornburgh, Professor Donald C. Shields, and former Alabama U.S. Attorney Doug Jones.

Allegations of Selective Prosecution Part II: The Erosion of Public Confidence in Our Federal Justice System

On May 14, 2008, the Subcommittee held the second of two joint hearings with the Subcommittee on Crime, Terrorism, and Homeland Security exploring several cases of alleged selective prosecution. The witnesses at the hearing included: Honorable Paul W. Hodes (D–NH); consultant Allen Raymond and the author of "How to Rig an Election"; Paul Twomey, Esq., counsel for the New Hampshire Democratic Party; and Mark C. Miller, the author of "Fooled Again" and a professor at New York University.

Oversight Hearing on the Politicization of the Justice Department and Allegations of Selective Prosecution (Karl Rove)

Former White House Deputy Chief of Staff Karl Rove refused to comply with a subpoena requiring his appearance before the Subcommittee on July 10, 2008, failing to appear for the hearing to answer questions. Subcommittee Chair Linda Sánchez proceeded to overrule the claims of immunity and privilege with respect to Mr.

Rove, and the ruling was sustained by Subcommittee Members in a recorded vote of 7–1.

Meeting to Consider a Resolution to Authorize Issuance of Subpoena to Attorney General Michael Mukasey for Certain Documents Previously Requested

On June 21, 2008, the Subcommittee approved by voice vote, a quorum being present, a resolution authorizing the Chairman of the Judiciary Committee to issue a subpoena to Attorney General Michael Mukasey, for the purpose of securing documents related to several Justice Department oversight requests, including documents related to the U.S. Attorneys investigation.

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, and CIVIL LIBERTIES [1]

JERROLD NADLER, New York, *Chairman*

ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota
JOHN CONYERS, JR., Michigan
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
STEVE COHEN, Tennessee

TRENT FRANKS, Arizona
MIKE PENCE, Indiana
DARRELL ISSA, California
STEVE KING, Iowa
JIM JORDAN, Ohio

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	169
Legislation on which hearings were held	9
Legislation reported favorably to the full Committee	3
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	0
Legislation pending before the full Committee	3
Legislation reported to the House	3
Legislation discharged from the Committee	1
Legislation pending in the House	0
Legislation failed passage by the House	0
Legislation passed by the House	4
Legislation pending in the Senate	2
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	2
Days of legislative hearings	8
Days of oversight hearings	21

LEGISLATIVE ACTIVITIES

H.R. 40, the Commission to Study Reparation Proposals for African-Americans Act

Summary.—H.R. 40, the "Commission to Study Reparation Proposals for African-Americans Act" was introduced by Representative John Conyers, Jr. to create a commission responsible for examining the fundamental injustice, cruelty, and brutality, and inhumanity of slavery in the United States and the lingering negative effects of the institution of slavery. After examining these issues, the Commission would recommend appropriate remedies to Congress.

Legislative History.—Representative John Conyers, Jr. introduced H.R. 40 on January 4, 2007, and the bill was referred to the Committee on the Judiciary. On February 2, 2007, H.R. 40 was referred to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties. On December 18, 2007, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on H.R. 40 entitled "The Legacy of the Trans-Atlantic Slave Trade."

[1] Subcommittee chairmanship and assignments approved January 26, 2007, and February 28, 2007.

H.R. 40 entitled "The Legacy of the Trans-Atlantic Slave Trade." The hearing witnesses were the Honorable JoAnn Watson, Councilwoman, Detroit City Council; Ms. Kibibi Tyehimba, Co-Chair, National Coalition of Blacks for Reparations in America (N'COBRA); Mr. H. Thomas Wells, Jr., President-Elect, American Bar Association; Professor Charles Ogletree, Jesse Climenko Professor of Law, Harvard Law; Professor Eric Miller, Assistant Professor of Law, St. Louis University School of Law; Bishop M. Thomas Shaw, Bishop, Episcopal Diocese of Massachusetts; Professor Stephan Thernstrom, Winthrop Professor of History, Harvard University; and Mr. Roger Clegg, President, Center for Equal Opportunity. There was no further action on H.R. 40 in the Committee on the Judiciary or U.S. House of Representatives.

H.R. 558—the "African-American Farmers Benefits Relief Act of 2007"

Summary.—H.R. 558 provides de novo review for qualifying claims filed under the consolidated class action lawsuits of Pigford v. Veneman and Brewington v. Veneman.

Legislative History.—H.R. 558, the "African-American Farmers Benefits Relief Act of 2007," was introduced by House Judiciary Committee member Artur Davis on January 18, 2007. On June 21, 2007, the Subcommittee on the Constitution, Civil Rights and Civil Liberties held a hearing on H.R. 558 and a related bill, H.R. 899, the "Pigford Claims Remedy Act of 2007." Testimony was received from the following witnesses: The Honorable Charles E. Grassley, United States Senate; John Zippert, Director of Program Operations, The Federation of Southern Cooperatives Land Assistance Fund; Cassandra Jones Harvard, Associate Professor of Law, University of Baltimore School of Law; Phillip L. Fraas, Esq., Pigford Class Counsel; The Honorable A. Donald McEachin, Virginia House of Delegates and Dr. John W. Boyd Jr., President, National Black Farmers Association. The substance of H.R. 558 was incorporated into H.R. 3073, the "Pigford Claims Remedy Act of 2007," and enacted as Section 14012 of H.R. 2419, the "Food, Conservation, and Energy Act of 2008," Public Law No. 110–234, on May 22, 2008, following an initial veto by President Bush.

H.R. 692, Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007

Summary—The Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007—Amends federal law with regard to the flying of the national flag at half-staff to: (1) allow a governor of a state, territory, or possession of the United States to proclaim that the national flag be flown at half-staff upon the death of a member of the Armed Forces from the governor's state, territory, or possession who dies while serving on active duty; (2) provide the same authority to the Mayor of the District of Columbia with respect to present or former District officials and members of the Armed Forces from the District; and (3) require, when a governor or Mayor of the District issues such a proclamation, the national flag flown at any federal installation or facility in that state, territory, possession, or District to be flown at half-staff consistent with that proclamation.

Legislative History.—H.R. 692 was introduced on January 24, 2007 by Rep. Bart Stupak. It was reported favorably to the House by a voice vote on April 25, 2007 (H. Rept. 110–139), and placed on the Union Calendar, Calendar No. 81. On motion to suspend the rules and pass the bill, as amended Agreed to by the Yeas and Nays (2/3 required): 408–4 (Roll No. 346). On June 7, the Senate Committee on the Judiciary reported the bill favorably and without amendment, and without a written report. It was placed on the Senate Legislative Calendar under General Orders on June 7, 2007. (Calendar No. 191). It passed the Senate without amendment by Unanimous Consent on June 14, 2007. The President Signed it on June 29, 2007. Pub. L. No. (110–41).

H.R. 899—the "Pigford Claims Remedy Act of 2007"

Summary.—H.R. 899 declares that any Pigford claimant (relating to a racial discrimination action against the Department of Agriculture) who has not previously obtained a determination on the merits of a Pigford claim may, in a civil action, obtain that determination. The legislation asserts that it is Congress' intent that this Act be liberally construed so as to effectuate its remedial purpose of giving a full determination on the merits for each denied Pigford claim. For the purposes of the legislation, a "Pigford claimant" is defined as an individual who previously submitted a late-filing request under the consent decree in the case of Pigford v. Glickman (1999); and a "Pigford claim" as a discrimination complaint as defined and documented by such consent decree.

Legislative History.—H.R. 899, the "Pigford Claims Remedy Act of 2007," was introduced by House Judiciary Committee member Robert C. "Bobby" Scott on February 7, 2007. On June 21, 2007, the Subcommittee on the Constitution, Civil Rights and Civil Liberties held a hearing on H.R. 899 and a related bill, H.R. 558, the "African-American Farmers Benefits Relief Act of 2007." Testimony was received from the following witnesses: The Honorable Charles E. Grassley, United States Senate; John Zippert, Director of Program Operations, The Federation of Southern Cooperatives Land Assistance Fund; Cassandra Jones Harvard, Associate Professor of Law, University of Baltimore School of Law; Phillip L. Fraas, Esq., Pigford Class Counsel; The Honorable A. Donald McEachin, Virginia House of Delegates and Dr. John W. Boyd Jr., President, National Black Farmers Association. The substance of H.R. 899 was incorporated into H.R. 3073, the "Pigford Claims Remedy Act of 2007," and enacted as Section 14012 of H.R. 2419, the "Food, Conservation, and Energy Act of 2008," Public Law No. 110–234, on May 22, 2008, following an initial veto by President Bush.

H.R. 923—the "Emmett Till Unsolved Civil Rights Crime Act of 2007"

Summary.—H.R. 923, as introduced, establishes an Unsolved Crimes Section in the Civil Rights Division of the Department of Justice (DOJ) and an Unsolved Civil Rights Crime Investigative Office in the Civil Rights Unit of the Federal Bureau of Investigation (FBI) with the responsibility of investigating violations of criminal civil rights statutes in which the alleged violation occurred before January 1, 1970 and resulted in death. The legislation also

amends the Crime Control Act of 1990 to authorize staff of an Inspector General to assist the National Center for Missing and Exploited Children by conducting reviews of inactive case files to develop recommendations for further investigations and engaging in similar activities.

As amended, the legislation allows for the expanded prosecution of unsolved civil rights crimes resulting in death that occurred on or before December 31, 1969, by authorizing additional funding to the Criminal Section of the Civil Rights Section of the Department of Justice, the Civil Rights Section of the Federal Bureau of Investigation (FBI), and the FBI's Community Relations Department. The bill would designate specific administrative authority for the investigation and prosecution of unsolved Civil Rights Era crimes and require an annual accounting to Congress on the progress of the investigative initiatives, with a 10-year sunset provision. In addition, the legislation amends the Crime Control Act of 1990 to authorize Inspector General staff to assist the National Center for Missing and Exploited Children by conducting reviews of inactive case files to develop recommendations for further investigations.

Legislative History.—H.R. 923, the "Emmett Till Unsolved Civil Rights Crime Act of 2007," was introduced by Representative John Lewis on February 8, 2007. On June 12, 2007, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties and the Subcommittee on Crime, Terrorism, and Homeland Security jointly held hearings on H.R. 923. Testimony was received from Myrlie Evers-Williams, activist, community leader and widow of slain civil rights activist Medgar Evers; Richard Cohen, President and Chief Executive Officer of the Southern Poverty Law Center; G. Douglas Jones, former United States Attorney for the Northern District of Alabama; Rita Bender, attorney, activist and widow of slain civil rights activist Michael Schwerner; Alvin Sykes, President of the Emmett Till Justice Campaign, Inc.; and Grace Chung Becker, Deputy Assistant Attorney General in the Department of Justice Civil Rights Division. On June 12, 2007, the Subcommittee on Constitution, Civil Rights, and Civil Liberties met in open session and ordered the bill H.R. 923 favorably reported, as amended, by voice vote, a quorum being present. On June 13, 2007, the Committee met in open session and ordered the bill H.R. 923 favorably reported with an amendment, by voice vote, a quorum being present. (H. Rept. No. 110–200.). On June 22, 2007, H.R. 923 was passed by the House by a roll call vote of 422 to 2. On September 24, 2008, H.R. 923 was passed by the Senate, without amendment, by unanimous consent. The President signed H.R. 923 on October 7, 2008, which became Public Law No. 110–344.

H.R. 1905, the "District of Columbia House Voting Rights Act of 2007"

Summary.—H.R. 1905, the "District of Columbia House Voting Rights Act of 2007" was introduced by Delegate Eleanor Holmes Norton and Representative Tom Davis in a bipartisan attempt to secure full representation in the U.S. House of Representatives for the citizens of the District of Columbia. H.R. 1905 permanently expands the U.S. House of Representatives from 435 to 437 seats, providing a seat to the District of Columbia and a new, at-large

seat to Utah. Based on the 2000 Census, Utah is the state next in line to enlarge its Congressional delegation.

Legislative History.—Delegate Norton and Representative Davis introduced H.R. 1905 on April 18, 2007, and the bill was referred to the Committee on the Judiciary. On April 19, 2007, H.R. 1905 passed the House by a roll call vote of 241 to 177. The following day, the bill was received in the Senate, read twice, and referred to the Senate Committee on Finance. Prior to House passage of H.R. 1905, the House Committee on the Judiciary considered similar legislation, H.R. 1433. H.R. 1433 was introduced on March 9, 2007, by Delegate Norton and Representative Davis and referred to the Committee on the Judiciary and the Committee on Oversight and Government Reform. On March 14, 2007, the Committee on the Judiciary held a hearing on H.R. 1433. The hearing witnesses were Viet D. Dinh, former U.S. Assistant Attorney General for Legal Policy at the U.S. Department of Justice; Bruce Spiva, founding partner of Spiva & Hartnett and Chair of the Board of DC Vote; Rick Bress, partner in the Washington, DC office of Latham & Watkins; and Jonathan Turley, professor of law at George Washington University. On March 15, 2007, the Committee on the Judiciary reported H.R. 1433 favorably by a roll call vote of 21 to 13. On March 22, 2007, the U.S. House of Representatives proceeded with general debate and debate on a motion to commit, with further proceedings on the motion postponed. There was no further House action on H.R. 1433.

H.R. 1281, the "Deceptive Practices and Voter Intimidation Prevention Act of 2007"

Summary.—H.R. 1281, the "Deceptive Practices and Voter Intimidation Prevention Act of 2007" was introduced by Representative Rahm Emanuel and Representative John Conyers, Jr. to protect a citizen's right to vote by criminalizing deceptive electioneering practices. H.R. 1281 prohibits a person from knowingly providing false information with the intent to prevent another person from voting, increases criminal penalties for voter intimidation, and requires the U.S. Attorney General to respond to deceptive practices with corrective measures.

Legislative History.—Representative Rahm Emanuel and Representative John Conyers, Jr. introduced H.R. 1905 on March 1, 2007, and the bill was referred to the Committee on the Judiciary. On March 7, 2007, the Committee on the Judiciary held a hearing on H.R. 1281 entitled "Protecting the Right to Vote: Election Deception and Irregularities in Recent Federal Elections." The hearing witnesses were Senator Barack Obama (D–IL); Senator Ben Cardin (D–MD); Representative Loretta Sanchez (D–CA); Representative Steve King (R–IA); Representative Brian Bilbray (R–CA); Representative Rahm Emanuel (D–IL); Donna Brazile, Chair, DNC Voting Rights Institute; Eve Sandberg, Associate Professor of Politics, Oberlin College; John Fund, Wall Street Journalist columnist; and Ralph Neas, President and CEO of People for the American Way. On March 29, 2007, the Committee on the Judiciary reported H.R. 1281 favorably by voice vote. On June 25, 2007, Committee on the Judiciary Chairman John Conyers, Jr. moved to suspend the rules and the U.S. House of Representatives passed

H.R. 1281 by voice vote. The following day, the bill was received in the U.S. Senate, read twice, and referred to the Senate Committee on the Judiciary.

H.R. 1995, the "Tulsa-Greenwood Race Riot Claims Accountability Act of 2007"

Summary.—H.R. 1995 provides that any Greenwood, Oklahoma, claimant (a survivor or descendant of victims of the Tulsa, Oklahoma, Race Riot of 1921) who has not previously obtained a determination on the merits of a Greenwood claim may, in a civil action commenced within five years after enactment of this Act, obtain that determination.

Legislative History.—H.R. 1995, "Tulsa-Greenwood Race Riot Claims Accountability Act of 2007," was introduced by House Judiciary Committee Chairman John Conyers, Jr. on April 23, 2007. On April 24, 2007, the Subcommittee on the Constitution, Civil Rights and Civil Liberties held a hearing on H.R. 1995. Testimony was received from the following witnesses: John Hope Franklin Ph.D., James B. Duke Professor Emeritus of History, Duke University School of Law; Alfred L. Brophy Ph.D., Professor of Law, University of Alabama School of Law; Olivia Hooker Ph.D., Professor of Psychology (retired), Fordham University and Professor Charles Ogletree, Jesse Climenko Professor of Law, Harvard Law School.

H.R. 2316, the "Honest Leadership and Open Government Act of 2007"

Summary.—H.R. 2316 would have required registered lobbyists to provide quarterly reports to the House clerk and secretary of the Senate regarding the "bundled" contributions totaling more than $5,000 in a quarter that they provide to a covered recipient.

Under the bill, bundled contributions include contributions that are received by a registered lobbyist and forwarded to a covered recipient, or contributions that are somehow credited or attributed to a lobbyist through records, designations or other means of tracking, such as placing the lobbyist's name on a check's memo line or using another symbol. The bill's definition of "covered recipients" applies to federal candidates, federal officeholders, leadership political action committees or political party committees.

The required reports would disclose the name of the lobbyist, the name of his or her employer, and the name of the covered recipient to whom the contributions were given, as well as the amount of the contributions made or a good-faith estimate thereof. The report would be due within 45 days of the end of the quarterly period. These reports would not include certain information that is included in other required disclosure reports.

The bill also required a lobbyist, within 25 days of the end of a quarterly reporting period, to send a notification by certified mail to a covered recipient outlining the information that will be included in the lobbyists' report, and the source of each contribution. According to the committee report, this would allow the recipient of bundled contributions to raise questions with the lobbyist, and take appropriate action, before the lobbyist files his or her report with Congress. As modified, the bill requires the statement to notify the recipient that he or she has the right to respond in order

to challenge or correct any information before the lobbyist files the disclosure report.

The bill also would have Members and senior staff from influencing hiring decisions or practices of private entities for partisan political gain. Violations can result in not only fines, but imprisonment for up to 15 years. The measure would have required the disclosure of lobbying activities by many coalitions, as well as the past executive branch and congressional employment of registered lobbyists. It would have required lobbyists to file more detailed reports disclosing their contacts with Congress, as well as certifications that the lobbyist did not give a gift or pay for travel in violation of the rules. These reports were to be filed electronically and more frequently, quarterly rather than semiannually, and then be made available to the public for free over the Internet in a timely fashion. Finally, the legislation provided for stronger enforcement. This measure significantly increased the penalties for noncompliance with Lobbying Disclosure Act requirements. Civil penalties are increased from the current $50,000 per violation to $100,000, and there are new criminal penalties for knowing, willful and corrupt violations, with potential sentences of imprisonment up to 5 years.

Legislative History.—H.R. 2316 was introduced by Chairman John Conyers, Jr. on May 15, 2007 and referred to the Committee on the Judiciary, and in addition to the Committees on Rules, and House Administration. A markup session was held on May 17, 2007. It was ordered reported, as amended by a voice vote. (H. Rept. 110–161, Part I). It was placed on the Union Calendar, Calendar No. 97. On May 27, 2007, it was considered, pursuant to a rule (H. Res. 437). The following amendments were considered: H. Amdt. 232, offered by Mr. Conyers. The amendment clarifies the application of the bill's provisions regarding the posting of financial disclosure forms on the Internet. The Conyers amendment was agreed to by voice vote. H. Amdt. 233, offered by Mr. Dreier. The amendment requires that when Members and House employees end their service in the House, they be given notice of the exact dates in which their post-employment restrictions apply and also requires that that information be made available on the Internet. The Dreier amendment was agreed to by voice vote. H. Amdt. 234, offered by Mr. Conyers. Amendment sought to place a one-year ban on flag and general officers of the Armed Services from receiving compensation from any company that does greater than $50 million in business with the Department of Defense. The Conyers amendment passed by voice vote, and Mr. Smith of Texas demanded a recorded vote. The amendment subsequently failed by recorded vote: 152–271, 1 Present (Roll No. 421). H. Amdt. 235 offered by Mr. Castle. An amendment stating that it is the sense of Congress that the use of a family relationship by a lobbyist who is an immediate family member of a Member of Congress to gain special advantages over other lobbyists is inappropriate. The Castle amendment was agreed to by voice vote. H. Amdt. 236 offered by Mr. Cardoza. The amendment gives judges the discretion to increase the sentence for public officials convicted of bribery, fraud, extortion or theft of public funds greater than $10,000. The Cardoza amendment was agreed to by voice vote. Mr. Chabot moved to recommit with in-

structions to Judiciary to require the bill to be reported back to the House with amendments to limit gifts to Members, Officers, and Employees of the House from State and local governments. The motion to recommit with instructions Agreed to by recorded vote: 346–71, 2 Present (Roll No. 422). The bill passed the House by a recorded vote: 396–22, 1 Present (Roll No. 423). The bill was received in the Senate. It was placed on Senate Legislative Calendar under General Orders. Calendar No. 182. See S. 1 for further action.

H.R. 2317, the "Lobbying Transparency Act of 2007"

Summary.—H.R. 2317 required the quarterly disclosure of campaign contributions that are "bundled" by lobbyists. Under the bill, lobbyists would have been required to provide such information in the quarterly reports that would be filed with congressional officials.

Legislative History.—Rep. Chris Van Hollen (D–MD) introduced H.R. 2317 on May 15, 2007. On May 17, 2007, it was marked up by the Judiciary Committee and ordered reported, as amended, by a voice vote. H. Rept. 110–162. It was placed on the Union Calendar, Calendar No. 98. On May 24, 2007 it was considered by the House of Representatives. Ranking Minority Member Lamar Smith (R–TX) moved to recommit with instructions to Judiciary to require the bill to be reported back to the House with an amendment inserting a multicandidate political committee described the Federal Election Campaign Act of 1971. The motion to recommit with instructions Agreed to by the Yeas and Nays: 228–192 (Roll No. 419). The bill passed by the Yeas and Nays: 382–37 (Roll No. 420). On June 4, 2007 it was placed on Senate Legislative Calendar under General Orders. Calendar No. 183. See S. 1 for further action.

H.R. 2356, To amend title 4, United States Code, to encourage the display of the flag of the United States on Father's Day

Summary.—H.R. 2356 amends the Flag Code to add Father's Day, the third Sunday in June, to the official occasions for the display of the U.S. flag.

Legislative History.—H.R. 2356 was introduced on May 17, 2007, by Rep. Scott of Georgia, and referred to the House Committee on the Judiciary. It was referred to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties on June 4, 2007. On June 11, 2007, Rep. Baldwin moved to suspend the rules and pass the bill. The motion was agreed to by a roll call vote of 386–0 (Roll No. 448). On May 15, 2008, it passed Senate without amendment by Unanimous Consent. The President signed it on June 3, 2008, and it became Public Law No. 110–239.

H.R. 2826, To amend titles 28 and 10, United States Code, to restore habeas corpus for individuals detained by the United States at Naval Station, Guantanamo Bay, Cuba, and for other purposes

Summary.—Introduced by Representative Ike Skelton and Representative John Conyers, Jr. on June 22, 2007 to restore habeas corpus rights to enemy combatants detained at Guantanamo Bay.

Legislative History.—On September 6, 2007, the Subcommittee met in open session and favorably reported H.R. 2826 by a roll call

vote of 7 to 4. H.R. 2826 was forwarded to the Committee, but no further action was taken during this Congress.

H.R. 3073, the "Pigford Claims Remedy Act of 2007"

Summary.—H.R. 3073 provides a mechanism for a determination on the merits of the claims of persons who met the class criteria in a civil action relating to racial discrimination by the Department of Agriculture but who were denied that determination. For the purposes of the legislation, a "Pigford claimant" was defined as an individual who previously submitted a late-filing request under the consent decree in the case of Pigford v. Glickman (1999); and "Pigford claim" as a discrimination complaint as defined and documented by such consent decree. The legislation also directs the Secretary of Agriculture to provide a claimant with a report on farm credit loans made within the claimant's county or adjacent county during a specified period which shall contain information on all accepted applicants (but without any personally identifiable information), including: (1) the applicant's race; (2) the application and loan decision dates; and (3) the location of the office making the loan decision.

Legislative History.—H.R. 3073, the "Pigford Claims Remedy Act of 2007," was introduced by House Judiciary Committee Chairman John Conyers, Jr. on July 18, 2007 and referred jointly to the Committee on the Judiciary and the Committee on Agriculture. The legislation was the follow-up product of a hearing held on June 21, 2007, on H.R. 558, the "African-American Farmers Benefits Relief Act of 2007" and H.R. 899, the "Pigford Claims Remedy Act of 2007." On July 17, 2007, the Subcommittee on the Constitution, Civil Rights and Civil Liberties met in open session and ordered favorably reported the bill H.R. 3073, without amendment, by voice vote. The Pigford Claims Remedy Act was enacted as Section 14012 of H.R. 2419, the "Food, Conservation, and Energy Act of 2008," Public Law No. 110–234, on May 22, 2008, following an initial veto by President Bush.

H.R. 3189, the "National Security Letters Reform Act of 2007" (April 15, 2008)

Summary.—The September 11, 2001 attacks prompted a review of the law enforcement and intelligence tools which were designed to detect and prevent terrorist attacks. Specifically, the Administration expressed concern about the delays in effectuating the preparation and ultimate dissemination of NSLs.[213] The PATRIOT Act substantially expanded the FBI's preexisting authority to obtain information through NSLs by amending three of the four existing NSL statutes and adding a fifth.[214] In each of the three NSL statutes available exclusively to the FBI—the ECPA, RFPA, and FCRA—Section 505 of the PATRIOT Act broadened the previously more rigorous FBI authority in four major areas.

[213] Hearing Before the H. Comm. On the Judiciary, 107th Cong. 57–58 (2001) (Administration's Draft of Anti-Terrorism Act of 2001).

[214] Charles Doyle, National Security Letters in Foreign Intelligence Investigations: Legal Background and Recent Amendments, CRS Report, March 17, 2006, at 4 [hereinafter Doyle CRS Report].

The PATRIOT Act: (1) eliminated the requirement that the information sought by a NSL must pertain to a foreign power or an agent of a foreign power, and instead substituted the lower threshold that the information requested be relevant to or sought for an authorized investigation to protect against international terrorism or espionage; (2) expanded the FBI issuing authority beyond FBI headquarters officials to include the heads of FBI field offices (i.e., Special Agents in Charge); (3) added the caveat that no such investigation of an American can be predicated exclusively on the basis of activities protected by the First Amendment; and (4) permitted NSLs to obtain information from communications providers, financial institutions, and consumer credit agencies about persons other than the subjects of FBI national security investigations so long as the requested information is relevant to an authorized investigation.[215] Similarly, subsection 358(g) of the Act amended the FCRA to add a fifth and final NSL, which, notably, allowed any federal government agency (not merely the FBI) investigating or analyzing international terrorism to obtain a consumer's full credit report.[216]

H.R. 3189, the "NSL Reform Act," would remedy the deficiencies in issuing and using NSLs. Specifically, the legislation would address: the documentation of deficient process by FBI agents issuing national security letters and utilizing their results; the broad scope of national security letters, lack of transparency in their issuance, and the problems raised by gag orders and use of information that are authorized under existing law; the need for statutory safeguards and judicial review; and the protections of constitutional rights and personal privacy, while permitting appropriate federal investigations of threats to national security.

The Justice Department's Office of the Inspector General (OIG) issued a report, "A Review of the FBI's Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006 which raised concerns regarding the manner in which our government agencies approach the investigations of individuals. The Report released in March 2007 revealed that the FBI has reported inaccurate and incomplete data to Congress. It further exposed that the FBI had engaged in improper methods to acquire data on individuals. Moreover, the Report indicated that even information about individuals who are irrelevant to terrorism investigations is nonetheless indefinitely retained and never purged from FBI database systems.

At an April 15, 2007 legislative hearing on H.R. 3189 before the Subcommittee on Constitution, Civil Rights and Civil Liberties of the House Judiciary Committee, Inspector General Glenn Fine testified on the findings and recommendations included in the recent 2008 released report.

On April 15, 2008, the Subcommittee held a hearing on the use of National Security Letters by the FBI. Mr. Glenn Fine, Justice Department Inspector General; Ms. Valerie Caproni, FBI General Counsel; Jameel Jaffer, director of the ACLU's National Security

[215] P.L. 107–56, § 505, 115 Stat. 365–66 (2001).

[216] P.L. 107–56, § 358(g), 115 Stat. 327 (2001). Prior to this amendment, the FBI could use FCRA NSLs only to obtain basic financial institution and consumer-identifying information about the person's bank accounts, places of employment, and addresses. See 15 U.S.C. 1681u (2000).

Project; Bruce Fein, adjunct scholar with the American Enterprise Institute, resident scholar at the Heritage Foundation, lecturer at the Brookings Institution, and adjunct professor at George Washington University; Michael Woods, former chief of the FBI's National Security Unit (1997–2002); and David Kris, former Associate Deputy Attorney General (2000–2003) and currently an adjunct professor at Georgetown University Law Center.

In this hearing, the subcommittee explored the need to revise and improve the FBI's use of national security letters (NSLs), in light of the abuses documented in the 2007 and 2008 Justice Department's Inspector General's Reports regarding NSLs. H.R. 3189, introduced by Representative Jerrold Nadler, was a potential legislative solution, which would incorporate the pre-PATRIOT Act NSL issuance standard requiring "specific and articulable facts giving reason to believe that the information or records sought . . . pertain to a foreign power or agent of a foreign power,"; provide the recipient of an NSL the right to challenge the NSL and its nondisclosure requirement; provide a cause of action to any person aggrieved by the illegal provision of records pertaining to that person as a result of an NSL issued contrary to law; place a time limit on an NSL gag order and allow for a court approved extension; and provide for minimization procedures to ensure that information obtained pursuant to an NSL regarding persons who are no longer of interest in an authorized investigation is destroyed.

Legislative History.—On June 24, 2008, the Subcommittee met in open session and favorably reported H.R. 3189 by a roll call vote of 7 to 3. The Subcommittee forwarded H.R. 3189 to the Committee, but no further action was taken during the 100th Congress.

H.R. 3195, the "ADA Amendments Act of 2008"

Summary.—H.R. 3195, the ADA Amendments Act of 2008 amends the definition of disability in the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101–386 (1990), 42 U.S.C. §§ 12101–12213, and provides related rules of construction for applying the amended definition. The bill restores protection for the broad range of individuals with disabilities as originally envisioned by Congress by responding to the Supreme Court's narrow interpretation of the definition of disability. Through its decisions, the Supreme Court has prevented individuals that Congress unquestionably intended to cover from qualifying as disabled and entitled to protection under the ADA, thus barring these individuals from ever getting the chance to prove their case of unlawful disability discrimination. H.R. 3195 restores Congressional intent by prohibiting consideration of mitigating measures that help control or lessen the impact of an impairment when determining whether an impairment is sufficiently limiting to qualify as a disability. It also reduces the burden of establishing that an impairment qualifies as a disability by defining terms in the definition that have proven most troubling for the courts. H.R. 3195 requires a broad construction of the definition of disability and clarifies agency authority to promulgate regulations.

Legislative History.—H.R. 3195 was introduced by House Majority Leader Steny H. Hoyer (D–MD) and Representative F. James Sensenbrenner, Jr. (R–WI) on July 26, 2007. The Subcommittee on

the Constitution, Civil Rights, and Civil Liberties held a hearing on the legislation on October 4, 2007, at which the following witnesses testified: Majority Leader Steny H. Hoyer; Cheryl Sensenbrenner, Chair, American Association of People with Disabilities; Stephen C. Orr, plaintiff in Orr v. Wal-Mart; Michael C. Collins, Executive Director, National Council on Disability; Lawrence Z. Lorber, U.S. Chamber of Commerce; Chai R. Feldblum, Professor, Georgetown University Law Center. On June 18, 2008, H.R. 3195 was ordered reported (as amended) by the House Judiciary Committee by a roll call vote of 27 to 0. On June 25, 2008, the House passed H.R. 3195 by a roll call vote of 402–17. On September 11, 2008, the Senate passed by unanimous consent S. 3406, a similar measure that was introduced on July 31, 2008 by Tom Harkin (D–IA). S. 3406 retained most of the language of H.R. 3195 but differed in its treatment of the term "substantially limits" in the ADA's definition of disability. H.R. 3195 redefined "substantially limits" as "materially restricts" to set a lower standard for qualifying as disabled; S. 3406 retained the term "substantially limits" but, through findings and statutory rules of construction, set a lower standard that, like H.R. 3195, makes it easier to qualify as disabled. Thus, while the language of the two bills differed, Congressional intent and the result achieved by both bills was the same. On September 17, 2008, the House passed by voice vote S. 3406, which became Public Law No. 110–325 on September 25, 2008.

H.R. 3685, the Employment Non-Discrimination Act of 2007

Summary—Millions of gay, lesbian, bisexual, and heterosexual Americans can be fired from their jobs, refused work, paid less and otherwise subjected to employment discrimination because of their actual or perceived sexual orientation with no recourse under Federal law. Currently, it is legal in 30 states to fire someone based on their sexual orientation.

Workplace discrimination based on sexual orientation, affecting heterosexual, as well as gay, lesbian, bisexual, and transgender Americans, has been widespread and well-documented over the years. The Employment Non-Discrimination Act protects all Americans who are or may be perceived to be gay, lesbian, or bisexual by making it illegal to fire, refuse to hire, refuse to promote employees based on notions of a person's sexual orientation. Furthermore, employers are prohibited from requiring gay, lesbian, or bisexual employees to work in a discriminatorily hostile or abusive environment.

Specifically, ENDA extends Federal employment protections to gay, lesbian, or bisexual workers similar to those protections provided to a person based on race, religion, sex, national origin, age or disability. The Act prohibits an employer from using an individual's sexual orientation as the basis for employment decisions, such as hiring, firing, promotion or compensation. ENDA also creates a cause of action for any individual—whether actually homosexual or heterosexual—who is discriminated against because that individual is 'perceived' as homosexual due to the fact that the individual does not conform to the sex or gender stereotypes associated with that individual's sex. Furthermore, ENDA provides for the similar pro-

cedures, while giving somewhat more limited remedies as those under Title VII of the Civil Rights Act of 1964.

Legislative History.—H.R. 3685 was introduced by Rep. Frank on September 27, 2007, and referred to the Committee on Education and Labor, the Committee on House Administration, the Committee on Oversight and Government Reform, and the Committee on the Judiciary. The Committee on Education and Labor reported the bill on October 22, 2007 (H. Rept. 110–406, Part I). The Committee on House Administration, the Committee on Oversight and Government Reform, and the Committee on Judiciary were discharged.

The House considered H.R. 3685 on November 7, 2007. The House considered the following amendments:

H. Amdt. 882 offered by Rep. George Miller, providing explicitly that any religious corporation, school, association or society that is exempt under either Section 702(a) or 703(e)(2) of Title VII's religious exemptions is exempt under END; it clarifies that the scope of Title VII's exemption is exactly the scope of ENDA's exemption and clarifying that ENDA does not alter the Defense of Marriage Act (DOMA) in any way. It strikes language referencing "a same-sex couple who are not married" in the Employee Benefits section of ENDA. It also inserts language clarifying that the term "married" has the meaning given such term in DOMA, directly incorporating DOMA's definition of marriage. The Miller amendment was agreed to by recorded vote: 402–25 (Roll No. 1054).

H. Amdt. 883, offered by Rep. Souder, to strike paragraph (3) of section 8(a), which prohibits employers from conditioning employment on a person being married or being eligible to be married. The Souder amendment was agreed to by recorded vote: 325–101 (Roll No. 1055).

H. Amdt. 884, offered by Rep. Baldwin, to expand ENDA's protections to persons discriminated against based on gender identity, defined as the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth, including language concerning shared facilities, dress, and grooming standards, as well as a paragraph stating that the construction of additional facilities are not required. By unanimous consent, the Baldwin amendment was withdrawn.

Rep. Forbes moved to recommit with instructions to Education and Labor. The instructions contained in the motion seek to require the bill to be reported back to the House with an amendment to add at the end of section 8(c) that "nothing in this Act may be construed to modify, limit, restrict, or in any way overturn any State or Federal definition of marriage as between one man and one woman, including the use of this Act as a legal predicate in litigation on the issue of marriage." The motion to recommit with instructions failed by the Yeas and Nays: 198–222 (Roll No. 1056).

The bill passed by the Yeas and Nays: 235–184 (Roll No. 1057). On November 13, 2007 it was placed on Senate Legislative Calendar under General Orders. Calendar No. 479. No further action was taken.

H.R. 3773, the "Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007 (the RESTORE Act of 2007)"

Summary.—The purpose of H.R. 3773 was to provide a mechanism, through December 2009, to conduct foreign electronic surveillance for the purpose of defense against terrorism and other national security threats, without the need for individual warrants for overseas targets, while protecting the civil liberties of Americans whose communications may be intercepted in the process. It would also require increased accountability through data collection, auditing, and mandatory reporting to Congress. And it would provide additional resources for the National Security Agency and Department of Justice to ensure that there are no backlogs of critical intelligence gathering. It removed any 'foreign-to-foreign' ambiguity by making it clear that purely foreign communications do not require a court order even when they transit the U.S. or the acquisition is in the United States as a result of changes in communications technology since FISA was first enacted. The RESTORE Act specifically prevented the extension of any Fourth Amendment or statutory protections to overseas targets such as Osama Bin Laden or other members of terrorist organizations.

Legislative History.—Chairman John Conyers, Jr. introduced H.R. 3773 on October 9, 2007 and referred to the Committee on the Judiciary, and to the Permanent Select Committee on Intelligence. On October 10, 2007, the Judiciary Committee held a mark-up session and ordered the bill reported, as amended, by a roll call vote of 20–14. (H. Rept. 110–373, Part I). The Committee on Intelligence reported the bill, as amended the same day. (H. Rept. 110–373, Part II). The bill was considered by the House on November 15, 2007. Rep. Lamar Smith moved to recommit to the Judiciary Committee with instructions to amend the bill and report it back to the House "promptly." The motion to recommit with instructions failed by the Yeas and Nays: 194–222 (Roll No. 1119). The bill passed by recorded vote: 227–189 (Roll No. 1120). It was received in the Senate. Read twice. Placed on Senate Legislative Calendar under General Orders. Calendar No. 517. On February 12, 2008, the Senate struck all after the Enacting Clause and substituted the language of S. 2248 as amended. It passed the Senate with an amendment by Unanimous Consent. No further action was taken.

H.R. 5038, the "Caging Prohibition Act of 2008"

Summary.—H.R. 5038, the "Caging Prohibition Act of 2008" was introduced by Representative John Conyers, Jr. to prohibit the pernicious practice of voter caging that has been used to prevent or discourage eligible voters from casting their vote on Election Day and having that vote counted. H.R. 5038 clearly defines and criminalizes voter caging and other questionable challenges intended to disqualify eligible voters and requires persons other than election officials to base voter challenges on first hand knowledge.

Legislative History.—Representative John Conyers, Jr. introduced H.R. 5038 on January 17, 2008, and the bill was referred to the Committee on the Judiciary. On February 4, 2008, H.R. 5038 was referred to the Subcommittee on the Constitution, Civil Rights, and Civil Liberties and the Subcommittee on Crime, Terrorism,

and Homeland Security. On July 24, 2008, the issue of caging was examined at a Subcommittee on the Constitution, Civil Rights, and Civil Liberties hearing entitled "Lessons Learned from the 2004 Presidential Elections. Hearing witnesses were J. Kenneth Blackwell, Ronald Reagan Distinguished Fellow, The Buckeye Institute for Public Policy Solutions; Dan Tokaji, Associate Professor of Law & Associate Director, Election Law, Ohio State University, Michael E. Moritz College of Law; Cleta Mitchell, Partner, Foley & Lardner LLP; Gilda Daniels, Assistant Professor of Law, University of Baltimore School of Law; Hans Von Spakovsky, Visiting Scholar, The Heritage Foundation; and J. Gerald Hebert, Executive Director & Director of Litigation, The Campaign Legal Center. There was no further action on H.R. 5038 in the Committee on the Judiciary or U.S. House of Representatives.

H.R. 5607, the "State Secret Protection Act of 2008"

Summary.—H.R. 5607, the State Secret Protection Act of 2008, codifies the common law state secret privilege and provides uniform standards and procedures for courts to apply when considering governmental claims of state secret privilege in civil litigation. H.R. 5607 responds to concerns that the courts have failed to apply consistent standards and have been reluctant to test government claims of secrecy, often failing to examine the evidence that the government seeks to withhold or deferring to government assertions of harm and, as a result, dismissing cases prematurely and unfairly. Modeled on the Classified Information Procedures Act—legislation passed by Congress in 1980 to govern court handling of secret information in criminal cases—but adjusted for civil litigation, H.R. 5607 protects legitimate secrets from harmful disclosure while preventing abuse and maximizing the ability of litigants to achieve justice in the courts.

Legislative History.—On January 29, 2008, the Subcommittee on Constitution, Civil Rights, and Civil Liberties held an oversight hearing on reform of the state secrets privilege, at which the following witnesses testified: H. Thomas Wells, Jr., President-Elect, American Bar Association; Judith Loether, daughter of one of the victims of the plane crash at issue in U.S. v. Reynolds; Hon. Patricia Wald, retired Chief Judge for the U.S. Court of Appeals for the D.C. Circuit; Patrick Philbin, partner at Kirkland & Ellis; and Kevin Bankston, Senior Attorney, Electronic Frontier Foundation. Based on the findings of this hearing, Rep. Nadler (D–NY) introduced H.R. 5607 on March 13, 2008. On July 31, 2008, the Subcommittee on Constitution, Civil Rights, and Civil Liberties held a legislative hearing on H.R. 5607, at which the following witnesses testified: Meredith Fuchs, General Counsel, National Security Archives; Steven Shapiro, Legal Director, American Civil Liberties Union; Michael A. Vatis, partner, Steptoe & Johnson, LLP; Bruce Fein, Chairman, The American Freedom Agenda. Letters in support of H.R. 5607 were submitted by Hon. William S. Sessions, retired Chief Judge of the U.S. District court for the Western District of Texas and former Director of the FBI; Hon. Patricia Wald, retired Chief Judge for the U.S. Court of Appeals for the D.C. Circuit; The Constitution Project; Human Rights First; Common Cause; and Public Citizen. On September 18, 2008, the Subcommittee on

Constitution, Civil Rights, and Civil Liberties reported the bill reported favorably (as amended) to the House Judiciary Committee by a roll call vote of 6–3.

S. 1, the "Honest Leadership and Open Government Act of 2007"

Summary.—Responding to concerns about the role of money in politics, the Congress enacted legislation addressing a variety of issues. S. 1, the final bill signed into law, contained the following changes: it requires campaign committees to disclose "bundled" contributions by lobbyists in excess of $15,000 in a six-month period. The disclosure would be available on a publicly accessible Web site of the Federal Election Commission. The measure extends to two years, for the Senate only, the "cooling off" period in which senators may not lobby after leaving office, while maintaining the current one-year period for the House. It requires quarterly, rather than semi-annual, reports from lobbyists on their lobbying activities, while requiring twice-yearly reports on certain contributions made by lobbyists to campaign committees, events honoring members, presidential libraries, and for certain other purposes. The measure also denies congressional pensions to members convicted of certain felonies committed after enactment of this measure. The bill makes changes to House and Senate rules to impose new earmark disclosure requirements in the Senate, and to bar members of both chambers from negotiating for post-congressional employment unless such negotiations are disclosed to the respective ethics committees.

Legislative History.—S. 1 was introduced by Sen. Harry Reid on January 4, 2007. It passed the Senate, as amended, on January 18, 2007, by a roll call vote of 96–2 (Roll No. 19). It passed the House on July 31, 2007, on a motion to suspend the rules and pass, as amended, by a roll call vote of 411–8 (Roll No. 763). On August 2, 2007, the Senate agreed to House amendment by Yea-Nay Vote. 83–14 (Roll No. 294). It was signed by the President on September 14, 2007, and became Public Law No. 110–81. The House of Representatives also considered two other ethics reform bills, H.R. 2316, the "Honest Leadership and Open Government Act of 2007," and H.R. 2317, the "Lobbying Transparency Act of 2007."

On March 1, 2007, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on "S. 1, the Senate Approach to Lobbying Reform." Testifying before the Subcommittee were Sarah Dufendach, Chief of Legislative Affairs, Common Cause; Kenneth A. Gross, Skadden, Arps, Slate, Meagher & Flom LLP; Thomas E. Mann, Senior Fellow, Governance Studies, The Brookings Institution; and Bradley A. Smith, Professor of Law, Capital University Law School.

Ms. Dufendach argued for an increased "cooling off period" of from the existing one to two years, and in favor of a provision that would require disclosure by a lobbying firm or a firm that does not presently file federal lobbying reports but that earns at least $100,000 a quarter to engage in paid efforts to stimulate Astroturf lobbying. She also urged the establishment of an independent ethics office for Congress.

Mr. Gross argued that the bundling provision should be drafted so it is limited to contributions physically handled by a lobbyist or

those forwarded to a campaign in coded envelopes, as is currently required under Federal Election Commission rules. He also argued in favor of a narrowed "astroturf" provision, and against a broader restriction on post-employment lobbying.

Mr. Mann testified in support of new "bundling" disclosure provisions, disclosure requirements for "astroturf," or professional grassroots lobbying, and broader post-employment restrictions on members and senior staff.

Prof. Smith expressed reservations about the constitutionality of the "astroturf" provisions in the Senate bill, and concerns about the vagueness of the "bundling" provisions. He also testified in support of earmark reform.

S. 188—A bill to revise the short title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006

Summary.—S. 188 amends the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 to change the short title to the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar E. Chavez, Barbara C. Jordan, William C. Velasquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

Legislative History.—S. 188, "A bill to revise the short title of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006," was introduced by Senator Ken Salazar on January 4, 2007. The House companion of the legislation, H.R. 745, was introduced by Judiciary Committee member Sheila Jackson-Lee on January 31, 2007. On February 2, 2007, the Senate Judiciary Committee ordered S. 188 to be reported with amendments favorably. On February 15, 2007, S. 188 passed the Senate, with amendments, by unanimous consent. On June 17, 2008, Representative Jackson-Lee moved that the House suspend the rules and pass S. 188, where after the bill was agreed to by voice vote. On July 1, 2008, S. 188 was signed by President and became Public Law No. 110–258.

Resolution Authorizing the Chairman of the Committee on the Judiciary to Issue a Subpoena to J. Kenneth Blackwell

On Tuesday, February 26, 2008, the Subcommittee on the Constitution, Civil Rights and Civil Liberties met for the purpose of considering whether to authorize the Chairman of the Committee to issue a subpoena to former Ohio Secretary of State J. Kenneth Blackwell. The Subcommittee sought Mr. Blackwell's testimony as part of its ongoing oversight of voting rights enforcement by the U.S. Department of Justice. While serving as Secretary of State, Mr. Blackwell simultaneously served as co-chair of the Bush-Cheney Ohio reelection campaign in 2004, and campaigned for office himself when he ran as Republican candidate for governor of Ohio in 2006. His conduct during the 2004 election was the subject of a 102-page report on vote suppression produced in 2005 by the Democratic staff of the House Judiciary Committee.[217] As the chief

[217] Preserving Democracy: What Went Wrong in Ohio (Status Report of the House Judiciary Committee Democratic Staff) (Jan. 5, 2005).

election officer during an election in which serious concerns regarding vote suppression have been raised, the Committee believed Mr. Blackwell's testimony was important to its ongoing oversight of voting rights enforcement and vote suppression.

Resolution Authorizing the Chairman of the Committee on the Judiciary to Issue a Subpoena to David Addington

On May 6, 2008, the Subcommittee met and by a voice vote authorized the full Committee Chairman to issue a subpoena to the Chief of Staff to the Vice President, David Addington. This subpoena was issued on May 7, 2008, and compelled Mr. Addington's testimony on June 26, 2008.[218]

Resolution Authorizing the Chairman of the Committee on the Judiciary to issue a Subpoena to Douglas Feith

On June 24, 2008, the Subcommittee met and by a bipartisan vote of 9–3 authorized the full Committee Chairman to issue a subpoena to former Undersecretary of Defense Douglas Feith. This subpoena was issued on July 10, 2008, and compelled Mr. Feith's testimony on July 15, 2008.

Resolution Authorizing the Chairman of the Committee on the Judiciary to Issue a Subpoena to Christopher Coates

On July 31, 2008, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties met for the purpose of considering whether to authorize the issuance of a subpoena to Christopher Coates, Voting Section Chief, Department of Justice, Civil Rights Division. The Subcommittee sought Mr. Coates testimony as part of its ongoing oversight of voting rights enforcement by the U.S. Department of Justice. While states have primary authority for conducting elections, the Department of Justice Civil Rights Division's Voting Section should play a significant role in ensuring a fair election in 2008 through its enforcement of voting rights laws. Given the controversy surrounding the last two presidential elections in 2000 and 2004, the Subcommittee felt it was important for Mr. Coates to appear to explain how the Department of Justice (DOJ) plans to implement its legislative mandate during the 2008 Presidential election to prevent voting rights problems and ensure a fair election.

H. Con. Res. 44, Honoring and praising the National Association for the Advancement of Colored People on the occasion of its 98th anniversary

Summary.—H. Con. Res. 44 was introduced by Representative Al Green to commemorate the 98th anniversary of the founding of the National Association for the Advancement of Colored People (NAACP). The NAACP is this nation's oldest and largest civil rights organization. The NAACP was founded on February 12, 1909 by Ida Wells-Barnett, W.E.B. DuBois, Henry Moscowitz, Mary White Ovington, Oswald Garrison Villiard, and William English Walling. Since its inception, the NAACP has united students, laborers, professionals, scholars, officials, and others of all races to

[218] *See* May 7, 2008, Letter from Hon. John Conyers, Jr. to Mr. David S. Addington.

advance its vision of "a society in which all individuals have equal rights and there is no racial hatred or racial discrimination."

Legislative History.—Representative Al Green introduced H. Con. Res. 44 on January 24, 2007, and the bill was referred to the Committee on the Judiciary. On February 12, 2007, Representative Howard Berman moved to suspend the rules and the resolution passed the U.S. House of Representatives by voice vote. The following day, the bill was received in the U.S. Senate and referred to the Senate Committee on the Judiciary. On March 1, 2007, the Senate Committee on the Judiciary reported H. Con. Res. 44 without amendment and with a preamble. On March 26, 2007, the resolution was agreed to without amendment and with a preamble by unanimous consent in the U.S. Senate.

H. Con. Res. 289, Honoring and praising the National Association for the Advancement of Colored People on the occasion of its 99th anniversary

Summary.—H. Con. Res. 289 was introduced by Representative Al Green to commemorate the 99th anniversary of the founding of the National Association for the Advancement of Colored People (NAACP). The NAACP is this nation's oldest and largest civil rights organization. The NAACP was founded on February 12, 1909 by Ida Wells-Barnett, W.E.B. DuBois, Henry Moscowitz, Mary White Ovington, Oswald Garrison Villiard, and William English Walling. Since its inception, the NAACP has united students, laborers, professionals, scholars, officials, and others of all races to advance its vision of "a society in which all individuals have equal rights and there is no racial hatred or racial discrimination."

Legislative History.—Representative Al Green introduced H. Con. Res. 44 on February 7, 2008, and the bill was referred to the Committee on the Judiciary. On February 13, 2008, Representative Steve Cohen moved to suspend the rules and on February 14, 2008, the resolution passed the U.S. House of Representatives by a roll call vote of 403–0. On February 25, 2008, the bill was received in the U.S. Senate and referred to the Senate Committee on the Judiciary. On March 5, 2008, the Senate Committee on the Judiciary discharged H. Con. Res. 289 and the U.S. Senate agreed to H. Con. Res. 289 without amendment and with a preamble by unanimous consent.

H. Con. Res. 381, Honoring and recognizing the dedication and achievements of Thurgood Marshall on the 100th anniversary of his birth

Summary.—H. Con. Res. 381 was introduced by Representative Donald Payne to commemorate Thurgood Marshall's significant contributions and accomplishments in the field of law on the 110th anniversary of his birth, July 2, 1908. Marshall challenged the separate but equal status quo in his capacity as Legal Director of the National Association for the Advancement of Colored People (NAACP) from 1940 through 1967, winning 29 out of 32 cases before the Supreme Court, the most Supreme Court cases won by any attorney. As a judge on the U.S. Court of Appeals for the Second Circuit in 1961, Marshall authored 112 opinions between 1961 and 1965, with not one of them being overturned. Marshall served as

the first African American Solicitor General from 1965 until 1967. From 1967 until 1991, Marshall was appointed to the U.S. Supreme Court, making him the first African American Supreme Court Justice.

Legislative History.—Representative Payne introduced H. Con. Res. 381 on June 24, 2008, and the bill was referred to the Committee on the Judiciary. On July 14, 2008, Representative Adam Schiff moved to suspend the rules and the resolution passed the U.S. House of Representatives by voice vote. On July 16, 2008, the resolution was agreed to without amendment and with a preamble by unanimous consent in the U.S. Senate.

H. Res. 149, Supporting the goals of International Women's Day

Summary.—H. Res. 149 states that the House of Representatives (1) supports the goals of International Women's Day; (2) recognizes and honors the women in the United States and in other countries who have fought and continue to struggle for equality in the face of adversity; (3) reaffirms its commitment to ending discrimination and violence against women and girls, to ensuring the safety and welfare of women and girls, and to pursuing policies that guarantee the basic human rights of women and girls both in the United States and in other countries; and (4) encourages the President to—(A) reaffirm his commitment to pursue policies to protect fundamental human rights and civil liberties, particularly those of women and girls; and (B) issue a proclamation calling upon the people of the United States to observe International Women's Day with appropriate programs and activities.

Legislative History.—Rep. Janice Schakowsky introduced H. Res. 149 on February 8, 2007. On February 8, 2007 it was referred to the Committee on Foreign Affairs and to the Committee on the Judiciary. On February 15, 2007, the Committee on Foreign Affairs reported it by a voice vote. On March 6, 2007 Rep. Watson moved to suspend the rules and agree to the resolution. The motion to suspend the rules was agreed to by a roll call vote of 403–0 (Roll No. 122).

H. Res. 194, Apologizing for the enslavement and racial segregation of African-Americans

Summary.—H. Res. 194 acknowledges that slavery is incompatible with the basic principle recognized in the Declaration of Independence that all men are created equal. The resolution also acknowledges the fundamental injustice, cruelty, brutality, and inhumanity of slavery and Jim Crow. The resolution offers an apology to African-Americans on behalf of the U.S. people for the wrongs committed against them and their ancestors and commits to rectifying the lingering consequences of slavery and Jim Crow and to stopping future human rights violations.

Legislative History.—H. Res. 194 was introduced by Judiciary Committee Member Steve Cohen on February 27, 2007. On December 18, 2007, the Subcommittee on the Constitution, Civil Rights and Civil Liberties held an oversight hearing on the Legacy of the Trans-Atlantic Slave Trade, where the substance of the resolution was discussed at length. Testimony was received from the following witnesses: M. Thomas Shaw, Bishop, The Episcopal Diocese of

Massachusetts; Kibibi Tyehimba, National Co-Chair, National Coalition of Blacks for Reparations in America (N'COBRA); Stephan Thernstrom, Winthrop Professor of History, Harvard University; The Honorable JoAnn Watson, Council Member, Detroit City Council; Professor Charles Ogletree, Jesse Climenko Professor of Law, Harvard Law School; H. Thomas Wells, Jr., President-Elect, American Bar Association; Roger Clegg, President and General Counsel, Center for Equal Opportunity and Eric Miller, Assistant Professor of Law, Saint Louis University School of Law. On July 29, 2008, H. Res. 194 was passed by the House by voice vote.

H. Res. 431, Recognizing the 40th anniversary of Loving v. Virginia legalizing interracial marriage within the United States

Summary.—H. Res. 431 was introduced by Representative Tammy Baldwin to recognize the 40th anniversary of the decision in the case Loving v. Virginia (388 U.S. 1 (1967)), which legalized interracial marriage within the United States. On June 12, 1967, in a unanimous decision, the Supreme Court struck down Virginia's statute forbidding white and black persons from marrying persons of another race. The convictions of Mildred Jeter and Richard Perry Loving, the interracial Virginia couple who challenged the law, were overturned. Writing for the Court, Chief Justice Earl Warren conveyed that "the Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations."

Legislative History.—Representative Baldwin introduced H. Res. 431 on May 23, 2007, and the bill was referred to the Committee on the Judiciary. On June 11, 2007, Representative Baldwin moved to suspend the rules and the resolution passed the U.S. House of Representatives by voice vote.

H. Res. 668, Recognizing the 50th anniversary of the September 25, 1957, desegregation of Little Rock Central High School by the Little Rock Nine

Summary.—H. Res. 668 was introduced by Representative John Conyers, Jr. to commemorate the 50th anniversary of the desegregation of Little Rock Central High School by the Little Rock Nine on September 25, 1957. Three years after the 1954 Brown v. Board decision (347 U.S. 483), the promise of equality within education had not been realized by the Little Rock Nine. In pursuit of that promise, the Little Rock Nine—Minnijean Brown, Elizabeth Eckford, Ernest Green, Thelma Mothershed, Melba Pattillo, Gloria Ray, Terrence Roberts, Jefferson Thomas, and Carlotta Walls—attempted to integrate Little Rock Central High. Despite death threats, verbal and physical assaults, school closings, and other adversities, the Little Rock Nine successfully integrated Little Rock Central High School on September 25, 1957.

Legislative History.—Representative Conyers introduced H. Res. 668 on September 20, 2007, and the bill was referred to the Committee on the Judiciary. On September 24, 2007, Chairman Conyers moved to suspend the rules and the resolution passed the U.S. House of Representatives by a roll call vote of 387–0.

H. Res. 826, Expressing the Sense of the House of Representatives that the hanging of nooses is a horrible act when used for the purpose of intimidation and which under certain circumstances can be a criminal act that should be thoroughly investigated by Federal law enforcement authorities and that any criminal violations should be vigorously prosecuted

Summary.—H. Res. 826 was introduced by Representative Al Green to condemn the hanging of nooses. The noose, a symbol of racial violence and hate, that had once been attributed to days ago, has resurfaced in recent years. Between September and December of 2007, there were approximately 50 noose incidents across the country. Since 2001, more than 30 lawsuits have been filed by the Equal Employment Opportunity Commission (EEOC) due to nooses in the workplace. In the wake of the Jena 6 controversy, noose incidents occurred with a disturbing frequency in our nation's schools. In 2007, noose incidents occurred at North Carolina's High Point Andrews High School, Columbia University, the University of Maryland, the University of Delaware, Perdue University, and Central Michigan University.

Legislative History.—Representative Green introduced H. Res. 826 on November 14, 2007, and the bill was referred to the Committee on the Judiciary. On December 5, 2007, Chairman John Conyers, Jr. moved to suspend the rules and the resolution passed the U.S. House of Representatives by voice vote.

H. Res. 1061, Commemorating the 40th anniversary of the assassination of Dr. Martin Luther King, Jr. and encouraging people of the United States to pause and remember the life and legacy of Dr. Martin Luther King, Jr., and for other purposes

Summary.—H. Res. 1061 was introduced by Representative John Lewis (D–GA) to celebrate the life and work of Dr. Martin Luther King, Jr., our nation's greatest civil rights leader, on the 40th anniversary of Dr. King's assassination. On April 4, 1968, Dr. King's life ended abruptly as he was fighting for the rights of African American sanitation workers in Memphis, Tennessee. In his short life, Dr. King had accomplished much, his work culminating in the enactment of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and receipt of the Nobel Peace Prize. H. Res. 1061 continues Dr. King's legacy by renewing the country's commitment to Dr King's pursuit of justice, equality, and peace.

Legislative History.—Representative Lewis introduced H. Res. 1061 on March 31, 2008, and the bill was referred to the Committee on the Judiciary. On September 24, 2007, Chairman John Conyers, Jr. moved to suspend the rules and the resolution passed the U.S. House of Representatives by voice vote.

H. Res. 1095, Recognizing and honoring the 40th anniversary of congressional passage of title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) and the 20th anniversary of the Fair Housing Amendments Act of 1988

Summary.—H. Res. 1095 was introduced by Representative Al Green to commemorate the 40th anniversary of the Fair Housing Act and its amendments. On April 11, 1968, just days after the assassination of Dr. Martin Luther King Jr., President Lyndon B.

Johnson signed into law the federal Fair Housing Act, which prohibited discrimination in housing based on race, color, religion or national origin. Twenty years later, in 1988, the law was expanded by the Fair Housing Amendments Act to include protections against discrimination based on sexual orientation, familial status and disability. Today, the Fair Housing Act remains an effective tool in our fight against discrimination.

Legislative History.—Representative Green introduced H. Res. 1095 on April 9, 2008, and the bill was referred to the Committee on the Judiciary. On April 15, 2008, Chairman John Conyers, Jr. moved to suspend the rules and the resolution passed the U.S. House of Representatives by voice vote.

H. Res. 1182, Expressing the sense of the House of Representatives that American flags flown on Federal Government buildings and on Federal property be made in the United States

Summary.—H. Res. 1182 expresses the sense of the House of Representatives that all American flags flown over federal buildings should be entirely produced in the United States.

Legislative History.—H. Res. 1182 was introduced by Rep. Bob Filner on May 8, 2008. On July 14, 2008, on a motion to suspend the rules and agree to the resolution was Agreed to by voice vote.

H. Res. 1293, Commemorating the 44th anniversary of the deaths of civil rights workers Andrew Goodman, James Chaney, and Michael Schwerner in Philadelphia, Mississippi, while working in the name of American democracy to register voters and secure civil rights during the summer of 1964, which became known as "Freedom Summer"

Summary.—H. Res. 1293 was introduced by Representative John Lewis to salute civil rights activists Andrew Goodman, James Chaney, and Michael Schwerner on the 44th anniversary of their deaths during the Freedom Summer of 1964. These three young men paid the ultimate sacrifice in their dedication to ensuring that all Americans could exercise the right to vote. While advancing the voting rights of Black Mississippians, on June 21, 1964, Goodman, Chaney, and Schwerner left Meridian, Mississippi's Congress on Racial Equality office for the nearby town of Philadelphia to investigate the recent burning of a Black church that had been operating as a Freedom School for education and voter registration. The civil rights workers never made it to their destination. They were arrested by police officers in Philadelphia, who turned them over to area Ku Klux Klan members. After more than six weeks of federal inquiries and searches, their desecrated bodies were found, buried under a mound of dirt. A federal criminal civil rights investigation and prosecution led to convictions for some, but a hung jury for others. Final justice would come 40 years later, with a 2005 State prosecution.

Legislative History.—Representative Lewis introduced H. Res. 1293 on June 20, 2008, and the bill was referred to the Committee on the Judiciary. On June 23, 2007, Chairman John Conyers, Jr. moved to suspend the rules and the resolution passed the U.S. House of Representatives by voice vote.

H. Res. 1345, Impeaching George W. Bush, President of the United States, of high crimes and misdemeanors

Summary.—The resolution was composed of one article of impeachment against the President for deceiving Congress with fabricated threats of Iraq WMDs to fraudulently obtain support for an authorization of the use of military force against Iraq.

Legislative History.—H. Res. 1346, was introduced by Rep. Dennis Kucinich July 15, 2008 and referred to the House Committee on the Judiciary. On July 15, 2008, Mr. Kucinich rose to a question of the privileges of the House and offered the resolution. Mr. Kucinich moved to refer the resolution to the Committee on the Judiciary. The motion to refer was agreed to by the Yeas and Nays: 238–180 (Roll No. 492). The resolution was referred to the House Committee on the Judiciary.

OVERSIGHT ACTIVITIES

Oversight hearing on the Impact of Ledbetter v. Goodyear on the Effective Enforcement of Civil Rights Laws

Summary.—On June 28, 2007, the Subcommittee held a hearing on the impact of the Supreme Court's decision in Ledbetter v. Goodyear[219] on the effective enforcement of civil rights laws. Testimony was received from: Lilly Ledbetter, plaintiff in Ledbetter v. Goodyear; Martha Chamallas, Professor of Law, The Ohio State University; Neal Mollen, Esq., on behalf of the U.S. Chamber of Commerce; and Marcia Greenberger, Co-President, National Women's Law Center.

In Ledbetter, the Supreme Court ruled that employees cannot challenge unlawful pay discrimination unless they file a claim within six months of the discriminatory pay-setting decision. In a sharply divided 5–4 decision, the Court interpreted Title VII's 180-day statute of limitations period as running from the date that an employer decides to pay an employee less rather than each time an employee earns or is paid less as a result. This ruling departed from prior interpretations of when victims of pay discrimination can file timely charges under Title VII. The case also raised questions about the effectiveness and fairness of statutory caps on damages for victims of discrimination based on sex, religion, or disability. In Ms. Ledbetter's case, the jury's award of compensatory and punitive damages against Goodyear for intentional sex discrimination was reduced by 90% because of the caps on damages contained in Section 1981a.

The Subcommittee's oversight hearing examined the two issues arising from the Ledbetter case: (1) the Court's ruling with respect to when victims of pay discrimination can file timely charges; and (2) the adequacy and fairness of remedies for victims of intentional employment discrimination. Ms. Ledbetter testified that, after filing a complaint with the EEOC shortly before her retirement, she discovered that she was making from $600 to $1,500 per month less than her male counterparts due to the cumulative effect of smaller raises, as compared to those received by her male colleagues, during her nineteen years working for Goodyear. Ms.

[219] Ledbetter v. Goodyear Tire & Rubber Company, Inc., ____U.S.____, 127 S.Ct. 2162 (2007).

Ledbetter explained that, following a trial, the jury found that Goodyear discriminated against her based on sex and awarded her more than $3 million in compensatory and punitive damages, an amount that she felt provided a deterrent effect on Goodyear. Professor Martha Chamallas testified that the statutory caps on damages undermine the deterrent effect of the law, are arbitrary, and harm victims of the most egregious and severe forms of discrimination. Both Professor Chamallas and Marcia Greenberger testified that Congress should enact legislation to correct the Supreme Court's ruling on the statute of limitation for pay discrimination claims and to lift the statutory caps on damages. Neal Mollen testified that the Court's ruling regarding the time period for filing a claim of discrimination was appropriate as it would encourage the prompt filing and resolution of charges.

Joint oversight hearing on Rendition to Torture: the Case of Maher Arar

Summary.—On October 18, 2007, the Subcommittee held the first of two joint hearings with the Subcommittee on International Organizations, Human Rights, and Oversight of the House Committee on Foreign Affairs on rendition to torture ("extraordinary" rendition). Testimony was received from: Maher Arar; Kent Roach, Prichard-Wilson Chair, Faculty of Law, University of Toronto; Frederick P. Hitz, Lecturer and Senior Fellow, Center for National Security Law, University of Virginia School of Law; Daniel Benjamin, Director, Center on the United States and Europe, The Brookings Institution; Michael John Garcia, Legislative Attorney, American Law Division, Congressional Research Service; David D. Cole, Professor of Law, Georgetown University Law Center.

This first hearing into rendition to torture featured testimony from Maher Arar, a Canadian citizen who was sent by U.S. officials to Syria, where he was imprisoned for nearly a year and tortured, and also explored, more generally, the evolution in the use of rendition as an interrogation tool following the 9/11 terrorist attacks and the legality of this practice.

Mr. Arar testified, via video hookup from Canada, that he was stopped by U.S. immigration officials while transiting through JFK airport in New York, detained for nearly two weeks, and then sent to Syria against his wishes and despite telling U.S. officials that he would be tortured there. Mr. Arar described his year in a Syrian jail cell as being held "in a grave" and how, during interrogations, he was beaten with a shredded electrical cable, punched, and blindfolded. He recalled being placed outside other interrogation rooms where he could hear prisoners screaming in pain during interrogations, explaining that "the women's screams haunt me the most." After nearly a year, Mr. Arar was finally released by Syria without charge.

Professor Roach, who was appointed to the commission convened by the Canadian government to investigate Mr. Arar's case following his release by Syria and return to Canada, testified that the Canadian Arar Commission concluded that there was no evidence that Mr. Arar had any ties to terrorism, and that Canadian intelligence officials mistakenly had passed misinformation about Mr. Arar to U.S. intelligence officials. Professor Roach explained that,

despite secrecy concerns raised by government officials, the Commission had been able to review documents and testimony and publish an extensive report without any harmful public disclosure of sensitive national security information.

Fred Hitz testified that he opposed the rendition of suspects for purposes of interrogation, explaining that the practice undermines international intelligence cooperation. Mr. Garcia explained applicable immigration removal laws and U.S. obligations under the Convention Against Torture, while Professor Cole testified that extraordinary rendition violates U.S. and International Law. Daniel Benjamin testified that U.S. rendition policy puts at risk the willingness of our allies to cooperate with U.S. anti-terrorism efforts and diminishes our moral standing in the world.

Oversight hearing on Torture and the Cruel, Inhuman, and Degrading Treatment of Detainees: the Effectiveness and Consequences of "Enhanced" Interrogation

Summary.—On November 8, 2007, the Subcommittee held its first oversight hearing to investigate the use of aggressive and physically coercive interrogation techniques. This initial hearing explored claims that aggressive interrogation—beyond the standards set forth in the Army Field Manual—is necessary and effective when questioning detainees in the Administration's war on terror. Testimony was received from: Malcolm W. Nance, Anti-Terrorism/Counter-Terrorism Intelligence Specialist, former SERE Instructor; Steven Kleinman, Colonel, USAFR, Intelligence and National Security Specialist, Senior Intelligence Officer/Military Interrogator; Amrit Singh, Staff Attorney, ACLU.

Malcolm Nance, a former instructor at the U.S. Navy Survival, Evasion, Resistance and Escape (SERE) School, opposed Administration claims that "waterboarding" a detainee does not constitute torture and described the technique as "an overwhelming experience that induces horror, triggers a frantic survival instinct" and results in a subject answering questions with "a truth, a half-truth, or outright lie in order to stop the procedure." Mr. Nance testified that, by lowering the standard on how it treats detainees, the U.S. was setting a harmful and dangerous standard for treatment of its own service members and that the reported mistreatment of detainees by the U.S. was increasing anti-American feelings in the Middle East. Colonel Steven Kleinman, an expert interrogator and human intelligence officer, testified that the conclusion that coercion is an effective means of obtaining reliable intelligence information "is, in my professional opinion, unequivocally false." He further testified that the standards of conduct for interrogation contained in the Army Field Manual are sufficiently flexible to allow for fully effective interrogation. Amrit Singh, an attorney who has reviewed hundreds of official documents obtained in a FOIA lawsuit against the Administration, testified that official authorization of harsh techniques had opened the door to widespread abuse and torture of detainees as illustrated by the widespread abuse of prisoners at Abu Ghraib prison in Iraq. All three witnesses agreed that information gained through aggressive, coercive interrogation is not reliable and that using such techniques has damaged U.S. moral and legal standing in the world.

Oversight hearing on Reform of the State Secrets Privilege

On January 29, 2008, the Subcommittee held an oversight hearing to explore judicial development and executive branch usage of the state secret privilege, and the need for legislative action. Testimony was received from H. Thomas Wells, Jr., President-Elect, American Bar Association; Judith Loether, daughter of one of the victims of the plane crash at issue in U.S. v. Reynolds; Hon. Patricia Wald, retired Chief Judge for the U.S. Court of Appeals for the D.C. Circuit; Patrick Philbin, partner at Kirkland & Ellis; and Kevin Bankston, Senior Attorney, Electronic Frontier Foundation.

Mr. Wells explained that congressional reform was necessary to address increased use of the privilege to seek dismissal of cases at the pleadings stage, noting that "[i]n the absence of congressional guidance, courts have adopted divergent approaches" to these cases, with some courts "deferring to the Government without engaging in sufficient inquiry into the Government's assertion of the privilege." Judge Wald agreed that "the courts sometimes are so deferential that if the Government makes in its affidavits even a prima facie plausible claim of state security being involved, they will shy away and they will not go beyond that." Like the ABA, Judge Wald supported legislation that would require "serious judicial review" of state secret claims, including review of the actual material that the government seeks to withhold. Judge Wald and Mr. Bankston emphasized the need for judges to have sufficient flexibility to fashion appropriate orders. "The thrust of legislation on state secrets should be to emphasize judicial flexibility and creativity in finding alternatives to the original material that will permit the case to proceed whenever possible." Mr. Wells, Judge Wald, and Mr. Bankston emphasized that Congress should enact procedures and standards that require courts independently to review privilege claims, make every effort to allow cases to proceed, avoid premature and unjust dismissal of claims or cases, and require a nonprivileged substitute (e.g., a summary or redacted version) for privileged material where at all possible. Patrick Philbin agreed that Congress has the constitutional authority to codify the state secret privilege but cautioned against "undermin[ing] the executive's authority to protect national security information." Mr. Philbin testified that judges should defer to the executive branch's judgment as to what constitutes a state secret.

Oversight hearing on Justice Department's Office of Legal Counsel

Summary.—On February 14, 2008 the Subcommittee held the first in a series of oversight hearings into the role of Administration lawyers in the development of the Administration's interrogation policies. At this first hearing, testimony was received from: Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice.

Following the terrorist attacks of September 11, 2001, the Administration embarked on a aggressive and highly controversial program of harsh or "enhanced" interrogation of detainees suspected of connection to terrorism. This program was given legal approval by the Department of Justice in a series of secret opinions authored by the Department's Office of Legal Counsel. These OLC opinions authorized and justified severe treatment of detainees by,

among other things, concluding that U.S. and International prohibitions on torture and cruel, inhuman, or degrading treatment did not prohibit "waterboarding," limiting "torture" to conduct causing "severe organ failure or death," denying detainees the baseline guarantee of "humane" treatment contained in the Geneva Conventions, and proclaiming that the President could authorize torture in his role as commander-in-chief. The opinions that have been made public have been criticized as poorly reasoned, result-oriented, and politically motivated. Ultimately, a number of these opinions were formally withdrawn by the Department.

Press reports indicated that Administration lawyers in the White House, the Department of Defense, and the Department of Justice all played in significant roles in developing and approving these interrogation methods.[220] Over the course of 2008, the Subcommittee held an extensive series of hearings to explore the role played by these lawyers and assess whether any U.S. or International laws may have been violated.

The first in this series, the Subcommittee's February 14, 2008, hearing provided an opportunity to explore the substance and process of the OLC with the current head of that office, Steven Bradbury, who reportedly authored several controversial memoranda regarding interrogation of detained terror suspects. Mr. Bradbury testified that, since 9/11, the Central Intelligence Agency has operated a program of detention and interrogation of "high value al Qaeda terrorists" and that the CIA has used "alternative" or "enhanced" interrogation methods that go beyond what is permitted by the Army Field Manual. Mr. Bradbury acknowledged that certain detainees had been subject to "waterboarding," but testified that this practice had not been used since 2003. Mr. Bradbury testified that the OLC reviewed the CIA program "from the very beginning," and approved it. In explaining the OLC's analysis under the U.S. anti-torture statute, Mr. Bradbury testified that "severe" physical pain or suffering must take into account both the intensity and duration of the suffering so that something that doesn't last very long "may not constitute severe physical suffering. To constitute severe mental pain or suffering, Mr. Bradbury testified that the interrogator would have to intend to cause prolonged mental harm to be unlawful. Mr. Bradbury further testified that interrogation techniques used by the CIA had been adapted from the SERE (Survival, Escape, Resistance, and Evasion) program, which is used by the U.S. to train its service members for how they may be treated by enemy nations who do not observe the laws of war.

From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part I

Summary.—On May 6, 2008, the Subcommittee held its second hearing into the role of Administration lawyers in the development of the Administration's interrogation policies. Testimony was received from: David B. Rivkin, Jr., Partner, Baker Hostetler, LLP; David J. Luban, Professor of Law, Georgetown University Law Center; Marjorie Cohn, Professor of Law, Thomas Jefferson School

[220] Sands, The Green Light, Vanity Fair, May 2008.

of Law; Philippe Sands, Professor of Law, University College London.

At this hearing, Professor Phillipe Sands presented the findings of his investigation into the development and legal approval of the Administration's interrogation programs:

> [T]he Administration has spun a narrative that is false, claiming that the impetus for the new interrogation techniques came from the bottom-up. That is not true: the abuse was a result of pressures and actions driven from the highest levels of government. The Administration claims that it simply followed the law. My investigation indicated that—driven by ideology—the Administration consciously sought legal advice to set aside international constraints on detainee interrogations. The Administration relied on a small number of political appointees, lawyers with no real background in military law, with extreme views on executive power, and with an abiding contempt for international rules like the Geneva Conventions.

Professor Marjorie Cohn, President of the National Lawyers Guild, testified that "top U.S. officials are liable for war crimes under the U.S. War Crimes Act and torture under the Torture Statute." Georgetown law professor and legal ethics expert David Luban questioned whether an appropriate process had been followed in drafting these opinions and criticized their substance, testifying that "the torture memos take enormous liberties with the law and reach eccentric conclusions." David Rifkin of the law firm Baker Hostetler, testifying for the minority, denounced what he described as a "witch hunt" against the Administration lawyers who participated in drafting and approving interrogation policies.

Joint oversight hearing on the U.S. Department of Homeland Security Inspector General Report OIG–08–18, The Removal of a Canadian Citizen to Syria

Summary.—On June 5, 2008, the Subcommittee held a second joint hearing with the Subcommittee on International Organizations, Human Rights, and Oversight of the House Committee on Foreign Affairs on the rendition of Maher Arar to torture in Syria. Testimony was received from: Richard L. Skinner, Office of Inspector General, U.S. Department of Homeland Security; Clark Kent Ervin, Director, Homeland Security Program, The Aspen Institute; Scott Horton, Distinguished Visiting Professor, Hofstra Law School.

This second joint hearing on rendition to torture focused on the DHS' Office of Inspector General investigation report regarding Mr. Arar's case. That report was the result of a four-year-long investigation, which initially had been requested by Rep. John Conyers, Jr., then the Ranking Member of the House Judiciary Committee in December 2003, just two months after Mr. Arar had been released by Syria. The publicly-released report of that investigation reveals troubling facts regarding possible criminal misconduct. For example, the DHS OIG concluded that, after finding that it was "more likely than not" that Mr. Arar would be tortured if sent to Syria, INS officials still concluded that the United States could send Mr. Arar to Syria based on "ambiguous" assurances whose va-

lidity was not examined. This decision was made by former INS Commissioner James W. Ziglar, with attorneys from the Office of the Deputy Attorney General making key decisions and consulting with INS officials at various stages in the removal process.

During the June 5, 2008 hearing, current DHS Inspector General Richard L. Skinner and former DHS Inspector General Clark Ervin testified that they believe that the removal of Mr. Arar to Syria may have violated criminal laws, including the Convention Against Torture and Federal Torture Statute. Mr. Ervin testified that the DHS OIG report led him to conclude that United States officials intended to render Mr. Arar to Syria, as opposed to Canada, because of the likelihood that he would be tortured in Syria and the certainty that he would not be tortured in Canada. Mr. Skinner and Mr. Horton agreed that a prima facie case of criminal misconduct could be made based on facts showing that high-ranking U.S. officials intentionally deprived Mr. Arar of the means to challenge his detention and transfer with the knowledge that he would be tortured upon transfer to Syria.

From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part II

Summary.—On June 18, 2008, the Subcommittee held its third hearing into the role of Administration lawyers in the development of the Administration's interrogation policies. Testimony was received from: Daniel Levin, White & Case, LLP; David B. Rivkin, Jr., Partner, Baker & Hostetler; Lawrence Wilkerson, Professor, College of William and Mary.

Daniel Levin, former Acting Assistant Attorney General in charge of the Office of Legal Counsel described his experiences in seeking to draft a new legal opinion on the federal torture statute to replace the earlier John Yoo opinions that had been withdrawn. Like David Luban, who testified at the Subcommittee's May 6th hearing, he questioned the secretive process used to draft the earlier opinions. He also acknowledged under questioning that he had not voluntarily left the office and was removed by Attorney General Alberto Gonzales at a time when he was trying to complete more restrictive opinions on interrogation. Colonel Lawrence Wilkerson, former Chief of Staff to Colin Powell, testified that he had investigated this issue for Secretary Powell and had concluded that the flawed legal opinions developed to approve CIA interrogations had been co-opted by senior Administration officials such as David Addington and Defense Department Chief Counsel Jim Haynes for military use. Col. Wilkerson also described hearing from Secretary Powell that the Secretary believed that President Bush himself was complicit in these decisions. David Rivkin, appearing again for the minority at this hearing, again defended the conduct and ethics of Administration lawyers involved with interrogation issues.

Douglas Feith, former Undersecretary of Defense for policy, was scheduled to appear at this hearing but withdrew his agreement to appear the day before the hearing because he was not willing to testify alongside Col. Wilkerson.

From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part III

Summary.—On June 26, 2008, the Subcommittee held its fourth hearing into the role of Administration lawyers in the development of the Administration's interrogation policies. Testimony was received from: David Addington, Chief of Staff, Vice President of the United States; Christopher Schroeder, Charles S. Murphy Professor of law and Public Policy Studies, Duke University; John Yoo, Professor, Boalt Hall School of Law, University of California at Berkeley.

Mr. Addington and Professor Yoo defended their roles in developing and approving the Administration's interrogation program, while Professor Schroeder noted numerous criticisms of both the process and substance of their work. Both Mr. Addington and Mr. Yoo also minimized their responsibility for Administration actions in this area, with Mr. Addington testifying under questioning from Subcommittee Chairman Nadler that he was not morally or legally responsible for any wrongs that may have been committed in the Administration's interrogation program. Under questioning from Chairman Conyers, Professor Yoo was unwilling to identify any method of interrogation that the President could not lawfully order, and would not even say whether the President had legal authority to order a suspect buried alive. Mr. Addington also distanced himself from the controversial "unitary executive" theory of Presidential theory, claiming "I don't know what it is."

From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part IV

Summary.—On July 15, 2008, the Subcommittee held its fifth hearing into the role of Administration lawyers in the development of the Administration's interrogation policies. Testimony was received from: Douglas Feith, Georgetown University (testifying pursuant to subpoena); Philippe Sands, Professor of law, University College London; Deborah Pearlstein, Visiting Scholar, Princeton University.

This hearing explored Mr. Feith's role in approving harsh interrogations for use by the U.S. military and, under questioning by Subcommittee Chairman Nadler, Mr. Feith asserted that many extremely harsh interrogation techniques such as 20 hour interrogation sessions, stress positions, isolation, nudity, and exploitation of phobias could be employed consistent with the Geneva Conventions. Professors Pearlstein and Sands sharply disputed that assertion, and much of the hearing consisted of an extended between Mr. Feith and Professor Sands—who had interviewed Mr. Feith for his book regarding the Administration's development of interrogation policy—regarding the honesty and accuracy of various prior statements by both.

Professor Pearlstein testified that, based on her study of the issues, she believed that "senior civilian legal and policy guidance was one of the key factors that led to the record of abuse [of U.S. detainees]" and that "the pattern of abuse [of U.S. detainees] followed a series of broad legal decisions (as other witnesses have addressed) to change what had been for decades settled U.S. law."

From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, Part V

Summary.—On July 17, 2008, the Full Committee held the sixth and final hearing regarding the role of Administration lawyers in the development of the Administration's interrogation policies. Testimony was received from: Hon. John Ashcroft, former Attorney General, U.S. Department of Justice; Benjamin Wittes, Fellow and Research Director in Public Law, Brookings Institution; Walter Dellinger, Former Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice.

Attorney General Ashcroft defended the Administration's interrogation program and asserted that it had been lawful and had kept the nation safe. Mr. Ashcroft's testimony, however, acknowledged that the Department's legal guidance on interrogation came in early August 2002, and that he was not aware of any legal approval being given for interrogation activities that had been undertaken before that time, including the extremely harsh interrogation of Abu Zubaydeh, who the CIA has acknowledged waterboarding. Mr. Ashcroft also described his decision not to accept John Yoo as head of the Office of Legal Counsel and the concerns that underlay that decision.

Former Assistant Attorney General Dellinger testified that "It is indisputable that something went badly wrong with the Office of Legal Counsel" during the early part of the Bush Administration. Mr. Dellinger further explained the core failure of the office as follows: "[T]he drafters of the 'torture memos' deviated from their duty to offer neutral legal advice, instead reaching a pre-determined and unsupportable legal conclusion." Mr. Wittes offered forward-looking testimony that asserted Congress had largely resolved the problem of detainee abuse through the Detainee Treatment Act and called for additional legislation to clarify standards for CIA interrogations. In addition, Mr. Wittes called for legislation authorizing the President to immunize interrogators who violate the law on Presidential orders so that accountability for such misconduct can be clearly focused on the President him or herself.

Oversight Hearing on Habeas Corpus and Detentions at Guantanamo Bay (June 26, 2007)

Summary.—This hearing focused on the Administration's Guantanamo detention policies and an exploration of the need to restore habeas corpus rights to Guantanamo detainees in light of the inadequate substitutes in place for the detainees to challenge their detention. Witnesses at this hearing were: William Taft, IV, Of Counsel Resident at Fried, Frank; former legal adviser at the State Department under President George W. Bush; Lt. Commander Charles Swift, JAG Corps U.S. Navy; Jonathan Hafetz, Litigation Director of the Liberty and National Security Project at the Brennan Center for Justice; Gregory Katsas, Principal Deputy Associate Attorney General of the United States; and Brad Berenson, Partner, Sidley Austin, LLP.

HEALTH CONSEQUENCES OF THE ATTACKS OF SEPTEMBER 11, 2001

Oversight Hearing on the U.S. Environmental Protection Agency's Response to Air Quality Issues Arising from the Terrorist Attacks of September 11, 2001: Were There Substantive Due Process Violations? Serial 110–54

Summary.—The Subcommittee held a hearing on June 25, 2007, to investigate whether the EPA's response to the attacks on the World Trade Center on September 11, 2001 violated the rights of first responders, workers, students, and residents in the area by misrepresenting the health risks associated with the destruction of the buildings.

The Honorable Christine Todd Whitman, Whitman Strategy Group, and former EPA Administrator; John L. Henshaw, Henshaw & Associates, Inc., and former Administrator of the Occupational Safety and Health Administration; Samuel Thernstrom, American Enterprise Institute, and former Associate Director of the Council on Environmental Quality; Tina Kreisher, Communications Director U.S. Department of the Interior, and former Associate Administrator for Communications at EPA; David Newman, New York Committee of Occupational Safety and Health; Eileen McGinnis, Senior Vice President Whitman Strategy Group, and former Chief of Staff to then-Administrator Whitman at EPA; Marianne L. Horinko, Executive Vice President Global Environment & Technology Foundation, and formerly with EPA; and Suzanne Y. Mattei, Former New York City Executive of the Sierra Club.

Ms. Mattei and Mr. Newman discussed the health impact of the destruction of the World Trade Center, and critiqued the manner in which the government had represented the ensuing health risks to first responders and the general public.

Ms. Whitman, Mr. Henshaw, Mr. Thernstrom, Ms. Kreisher, Ms. McGinnis, and Ms. Horinko explained their perspectives on the manner in which the government managed the crisis from an environmental and health perspective.

Oversight Hearing on "Paying with their Lives: The Status of Compensation for 9/11 Health Effects"

Summary.—This hearing was held jointly with the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law on April 1, 2008. The hearing examined the status of compensation for victims of the terrorist attacks on the World Trade Center of September 11, 2001. Specifically the hearing focused on the Captive Insurance Fund set up with a $1 billion appropriation to provide relief for individuals who had developed health problems as a result of exposure to toxins released as a result of the attacks.[221]

Testifying at the hearing were: Kenneth R. Feinberg, Esq., Former Special Master Victim Compensation Fund; Michael Cardozo, Corporation Counsel, City of New York; Anne-Marie Lasowski, Acting Director, Education Workforce and Income Security, Government Accountability Office; Michael A. Valentin,

[221] Pub. L. No. 108–7, 117 Stat. 11, 517–518 (2nd Cir. 2003).

Former NYPD Detective; Theodore H. Frank, Resident Fellow, American Enterprise Institute for Public Policy, Research Director, AEI Legal Center for the Public Interest; James Melius, MD, Ph.D, Administrator, New York State Laborers' Health and Safety Trust Fund.

Mr. Feinberg discussed ways to provide appropriate funding and administration to ensure that uncompensated victims received assistance. Ms. Lasowski provided background on the track record of four earlier federal programs designed to assist individuals who had experienced serious health effects as a result of exposure to dangerous materials. While Mr. Frank expressed support for the Victims Compensation Fund administered by Mr. Feinberg in the wake of the attacks, he expressed the concern that proposals to provide compensation for individuals suffering serious health effects was overbroad in its application, and too narrow in its protection of contractors facing litigation. Dr. Melius discussed the health effects being experienced by the affected individuals. Detective Valentin gave a personal account of those health effects and their impact on him and thousands of other first responders.

LAW ENFORCEMENT PRACTICES AND ACCOUNTABILITY

Oversight Hearing on Law Enforcement Confidential Informant Practices

Summary.—On July 19, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a joint Oversight Hearing on Law Enforcement Confidential Informant Practices. Witnesses at the hearing included: Wayne M. Murphy, Assistant District, Director of Intelligence, FBI; Professor Alexandra Natapoff, Loyola Law School; Commander Pat O'Burke, Deputy Commander, Narcotics Service, Texas Department of Public Safety; Dorothy Johnson Speight, Founder, Mothers In Charge; Ronald E. Brook, President, National Narcotic Officers' Association Coalition and Reverend Markel Hutchins, Minister and Civil Rights Leader.

This oversight hearing was the first in a series that explored law enforcement practices and their impact on civil and constitutional rights. The witnesses testified about the use of confidential informants, particularly in drug enforcement, and why their use persisted despite controversy. The witnesses also testified about how the use of confidential informants has influenced the practice of plea bargaining, increased the potential for abuse due to the inherent secrecy of the practice, and has affected poor and minority communities. Assistant District Murphy testified about existing federal guidelines and suggested policies designed to curb the potential for abuse.

Oversight Hearing on Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools

Summary.—On Tuesday, October 16, 2007, the Committee on the Judiciary convened an oversight hearing on Jena 6 and the Role of Federal Intervention in Hate Crimes and Race-Related Violence in Public Schools. The hearing witnesses were Mr. Donald Washington, U.S. Attorney, Western District of Louisiana; Mr. Richard

Cohen, President and CEO, Southern Poverty Law Center; Reverend Al Sharpton, President, National Action Network; Professor Charles Ogletree, Director, Charles Hamilton Houston Institute for Race and Justice, Harvard Law School; Reverend Brian Moran, Pastor, Jena Antioch Baptist Church, President, NAACP Jena Chapter; and Minority Witness: Ms. Lisa Krigsten, Counsel to the Assistant Attorney General, Civil Rights Division.

The purpose of the hearing was to examine the role of the federal government as it pertains to hate crimes, race-related school violence, and disparities within the juvenile criminal justice system in the context of Jena. While the high profile, controversial case of the Jena 6 warrants federal oversight, the hearing was meant to shed light on other inequities on the basis of race within the nation's school discipline and legal systems. The Jena 6 matter was not an isolated incident, but rather part of a nationwide issue, that could be used as a vehicle for a larger discussion of concerns about the inequitable application of rules and laws, particularly with respect to African American males. This hearing also discussed the federal remedies available for those students and juveniles who have been subjected to discriminatory and biased treatment by school administrators, prosecutors, judges, and law enforcement, for example.

New York Forum on Law Enforcement Accountability

Summary.—On May 9, 2008, the Subcommittee on the Constitution, Civil Rights & Civil Liberties sponsored a forum on Law Enforcement Accountability in New York City in the wake of the highly publicized shooting of an unarmed man on the night before his wedding by officers of the New York Police Department. Witnesses at the forum included: Rachel Harmon, Professor, University of Virginia School of Law (former federal prosecutor with the Justice Department's Civil Rights Division, Criminal Section); Dr. Mary Frances Berry, former Chairwoman of the United States Commission on Civil Rights and Endowed Chair at the University of Pennsylvania; Chris Stone, Professor, Kennedy School of Government, Harvard University; Deborah Ramirez, Professor, Northeastern University; Hazel Dukes, New York NAACP; Revered Al Sharpton, National Action Network; Kamau Franklin, Racial Justice Fellow, Center for Constitutional Rights and Michael Hardy, Esq., Counsel for the Sean Bell family.

The forum was intended to inform the community of the federal role in overseeing the operations of state and local law enforcement agencies, similar to fora that the Judiciary Committee held in Los Angeles and Miami following high profile allegations of police misconduct. The forum also served as the Committee's initial inquiry into law enforcement accountability issues and potential legislative solutions as they pertained to the shooting of Sean Bell. The academic expert witnesses testified about existing federal authority to oversee the activities of state and local law enforcement and suggested possible amendment to existing authority that would improve law enforcement reform practices. The local expert witness provided context for the discussion regarding the ways in which police and community relations can be enhanced in light of often deteriorating community confidence in the police.

CIVIL RIGHTS ENFORCEMENT

Hearing on "Changing Tides: Exploring the Current State of Civil Rights Enforcement Within the Department of Justice," Serial No. 110–44

Summary.—On Thursday, March 22, 2007, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties conducted an oversight hearing to examine the enforcement record of the Civil Rights Division of the Department of Justice and to evaluate the Division's progress in accomplishing its mission to end discrimination. The following witnesses testified before the Subcommittee: Wan J. Kim, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division; William Taylor, Chair, Citizens' Commission on Civil Rights; Joseph Rich, Director of the Fair Housing Community Development Project, Lawyers' Committee for Civil Rights Under Law; Roger Clegg, President and General Counsel, Center for Equal Opportunity; and Wade Henderson, President and CEO, Leadership Conference on Civil Rights.

Mr. Kim testified that while much has been achieved under the Civil Rights Act of 1964 and other civil rights laws, the Civil Rights Division's daily work demonstrates that discrimination still exists. He then highlighted several civil rights cases filed by the Department. Mr. Taylor testified that as the Civil Rights Division approached its 50th anniversary, it is in deep trouble because the Bush Administration has used it as a vessel for its own political objectives, often disregarding the law and sullying the group's reputation for professionalism and integrity. Mr. Rich testified that during the Bush Administration, a dramatic change had taken place; there appeared to be a conscious effort to remake the Division's career staff. He said that political appointees often assumed an attitude of hostility toward career staff, exhibited a general distrust for recommendations made by them, and were very reluctant to meet with them to discuss their recommendations. Mr. Clegg testified that since Congress appropriates money for the Civil Rights Division and wants it to enforce the laws it has passed, it makes sense for the members to keep an eye on what sort of job the Division is doing—so long, of course, as the oversight process does not become so onerous that it actually prevents the Division from doing its job. Mr. Henderson testified that over the last six years, politics have trumped substance and altered the prosecution of our nation's civil rights laws in many parts of the Civil Rights Division. He explained that while the Division is charged with enforcing federal civil rights statutes aimed at eliminating discrimination and ensuring equal treatment and equal justice under law, recent decisions made within the Division have reversed longstanding civil rights policies and have impeded civil rights progress.

Oversight Hearing on Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice, Serial No. 110–91

Summary.—On Tuesday, September 25, 2007, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties conducted an oversight hearing to evaluate the effectiveness of the Employment

Litigation Section in enforcing federal statutes designed to prevent employment discrimination. The following witnesses testified before the Subcommittee: Asheesh Agarwal, Deputy Assistant Attorney General, U.S. Department of Justice, Civil Rights Division; Richard Ugelow, Practitioner In Residence, American University Washington College of Law; Janet Caldero, Beechhurst, NY; Eric S. Dreiband, Partner, Akin Gump Strauss Hauer & Feld; and Jocelyn Frye, General Counsel, Workplace Fairness Program, National Partnership for Women and Families.

Asheesh Agarwal testified that the Civil Rights Division remains diligent in combating employment discrimination and highlighted a few of the Employment Litigation Section's cases. Mr. Ugelow testified that eliminating discrimination against African-Americans was at the heart of the creation of the Civil Rights Division. He then explained that the Employment Litigation mandate was conscientiously fulfilled in an even-handed and judicious fashion by both Republican and Democratic Administrations, until the George W. Bush administration. He said the Bush Administration sought to significantly limit enforcement in the area of discrimination targeted to African Americans and Latinos. Ms. Caldero testified about one of several cases where the Department changed positions, the U.S. v. The New York City Board. She said that DOJ switched from defending the civil rights of women and minority plaintiffs to being their opponent. She said she trusted the Justice Department, and then it betrayed and abandoned her and many others. Mr. Dreiband testified that it is important to remember that the folly and disgrace of unlawful discrimination continues to plague our nation. He said that enforcement of the civil rights laws vests the EEOC and the Civil Rights Division with sacred responsibilities that speak to the very essence of who we are as a people, and who we aspire to be. Ms. Frye testified that the past six and one-half years under the Bush Administration have prompted serious, troubling questions about the strength and scope of the Employment Section's Title VII enforcement efforts. Among the concerns, she pointed out: the decline in the Employment Section's overall enforcement and litigation numbers; perceptions of decreased emphasis on cases that traditionally have been a high priority, such as race discrimination cases involving African Americans; fewer pattern or practice cases and disparate impact cases that could be used to uncover systemic practices that affect large numbers of employees; reversals of legal positions in key cases, resulting in less protection for discrimination victims and making it much harder for discrimination victims to vindicate their rights; and allegations of improper political influence affecting attorney hiring and case decisions.

Oversight Hearing on Voting Rights Section of the Civil Rights Division, Serial No. 110–156

Summary.—On Tuesday, October 30, 2007, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties conducted an oversight hearing to review the Voting Section's progress in accomplishing its mission to end discrimination in voting and to enhance voting opportunities. In addition the hearing examined the allocation of Department of Justice resources devoted toward eradicating

obstacles to the franchise. The following witnesses testified before the Subcommittee: John Tanner, Chief, Voting Section, U.S. Department of Justice, Civil Rights Division (CRT); Laughlin McDonald, Director—ACLU Voting Rights Project; Toby Moore, former Geographer/Social Science Analyst of the Voting Section, U.S. Department of Justice, CRT; Bob Driscoll, Partner Alston & Bird, LLP; and Julie Fernandes, Senior Policy Analyst and Special Counsel—Leadership Conference for Civil Rights

Mr. Tanner testified that the Voting Section remains committed to the continued enforcement of the Nation's voting rights laws and highlighted several cases from the Voting Section case docket. Mr. McDonald testified that the revelations of partisan bias in the Civil Rights Division Voting Section's decision making create a lack of confidence and trust in the section. He explained that partisan bias undermines the section's effectiveness and calls into question the section's decisions about what to investigate and what kind of cases to bring. He pointed out that the section's recent actions are a clear signal that partisanship can trump racial fairness, and thus increases the likelihood that minorities will be manipulated to advance partisan goals. Mr. Moore testified that broad generalizations, deliberate misuse of statistics, and casual supposition, were preferred over the analytical rigor, impartiality and scrupulous attention to detail after Tanner became the chief of the Voting Section in 2005. Mr. Driscoll testified about the need for the Civil Rights Division to balance voters' access to the polls with ensuring ballot integrity. Ms. Fernandes testified that in recent years the Voting Section has turned away from its historic mandate. She explained that instead of promoting access to the polls, the Voting Section has used its enforcement authority to deny access and promote barriers to block legitimate voters from participating in the political process. As examples, she cited the decline in voting discrimination cases filed on behalf of African Americans, the decrease in the National Voter Registration Act enforcement cases; a change in the Department's position on significant legal questions such as the impact of photo identification requirements; and the increased emphasis in voter fraud which often has a chilling effect on the participation of minority voters, particularly in jurisdictions where there is a history of disfranchisement efforts targeting racial and ethnic minorities.

Oversight Hearing on Voter Suppression, Serial No. 110–100

Summary.—On Tuesday, February 26, 2008, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties conducted an oversight hearing on vote suppression to examine whether the enforcement actions of the Department of Justice were protecting voting rights or instead promoting barriers to the franchise. The following witnesses testified before the Subcommittee: Asheesh Agarwal, Deputy Assistant Attorney General, U.S. Department of Justice, Civil Rights Division; J. Gerald Hebert, Executive Director and Director of Litigation, The Campaign Legal Center; Hilary O. Shelton, Director, Washington Bureau of the NAACP; Rep. Tom Emmer, Deputy Minority Leader, Minnesota State House of Representatives; and Lorriane C. Minnite, PhD, Assistant Professor of Political Science, Barnard College, Columbia University.

Mr. Agarwal testified that the Bush Administration is committed to vigorously enforcing the Voting Rights Act, recently reauthorized in 2006. He assured members that the Department would vigorously defend the statute's constitutionality in federal court. Mr. Hebert testified that vote suppression and racially targeted vote caging schemes threaten the integrity of our elections and undermine our democracy. He outlined the steps that should be taken by the U.S. Department of Justice now to prevent caging and other efforts to use law enforcement machinery to advance partisan goals. Mr. Shelton testified that the number of voter suppression cases brought by the current Department of Justice does not reflect the number of complaints of people across the Nation who feel their rights have been violated. Shelton said that the NAACP, as well as representatives from almost every other civil and voting rights organization, all report an increase in the number of Americans—primarily racial and ethnic minority Americans—who say that they have been denied their Constitutional right to register and vote. Mr. Emmer explained that it is imperative to maintain the integrity of the electoral process and thus the public confidence in that process. Mr. Minnite testified that voter fraud is rare, and the cure is worse than the disease. She questioned the purpose of the Department of Justice's Ballot Access and Voting Integrity Initiative, pointing out that the program has turned up very little individual voter fraud.

Oversight Hearing on the Enforcement of the Fair Housing Act of 1968, Serial No. 110–183

Summary.—On Thursday, June 12, 2008 the Subcommittee on the Constitution, Civil Rights, and Civil Liberties held an oversight hearing on the enforcement of the Fair Housing Act by the Housing Section of the Civil Rights Division (CRT) of the U.S. Department of Justice (DOJ) and the Office of Fair Housing and Equal Opportunity (FHEO) of the Department of Housing and Urban Development (HUD). This hearing coincided with the 40th Anniversary of the Fair Housing Act. The following witnesses testified before the Subcommittee: Jessie Liu, Deputy Assistant Attorney General, DOJ, CRT; Kim Kendrick, Assistant Secretary, HUD, Office of Fair Housing and Equal Opportunity, HUD; James Carr, Chief Operating Officer, National Community Reinvestment Coalition (NCR); Shanna L. Smith, President & CEO, National Fair Housing Alliance; Suzanne Sangree, Chief Solicitor, City of Baltimore Law Department; Stan Liebowitz, Ashbel Smith Professor of Economics Director, Center for the Analysis of Property Rights and Innovation School of Management, University of Texas at Dallas; and Audrey Wiggins, Director, Fair Housing Environmental Justice, Lawyers' Committee for Civil Rights Under Law.

Mr. Liu testified that the Housing Section is strongly committed to enforcing the Fair Housing Act, the Equal Credit Opportunity Act, Title II of the Civil Rights Act of 1964, the Religious Land Use and Institutionalized Persons Act, and the Servicemembers Civil Relief Act. Ms. Kendrick testified that housing discrimination persists. She explained that HUD studies show that African Americans, Hispanics, Asian Americans, and Native Americans receive consistently unfavorable treatment at least 20 percent of the time

when they seek to purchase or rent a home. Mr. Carr testified that our federal fair housing enforcement efforts are failing to protect the interests of America's working families and minority homebuyers. Ms. Smith testified that the lack of enforcement of federal fair housing laws by the Department of Justice and the Department of Housing and Urban Development is the main cause of the mismatch between the high incidence of housing discrimination and the low incidence of complaints of housing discrimination. She explained that landlords, real estate agents, lenders, insurance agents and others have limited fear of getting caught in the act of discriminating simply because neither the federal, state nor local governments have made fair housing enforcement a priority. Even those who are prosecuted often pay such a small penalty that discrimination becomes just another cost of doing business. As a result, housing providers continue to discriminate and our country remains highly segregated. Ms. Sangree testified that Baltimore is a case study of the damage that has befallen cities in the absence of aggressive federal enforcement of this nation's civil rights laws, especially the Fair Housing Act of 1968. She explained that lax enforcement of the Fair Housing Act, combined with federal relaxation of federal banking regulations and federal preemption of states' ability to regulate lenders, created an environment in which racially discriminatory predatory lending flourished. Mr. Liebowitz testified that the disarray of the current mortgage market is the result of claims that minorities were being denied mortgages because of racial discrimination. Ms. Wiggins testified about the failures of the U.S. Department of Justice and the U.S. Department of Housing and Urban Development to enforce the Fair Housing Act. She explained that Communities have been obligated to act as principal prosecutors of the Fair Housing Act, as a result of DOJ's de-emphasis, if not refusal, on bringing disparate impact cases based on race, failures in the complaint process of HUD's Office of Fair Housing and Equal Opportunity, and a cut in funding to private and local government fair housing agencies, have burdened communities to act as principal enforcers of the Fair Housing Act.

Hearings of Lessons Learned From the 2004 Presidential Election, Serial No. 110–199

Summary.—On Thursday, July 24, 2008, the Subcommittee on the Constitution, Civil Rights and Civil Liberties held an oversight hearing to examine the range of voting problems encountered during the 2004 presidential election in order to glean key lessons that can be applied to recurring voting problems before the 2008 general election. The Committee also examined the proactive measures that could be taken by the Department of Justice, Election Assistance Commission, and local and state election officials to effectively address potential voting problems. The following witnesses testified before the Subcommittee: J. Kenneth Blackwell, Ronald Reagan Distinguished Fellow for Public Policy—Buckeye Institute; Dan Tokaji, Associate Professor of Law, Associate Director, Election Law—Ohio State University, Moritz College of Law; Cleta Mitchell, Partner—Foley & Lardner LLP; Gilda Daniels, Assistant Professor of Law—University of Baltimore School of Law; Hans Von Spakovsky, Visiting Scholar The Heritage Foundation; J. Gerald

Hebert, Executive Director & Director of Litigation—The Campaign Legal Center.

Witnesses testified about election administration problems that arose in the course of Ohio's 2004 presidential election. Witnesses also discussed broader lessons that could be learned from Ohio's experience in 2004 as a means to guide preparatory efforts for the 2008 general election.

Joint Hearing on Federal, State, and Local Efforts to Prepare for the 2008 Election—Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, Joint with Subcommittee on Elections Committee on House Administration

Summary.—On Wednesday, September 24, 2008, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties and the Subcommittee on Elections held a joint oversight hearing to examine federal, state, and local efforts to prepare for the 2008 election. The following witnesses testified before the Subcommittees: David M. Farrell, Deputy Assistant Secretary of State and Director of Elections—Office of the Ohio Secretary of State; Pedro Cortes, Secretary of the Commonwealth of Pennsylvania; Rokey W. Suleman, General Registrar, Fairfax County Office of Elections; Doug Lewis, Director, National Association of Election Officials; Grace Chung Becker, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division; Paul F. Hancock, Partner, Kirkpatrick & Lockhart Preston Gates & Ellis, LLP; Karen K. Narasaki, Executive Director, Asian American Justice Center; Bryan P. O'Leary, Public Policy Consultant, Crowell Moring; James Terry, Chief Public Advocate—Consumers Rights League; Jocelyn Benson, Assistant Professor—Wayne State University Law School; Kristen Clarke Avery, Co-Director, Political Participation Group—NAACP Legal Defense Fund

Witnesses acknowledged the significant increase in the number of voters—more than 3.5 million new voters, up 64% from the same period 4 years ago. The witnesses discussed the proactive and preemptive steps that will and should be taken by federal, state, and local officials to address election administration and voting rights issues likely to arise during the 2008 Presidential election in order to ensure a fair election.

SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY [1]

HOWARD L. BERMAN, California, *Chairman*

JOHN CONYERS, JR., Michigan
RICK BOUCHER, Virginia
ROBERT WEXLER, Florida
MELVIN L. WATT, North Carolina
SHEILA JACKSON LEE, Texas
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
BRAD SHERMAN, California
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
ZOE LOFGREN, California
BETTY SUTTON, Ohio

HOWARD COBLE, North Carolina
TOM FEENEY, Florida
LAMAR SMITH, Texas
F. JAMES SENSENBRENNER, Jr., Wisconsin
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
CHRIS CANNON, Utah
RIC KELLER, Florida
DARRELL E. ISSA, California
MIKE PENCE, Indiana

Tabulation of subcommittee legislation and activity

Public:	
Legislation referred to the Subcommittee	87
Legislation on which hearings were held	4
Legislation reported favorably to the full Committee	4
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	1
Legislation pending before the full Committee	2
Legislation reported to the House	2
Legislation discharged from the Committee	2
Legislation pending in the House	0
Legislation passed by the House	3
Legislation pending in the Senate	3
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	0
Legislation enacted into Public Law as part of other legislation	1
Days of legislative hearings	4
Days of oversight hearings	11

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Courts, the Internet, and Intellectual Property has jurisdiction over the following subject matters: copyright, patent and trademark law, information technology, administration of U.S. Courts, Federal Rules of Evidence and Appellate Procedure, judicial ethics, other matters referred by the Chairman, and relevant oversight.

[1] Subcommittee chairmanship and assignments approved January 26, 2007, and February 28, 2007.

LEGISLATIVE ACTIVITIES

COURTS

H.R. 1955, the "Violent Radicalization and Homegrown Terrorism Prevention Act of 2007"

Summary.—Introduced by Representative Jane Harman, H.R. 1955 amends the Homeland Security Act of 2002 to add a new section concerning the prevention of violent radicalization and homegrown terrorism. The bill 1) establishes within the legislative branch the National Commission on the Prevention of Violent Radicalization and Homegrown Terrorism, 2) directs the Secretary of Homeland Security to establish or designate a university-based Center of Excellence for the Study of Violent Radicalization and Homegrown Terrorism that will assist officials through training, and 3) prohibits Department of Homeland Security from violating the civil rights of U.S. citizens or lawful permanent residents in its efforts to prevent homegrown terrorism.

Legislative History.—H.R. 1955 was introduced April 19, 2007 and was referred to the Committee on Homeland Security and the Committee on the Judiciary. The bill was referred to the Subcommittee on June 25, 2007. The bill was discharged from the Committee on the Judiciary October 16, 2007 upon reporting of the bill by the Committee on Homeland Security, as amended. On October 23, 2007, under suspension of the rules the House passed the bill, as amended, by a roll call of 404–6. The following day H.R. 1955 was read twice and referred to the Senate Committee on Homeland Security and Government Affairs.

H.R. 1979, the "Interstate Recognition of Notarizations Act of 2007"

Summary.—Introduced by Representative Robert B. Aderholt, H.R. 1979 requires each federal and state court to recognize any lawful notarization occurring in or affecting interstate commerce which is made by a notary public licensed or commissioned under the laws of a state other than the state where the court is located.

Legislative History.—H.R. 1979 was introduced on April 20, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on May 4, 2007. On July 10, 2007, under suspension of the rules the House passed H.R. 1979 without amendment by voice vote. The following day H.R. 1979 was received in the Senate, read twice and referred to the Senate Committee on the Judiciary.

H.R. 2128, the Sunshine in the Courtroom Act of 2007

Summary.—Introduced by Representative Steve Chabot, H.R. 2128 authorizes the presiding judge of a U.S. appellate 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 except when such action would constitute a violation of the due process rights of any party. At the request of any witness in a trial proceeding other than a party, a judge may order the face and voice of the witness to be disguised to render the witness unrecognizable to the broadcast audience. The bill also authorizes the Judicial Conference of the United States to promulgate ad-

visory guidelines regarding the management and administration of photographing, recording, broadcasting, or televising of court proceedings.

Legislative History.—H.R. 2128 was introduced on May 3, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on June 4, 2007. The bill was discharged from the Subcommittee on September 20, 2007. On October 24, 2007 the Committee on the Judiciary met in open session mark-up and ordered favorably reported H.R. 2128, as amended, by a roll call of 17–11.

H.R. 3086, to amend title 28, United States Code, to provide, in the case of certain widows and widowers whose judicial survivors' annuities are terminated on account of remarriage, for the restoration of benefits upon the dissolution of the remarriage

Summary.—Introduced by Representative Vic Snyder, H.R. 3086, amends the federal judicial code with respect to certain widows and widowers whose judicial survivors' annuities are terminated on account of remarriage before age 55. The bill would require restoration of such benefits, at the same rate, upon the dissolution of the remarriage by death, divorce, or annulment, if specified requirements are met.

Legislative History.—H.R. 3086 was introduced on July 18, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on August 10, 2007. While no action was taken on H.R. 3086 directly, similar language passed the House on September 27, 2008 as part of H.R. 7082, a bill dealing with the disclosure of inmate tax returns. This legislation became Pub. Law 110–428 on October 15, 2008.

H.R. 3174, the Equal Justice for Our Military Act of 2007

Summary.—Introduced by Representative Susan Davis, H.R. 3174 amends the federal judicial code to allow for review by writ of certiorari of certain cases denied relief or review by the U.S. Court of Appeals for the Armed Forces.

Legislative History.—H.R. 3174 was introduced on July 2, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on September 10, 2007. On September 27, 2008, under suspension of the rules the House passed H.R. 3174 by voice vote. The bill was received by the Senate on September 29, 2008. On October 2, 2008, H.R. 3174 was read twice and referred to the Senate Committee on the Judiciary.

H.R. 3753, the Federal Judicial Salary Restoration Act of 2007

Summary.—Introduced by Representative John Conyers, Jr., H.R. 3753 authorizes salaries of the following categories of federal judicial officers to be increased: judges of the United States district courts appointed under section 133(a) of title 28, United States Code, judges of the United States courts of appeals appointed under section 44(a) of title 28, United States Code, associate justices of the United States Supreme Court provided for in section 1 of title 28, United States Code, and the Chief Justice of the United States provided for in section 1 of title 28, United States Code.

Legislative History.—H.R. 3753 was introduced on October 4, 2007 and was referred to the Committee on the Judiciary. On December 12, 2007, the Committee on the Judiciary met in an open session mark-up and ordered H.R. 3753 reported as amended by a roll call of 28–5. No further action was taken on the bill.

H.R. 3921, to provide nationwide subpoena authority for actions brought under the September 11 Victim Compensation Fund of 2001

Summary.—Introduced by Representative Timothy Bishop, H.R. 3921 amends the September 11 Victims Compensation Fund of 2001 to allow a subpoena requiring the attendance of a witness at a trial or hearing conducted under such Act to be served at any place in the United States.

Legislative History.—H.R. 3921 was introduced on October 22, 2007 and was referred to the Committee on the Judiciary. On October 24, 2007, the Committee ordered the bill reported without amendment by voice vote. On October 29, 2007 the bill was reported by the Committee on the Judiciary. (H. Rep. 110–413). No further action was taken on this bill, however its contents were included in S. 2106, a bill to provide nationwide subpoena authority for actions brought under the September 11 Victim Compensation Fund of 2001, which was signed into law as Pub. Law 110–113.

H.R. 4854, the False Claims Corrections Act of 2007

Summary.—Introduced by Representative Howard L. Berman, H.R. 4854 amends the False Claims Act to revise requirements and procedures governing civil actions for false claims (qui tam actions) brought by private persons. The bill repeals the requirement that a false or fraudulent claim for payment must be presented directly to a federal employee or member of the Armed Forces (thus tying liability for such claims directly to federal money and property, regardless to whom the claim is presented).

Legislative History.—H.R. 4854 was introduced on December 17, 2007 and was referred to the Committee on the Judiciary. On February 25, 2008, H.R. 4854 was referred to both the Subcommittee on Commercial and Administrative Law and the Subcommittee on Courts, the Internet, and Intellectual Property. On June 19, 2008, the Subcommittee on Courts, the Internet, and Intellectual Property and the Subcommittee on Commercial and Administrative Law held a joint legislative hearing on H.R. 4854. Witnesses at the hearing included Albert Campbell, a qui tam relator from Winter Springs, FL; Shelley Slade, Partner, Vogel, Slade & Goldstein, LLP, Washington, DC; Peter B. Hutt II, Partner, Akin Gump Strauss Hauer & Feld, LLP, Washington, DC, representing the U.S. Chamber of Commerce; and James B. Helmer, Jr., President, Helmer, Martins, Rice & Popham Company, L.P.A., Cincinnati, OH. On July 16, 2008, the Committee ordered the bill reported, as amended, by voice vote. On the same day, the Subcommittee on Courts, the Internet, and Intellectual Property and the Subcommittee on Commercial and Administrative Law discharged the bill.

H.R. 6146, to amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments

Summary.—Introduced by Representative Steve Cohen, H.R. 6156 amends the federal judicial code to prohibit a domestic court from recognizing or enforcing a foreign judgment for defamation that is based upon a publication concerning a public figure or a matter of public concern, unless the domestic court determines that the judgment is consistent with the First Amendment of the Constitution.

Legislative History.—H.R. 6146 was introduced on May 22, 2008 and was referred to the Committee on the Judiciary. On September 27, 2008, under suspension of the rules the House passed H.R. 6146 as amended by voice vote. On September 29, 2008, the Senate received H.R. 6146.

H.R. 6610, to amend the Federal Rules of Evidence to address the waiver of the attorney-client privilege and the work product doctrine

Summary.—Introduced by Representative Sheila Jackson-Lee, H.R. 6610 amends the Federal Rules of Evidence to specify under what circumstances a disclosure of a communication or information covered by the attorney-client privilege and work product protection may be waived for purposes of other federal and state proceedings.

Legislative History.—H.R. 6610 was introduced on July 24, 2008 and was referred to the Committee on the Judiciary. No further action was taken on H.R. 6610, although similar legislation, S. 2450, became Pub. Law 110–402. See S. 2450 for further action.

H.R. 6855, to extend the authority for the United States Supreme Court Police to protect court officials off the Supreme Court grounds, and for other purposes

Summary.—Introduced by Representative Lamar Smith, H.R. 6855 extends through calendar year 2013 the authority of the United States Supreme Court Police to protect court officials off the Supreme Court grounds and changes the title of the Administrative Assistant to the Chief Justice to Counselor to the Chief Justice.

Legislative History.—H.R. 6855 was introduced on September 10, 2008 and was referred to the Committee on the Judiciary. On September 17, 2008, under suspension of the rules, the House passed H.R. 6855 by voice vote. On September 22, 2008 the bill was received in the Senate. The text of H.R. 6855 was incorporated in S. 3296, to extend the authority of the United States Supreme Court Police to protect court officials off the Supreme Court Grounds and change the title of the Administrative Assistant to the Chief Justice, which became Public Law 110–402. See S. 3296 for further action.

H.R. 7321, the "Auto Industry Financing and Restructuring Act"

Summary.—Introduced by Representative Barney Frank (D–MA), H.R. 7321 provides for emergency bridge loans to automobile manufacturers. Section 19 of the bill authorized a cost of living adjustment for FY2009 for justices and judges of the United States.

Legislative History.—H.R. 7321 was introduced on December 10, 2008 and was referred to several House committees including the Committee on the Judiciary. On December 11, 2008, the House passed H.R. 7321 without amendment by a recorded vote of 237–170, and 1 present. The bill was received by the Senate on December 12, 2008.

S. 2106, a bill to provide nationwide subpoena authority for actions brought under the September 11 Victim Compensation Fund of 2001

Summary.—Introduced by Senator Joseph Biden, S. 2106 amends the September 11 Victims Compensation Fund of 2001 to allow a subpoena requiring the attendance of a witness at a trial or hearing conducted under such Act to be served at any place in the United States.

Legislative History.—S. 2106 was introduced September 27, 2007 and was referred to the Senate Committee on the Judiciary. On October 3, 2007, the Senate Committee on the Judiciary discharged the bill by unanimous consent. On the same day, the Senate passed S. 2106 by unanimous consent. On October 4, 2007, the bill was received by the House and referred to the Committee on the Judiciary. On October 30, 2007, under suspension of the rules, the House passed S. 2106 without amendment by voice vote. On November 8, 2007, S. 2106 was signed by the President and became Public Law 110–113.

S. 2450, to amend the Federal Rules of Evidence to address the waiver of the attorney-client privilege and the work product doctrine

Summary.—Introduced by Senator Patrick Leahy, S. 2450 amends the Federal Rules of Evidence to specify under what circumstances a disclosure of a communication or information covered by the attorney-client privilege and work product protection may be waived for purposes of other federal and state proceedings.

Legislative History.—S. 2450 was introduced December 11, 2007 and was referred to the Senate Committee on the Judiciary. On January 31, 2008, the Senate Committee on the Judiciary ordered the bill reported favorably, without amendment. The Senate Committee on the Judiciary reported the bill on February 25, 2008. (S. Rpt. 110–264). On February 27, 2008, the Senate passed S. 2450 without amendment by unanimous consent. The bill was received by the House and referred to the Committee on the Judiciary on February 28, 2008. On September 8, 2008, under suspension of the rules, the House passed S. 2450 by voice vote. On September 19, 2008, the bill was signed by the President and became Public Law 110–322.

S. 3296, a bill to extend the authority of the United States Supreme Court Police to protect court officials off the Supreme Court Grounds and change the title of the Administrative Assistant to the Chief Justice

Summary.—Introduced by Senator Patrick Leahy, S. 3296 extends through calendar year 2013 the authority of the United States Supreme Court Police to protect court officials off the Su-

preme Court grounds, changes the title of the Administrative Assistant to the Chief Justice to Counselor to the Chief Justice, and prohibits a judicial officer from accepting a gift of an honorary club membership with a value of more than $50 in any calendar year.

Legislative History.—S. 3296 was introduced on July 21, 2008 and was referred to the Senate Committee on the Judiciary. On September 11, 2008, the Senate Committee on the Judiciary ordered the bill reported favorably, without amendment and without written report. On September 25, 2008, the Senate passed S. 3296, with an amendment, by unanimous consent. The bill was received by the House the same day. On September 29, 2008, under suspension of the rules, the House passed the bill by voice vote. On October 13, 2008, S. 3296 was signed by the President and became Public Law 110–402.

S. 3569, the Judicial Administration and Technical Amendments Act of 2008

Summary.—Introduced by Senator Charles Schumer, S. 3569 makes a number of changes related to federal court and jury management.

Legislative History.—S. 3569 was introduced on September 24, 2008 and was referred to the Senate Judiciary Committee. On September 27, 2008, the bill was discharged by the Senate Judiciary Committee and was passed by the Senate without amendment by unanimous consent. On the same day the House received and passed the bill under suspension of the rules by voice vote. On October 13, 2008, the bill was signed by the President and became Public Law 110–406.

H. Res. 263, Recognizing National Foster Care Month as an opportunity for Congress to improve the foster care system throughout the United States

Summary.—Introduced by Representative Dennis Cardoza, H. Res. 263 provided that, in recognition of National Foster Care Month, and in order to improve the foster care system throughout the United States, it is the sense of the House of Representatives that Congress should ensure that improving the foster care system remains a top priority for both Congress and the Nation.

Legislative History.—H. Res. 263 was introduced March 23, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on April 20, 2007. On May 15, 2007, under suspension of the rules the House passed H. Res. 263 by voice vote.

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H.R. 2060, the "Internet Radio Equality Act"

Summary.—Introduced by Representative Jay Inslee, H.R. 2060 nullifies the March 2, 2007, Determination of Rates and Terms of the U.S. Copyright Royalty Board regarding rates and terms for the digital performance of sound recordings and ephemeral recordings, the April 17, 2007 modification of that determination, and any subsequent modifications by the Copyright Royalty Judges published in the Federal Register. The bill goes on to revise the

standards for determining reasonable rates and terms of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmission services and new subscription services. The bill also requires the Federal Communications Commission to report, upon commencement of proceedings of the Copyright Royalty Judges to determine the aforementioned rates and terms, on the effect of such proposals on localism, diversity, and competition in the Internet radio marketplace.

Legislative History.—H.R. 2060 was introduced on April 26, 2007 and was referred to both the Committee on the Judiciary and the Committee on Energy and Commerce. The bill was referred to the Subcommittee on May 4, 2007. No further action was taken on the bill. A related measure, H.R. 7084, the Webcaster Settlement Act of 2008, which extends the period in which copyright owners and webcasters can negotiate terms different from those set by the Copyright Royalty Board, became Public Law 110–435. See H.R. 7084 for further action.

H.R. 3015, to delay the applicability to webcasters of rates and terms determined by the Copyright Royalty Judges for certain statutory licenses under title 17, United States Code

Summary.—Introduced by Representative Steve Chabot, H.R. 3015 delays the effective date of the rates and terms determined by the Copyright Royalty Judges for statutory licenses for the transmission of sound recordings by 60 days beginning on July 15, 2007.

Legislative History.—H.R. 3015 was introduced on July 12, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on Courts, the Internet and Intellectual Property, and to the Subcommittee on Constitution, Civil Rights, and Civil Liberties on August 10, 2007. No further action was taken on the bill. A related measure, H.R. 7084, the Webcaster Settlement Act of 2008, which extends the period in which copyright owners and webcasters can negotiate terms different from those set by the Copyright Royalty Board, became Public Law 110–435. See H.R. 7084 for further action.

H.R. 3155, the "Intellectual Property Enhanced Criminal Enforcement Act of 2007"

Summary.—Introduced by Representative Steve Chabot, H.R. 3155 strengthens civil and criminal intellectual property enforcement laws and penalties, makes unauthorized importation or exportation of copies or phonorecords an infringement of the exclusive right to distribute, provides for forfeiture of any property consisting of or derived from proceeds of civil copyright infringement, and directs the Attorney General to dedicate additional resources to intellectual property enforcement, including the creation of an operational unit in the Federal Bureau of Investigation to assist in the investigation and coordination of intellectual property crimes.

Legislative History.—H.R. 3155 was introduced July 24, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on Courts, the Internet and Intellectual Property, and to the Subcommittee on Crime, Terrorism and Homeland Security on August 10, 2007. No further action was taken on

the bill. A related measure, S. 3325, the Prioritizing Resources and Organization for Intellectual Property Act of 2008, became Public Law 110–403. See S. 3325 for further action.

H.R. 3578, the "Intellectual Property Rights Enforcement Act"

Summary.—Introduced by Representative Brad Sherman, H.R. 3578 abolishes the National Intellectual Property Law Enforcement Coordination Council and establishes the Intellectual Property Enforcement Network (IPEN), consisting of specified representatives of various government agencies, to establish policies concerning international intellectual property protection and law enforcement and to coordinate implementation of such policies.

Legislative History.—H.R. 3578 was introduced on September 18, 2007 and was referred to the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Ways and Means. The bill was referred to the Subcommittee on October 12, 2007. No further action was taken on the bill. A related measure, S. 3325, the Prioritizing Resources and Organization for Intellectual Property Act of 2008, became Public Law 110–403. See S. 3325 for further action.

H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007"

Summary.—Introduced by Representative John Conyers, Jr., H.R. 4279 enhances remedies for violations of intellectual property laws, harmonizes forfeiture laws related to intellectual property offenses, improves U.S. government efforts to coordinate intellectual property enforcement efforts, and provides additional resources dedicated to intellectual property enforcement.

Legislative History.—H.R. 4279 was introduced on December 5, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on December 7, 2007. On December 13, 2007, the Subcommittee held a legislative hearing on H.R. 4279. The following witnesses appeared and prepared a statement for the record: Rick Cotton, Chairman of the Coalition Against Counterfeiting and Piracy (CACP), Washington, DC; Gigi Sohn, President and Co-Founder of Public Knowledge, Washington, DC; James Hoffa, General President of the International Brotherhood of Teamsters, Washington, DC; and Sigal P. Mandelker, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Washington, DC. On March 6, 2008, the Subcommittee met in open session mark-up and agreed to forward the bill as amended to full committee by voice vote. On April 30, 2008 the Committee on the Judiciary met in open session mark-up and ordered H.R. 4279 favorably reported as amended by voice vote. On May 5, 2008 the Committee on the Judiciary reported the bill. (H. Rpt. 110–617). On May 8, 2008, under suspension of the rules the House passed H.R. 4279 by a recorded vote of 410–11. On May 12, 2008 the bill was received in the Senate, read twice and referred to the Senate Committee on the Judiciary. No further action was taken on this bill. A measure that incorporated much of H.R. 4279, S. 3325, the Prioritizing Resources and Organization for Intellectual Property Act of 2008, was subsequently signed by the President

and designated as Public Law 110–403. See S. 3325 for further action.

H.R. 4789, the "Performance Rights Act"

Summary.—Introduced by Representative Howard Berman, H.R. 4789 amends federal copyright law to grant owners of sound recordings the right to compensation for the public performance of their sound recordings on terrestrial radio broadcasts.

Legislative History.—H.R. 4789 was introduced on December 11, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on January 14, 2008. On June 11, 2008 the Subcommittee held a legislative hearing on H.R. 4789. The following witnesses appeared and prepared a statement for the record: Nancy Sinatra, Recording Artist; Steven W. Newberry, President and Chief Executive Officer, Commonwealth Broadcasting Corporation, Glasgow, KY; Charles Warfield, President and Chief Operating Officer, ICBC Broadcast Holdings, Incorporated, New York, NY ; and Thomas F. Lee, President, American Federation of Musicians, New York, NY. On June 26, 2008 the Subcommittee met in open session mark-up of H.R. 4789, and forwarded the bill, with an amendment, to the full committee by voice vote.

H.R. 5889, the "Orphan Works Act of 2008"

Summary.—Introduced by Representative Howard Berman, H.R. 5889, establishes limitations on the remedies available in a civil action for copyright infringement, provided the infringer meets procedural requirements that are intended to safeguard the legitimate interests of copyright owners. The bill also provides that if the user does not meet the procedural requirements set forth in the legislation, the owner of an infringed work may seek all the remedies that would otherwise be available to a copyright owner.

Legislative History.—H.R. 5889 was introduced on April 24, 2008 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on April 28, 2008. On May 7, 2008 the Subcommittee met in open session mark-up of H.R. 4789, and forwarded the bill, with an amendment, to the full committee by voice vote.

H.R. 5893, to reauthorize the sound recording and film preservation programs of the Library of Congress, and for other purposes

Summary.—Introduced by Representative Robert Brady, H.R. 5893 authorizes appropriations for Library of Congress activities related to the preservation of sound recordings, including the Library's National Film Preservation Board and the National Film Preservation Foundation, through FY 2016.

Legislative History.—H.R. 5893 was introduced on April 24, 2008 and was referred to the Committee on House Administration and the Committee on the Judiciary. On May 7, 2008, the Committee on House Administration reported the bill favorably reported with an amendment by voice vote. (H. Rept. 110–683). On June 4, 2008 the Committee on the Judiciary discharged the bill. The same day, under suspension of the rules the House passed H.R. 5893 as amended by voice vote. On June 5, 2008, the bill was received by the Senate, read twice, and referred to the Senate Committee on

Rules and Administration. On September 16, 2008, the Senate passed H.R. 5893 without amendment by unanimous consent. On October 2, 2008, H.R. 5893 was signed by the President and became Public Law 110–336.

H.R. 6531, the "Vessel Hull Design Protection Amendment of 2008"

Summary.—Introduced by Representative Howard Berman, H.R. 6531 clarifies the definitions of a hull and a deck in the Vessel Hull Design Protection Act.

Legislation History.—H.R. 6531 was introduced on July 17, 2008 and was referred to the Committee on the Judiciary. On July 22, 2008, under suspension of the rules, the House passed H.R. 6531 without amendment by voice vote. The Senate received H.R. 6531 the next day, and passed it without amendment by unanimous consent on September 30, 2008. On October 16, 2008, the bill was signed by the President and became Public Law 110–434.

H.R. 6845, the "Fair Copyright in Research Works Act"

Summary.—Introduced by Representative John Conyers, Jr., H.R. 6845 prohibits Federal agencies from requiring, as a part of a funding agreement, that researchers assign or license back to the agency their copyright in extrinsic works. The bill defines extrinsic works as any work where a third party either contributed funding for the research underlying the work or provided meaningful added value to the work.

Legislative History.—H.R. 6845 was introduced September 9, 2008 and was referred to the Committee on the Judiciary. On September 11, 2008, pursuant to notice, the Subcommittee held a legislative hearing on H.R. 6845. The following witnesses appeared and submitted statements for the record: Dr. Elias A. Zerhouni, Director, National Institutes of Health, Bethesda, MD; The Honorable Ralph Oman, Pavel Professorial Lecturer in Intellectual Property Law Fellow, Creative and Innovative Economy Center, The George Washington University Law School, Washington, DC; Heather Dalterio Joseph, Executive Director, Scholarly Publishing and Academic Resources Coalition, Washington, DC; and Dr. Martin Frank, Executive Director, American Physiological Society, Bethesda, MD.

H.R. 7084, the "Webcaster Settlement Act of 2008"

Summary.—Introduced by Representative Jay Inslee, the bill makes a technical amendment to the Small Webcasting Settlement Act of 2002, which extends the period of time that webcasters and copyright owners have to negotiate royalty rates and terms.

Legislative History.—H.R. 7084 was introduced on September 25, 2008 and was referred to the Committee on the Judiciary. On September 27, 2008, under suspension of the rules, the House passed H.R. 7084 with an amendment by voice vote. The Senate received H.R. 7084 on September 29, 2008 and passed it without amendment by unanimous consent the following day. On October 16, 2008, the bill was signed by the President and became Public Law 110–435.

S. 3325, the "Prioritizing Resources and Organization for Intellectual Property Act of 2008"

Summary.—Introduced by Senator Patrick Leahy, S. 3325 enhances remedies for violations of intellectual property laws, harmonizes forfeiture laws related to intellectual property offenses, improves U.S. government efforts to coordinate intellectual property enforcement efforts, and provides additional resources dedicated to intellectual property enforcement.

Legislative History.—S. 3325 was introduced on July 24, 2008 and was referred to the Senate Committee on the Judiciary. On September 11, 2008, the Senate Committee on the Judiciary ordered the bill, with amendments, reported favorably. On September 15, 2008, the Senate Committee on the Judiciary reported S. 3325 as amended without written report. On September 26, 2008 the committee amendments were withdrawn by unanimous consent and the Senate passed the bill with an amendment by unanimous consent. On the same day, the House received the bill. On September 28, 2008, under suspension of the rules the House passed S. 3325 without amendment by a recorded vote of 381–41. On October 13, 2008, S. 3324 was signed by the President and became Public Law 110–403.

H. Res. 314, Supporting the goals of World Intellectual Property Day, and for other purposes

Summary.—Introduced by Representative Robert Wexler, H. Res. 314 supports the goals of World Intellectual Property Day.

Legislative History.—Introduced April 17, 2007, H. Res. 314 was referred to the Committee on the Judiciary the same day. On April 25, 2007, the Committee on the Judiciary ordered the bill reported by voice vote.

H. Res. 1251, Saluting the life and music of the late Otha Ellas "Bo Diddley" Bates, guitar virtuoso and rock and roll pioneer, whose music continues to influence generations of musicians

Summary.—Introduced by Representative John Conyers, Jr., H. Res. 1251 salutes the life and music of the late Otha Ellas "Bo Diddley" Bates.

Legislative History.—Introduced June 9, 2008, H. Res. 1251 was passed by the House under suspension of the rules by voice vote the same day.

H. Res. 1425, Honoring the life and music of the late Isaac Hayes, a passionate humanitarian, whose music laid the foundation for many musical styles, including R&B, disco, and rap

Summary.—Introduced by Marsha Blackburn, H. Res. 1425 honors the life and music of the late Isaac Hayes.

Legislative History.—Introduced September 11, 2008, H. Res. 1425 was referred to the Committee on the Judiciary the same day. On September 17, 2008, the House passed H. Res. 1425 under suspension of the rules by voice vote.

PATENTS AND TRADEMARKS

H.R. 34, to establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges

Summary.—Introduced by Representative Darrell Issa, H.R. 34 establishes a pilot program in certain United States district courts to encourage enhancement of expertise in patent and plant variety protection cases among district court judges.

Legislative History.—H.R. 34 was introduced on January 4, 2007 and was referred to the Committee on the Judiciary. The bill was referred to the Subcommittee on February 2, 2007. On February 12, 2007, under suspension of the rules, the House passed H.R. 34, without amendment, by voice vote. On February 13, 2007, the bill was received by the Senate, read twice, and referred to the Senate Committee on the Judiciary.

H.R. 1908, the "Patent Reform Act of 2007"

Summary.—Introduced by Representative Howard Berman, H.R. 1908 updates the patent system by providing guidance on how to calculate damages, creates a new administrative procedure to challenge patents after they have been granted, improves venue rules to prevent forum shopping in patent infringement cases, establishes a first-inventor-to-file system in the United States, and gives the Patent Office authority to make rules intended to improve patent application requirements, among other changes.

Legislative History.—H.R. 1908 was introduced on April 18, 2007 and was referred to the Committee on the Judiciary. H.R. 1908 was referred to the Subcommittee on April 20, 2007. The Subcommittee held a legislative hearing on H.R. 1908 on April 26, 2007. The following witnesses appeared and submitted a written statement for the record: Kevin Sharer, Chairman of the Board and Chief Executive Officer, Amgen Incorporated, Thousand Oaks, CA; Gary L. Griswold, President and Chief Counsel of Intellectual Property, 3M Innovative Properties, St. Paul, MN; John R. Thomas, Professor of Law, Georgetown University Law Center, Washington, DC; William T. Tucker, Executive Director, Research and Administration and Technology Transfer, University of California, Oakland, CA; and Anthony Peterman, Director, Patent Counsel, Dell Incorporated, Round Rock, TX. On May 16, 2007, the Subcommittee met in open session mark-up of H.R. 1908 and forwarded the bill to the full committee by voice vote. On July 18, 2007, the Committee on the Judiciary met in a open session and ordered the bill reported, with an amendment, by voice vote. On September 6, 2007, the Committee on the Judiciary reported H.R. 1908. (H. Rept. 110–314). The same day the Rules Committee Resolution H. Res. 636 was reported to the House and provided that the amendment in the nature of a substitute recommended by the Committee on the Judiciary be considered as an original bill. On September 7, 2007, the House passed H.R. 1908 by a recorded vote of 220–175. (Roll No. 863). The bill was received by the Senate on September 10, 2007.

H.R. 6344, the "Responsive Government Act of 2008"

Summary.—Introduced by Representative William Delahunt, H.R. 6344 amends the federal judicial code to authorize the chief judge of a district court or court of appeals to delay, toll, or otherwise grant relief from time deadlines applicable to pending civil and criminal cases in the event of a natural disaster or other emergency situation requiring the closure of courts or rendering it impracticable to comply with such deadlines. The bill also grants the Director of the United States Patent and Trademark Office authority to waive various statutory deadlines related to patent and trademark application filings in cases of unintentional delay. The bill also prescribes filing fees for patent extensions, including $65 million for an anticoagulant drug intended for use in humans.

Legislative History.—H.R. 6344 was introduced on June 23, 2008 and was referred to the Committee on the Judiciary. On the same day, under suspension of the rules, the House passed H.R. 6344 by voice vote. On June 24, 2008, the bill was received in the Senate, read twice and referred to the Senate Committee on the Judiciary.

H.R. 6362, to amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, and for other purposes

Summary.—Introduced by Representative Howard Berman, H.R. 6362 corrects a potential constitutional defect in the appointment of administrative patent and trademark judges at the United States Patent and Trademark Office and addresses how previous decisions made by potentially unconstitutionally appointed patent and trademark administrative judges are to be treated.

Legislative History.—H.R. 6362 was introduced on June 25, 2008 and was referred to the Committee on the Judiciary. No further action was taken on H.R. 6362, although its contents were included in S. 3295, a bill to amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, and for other purposes, which became Public Law 110–313. See S. 3295 for further action.

S. 3295, A bill to amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, and for other purposes

Summary.—Introduced by Senator Patrick Leahy, S. 3295 corrects a potential constitutional defect in the appointment of administrative patent and trademark judges at the United States Patent and Trademark Office and addresses how previous decisions made by potentially unconstitutionally appointed patent and trademark administrative judges are to be treated.

Legislative History.—S. 3295 was introduced on July 21, 2008 and was referred to the Senate Committee on the Judiciary. The

following day the Senate Judiciary Committee discharged the bill and the Senate passed S. 3295 without amendment by unanimous consent. The bill was received by the House and referred to the Committee on the Judiciary July 23, 2008. On July 29, 2008, under suspension of the rules, the House passed S. 3295 without amendment by voice vote. On August 12, 2008, the bill was signed by the President and became Public Law 110–313.

OVERSIGHT ACTIVITIES

The Federal Judicial System

The Subcommittee has responsibility for oversight of the Judicial Conference of the United States; the Administrative Office of the U.S. Courts; the Federal Rules Enabling Act and the Advisory Committees on Civil Rules, Appellate Rules and Rules of Evidence, as well as judicial ethics and discipline.

In the 110th Congress, the Subcommittee also examined how the salaries of federal judges have impacted the ability to maintain a qualified and experienced federal bench. On April 19, 2007, the Subcommittee held an oversight hearing on Federal judicial compensation. The witnesses were Supreme Court Presiding Justices Stephen Breyer and Samuel Alito. Both witnesses testified to the threatened impact and outcomes of the decline in real pay of Federal judges. In response to this hearing, Chairman Conyers introduced H.R. 3753, the Federal Judicial Salary Restoration Act of 2007, on October 4, 2007.

The U.S. Copyright System

The Subcommittee devoted substantial time to addressing issues related to copyright (and trademark) enforcement. Early in the Congress, the Subcommittee held an oversight hearing on copyright piracy occurring on college campuses through peer-to-peer and other online networks. Later, the Subcommittee held an oversight hearing on efforts to combat international intellectual property piracy, with a special focus on China and Russia. During this hearing, particular attention was given to a series of Government Accountability Office reports that called for more permanency in federal intellectual property enforcement coordination efforts.

Following these hearings, H.R. 4279 was introduced which provided for stronger intellectual property laws, dedicated additional resources to combat domestic and international intellectual property theft, and a mechanism to better coordinate government enforcement efforts. Ultimately S. 3325, which substantially incorporated the provisions of H.R. 4279, was signed into law. Additionally, the Subcommittee worked closely with the Committee on Education and Labor to place additional burdens on universities receiving federal funding to address copyright piracy on their computer networks.

The Subcommittee also dedicated substantial time to investigate whether further modernization of the copyright law is necessary for the digital environment. Through oversight hearings, the Subcommittee focused its attention on the Section 115 statutory license and on parity across analog and digital music platforms. The latter led to H.R. 4789, which sought to establish public performance

rights for sound recordings that are broadcast on terrestrial radio, similar to those already provided sound recording owners whose works are digitally broadcast (i.e., webcasts). Related to this, there was substantial controversy concerning a June 2007 Copyright Office Royalty Board decision setting the rates for Section 114 statutory licenses. Ultimately, H.R. 7084 was passed which provided additional time for sound recording owners and webcasters to negotiation rates different from those provided by the Copyright Office Royalty Board's decision.

Another major focus of the Subcommittee has been developing appropriate legislation to address the problem of Orphan Works. Following a 2006 report by the Copyright Office on orphan works, Congress has worked on developing legislation to facilitate public use of orphan works in a manner that safeguards the interests of copyright owners.

Lastly, the Chairman has engaged in an exchange of letters with the Register of Copyrights, inquiring specifically about the Copyright Office's efforts to transition operations into a digital environment, and a growing backlog of copyright registrations.

The U.S. Patent and Trademark Systems

The Subcommittee devoted considerable time to reform of the United States patent system. Patents provide an incentive to individuals and companies to innovate, by granting inventors exclusive rights to their inventions. In turn, inventors are required to provide society with the knowledge behind their inventions. This social bargain is enshrined in the Constitution, which directs Congress to "promote the progress of . . . science and the useful arts . . . by securing for limited times to . . . inventors the exclusive right to their . . . discoveries." However, over the course of the last several years, commentators, businesses and users of the patent system have voiced serious concerns about whether the system is doing an adequate job in fulfilling its role in encouraging innovation. Many have argued that inefficiencies in the examination of patent applications, as well as inappropriate rules in patent litigation, have led to substantial uncertainty in the value of patents.

Many organizations have chosen to carry out extensive reviews of the current system and have developed useful and thoughtful recommendations. Some of the more important efforts include the Federal Trade Commission's study To Promote Innovation: the Proper Balance of Competition and Patent Law and Policy, the National Academy of Science report A Patent System for the 21st Century, the U.S. Patent and Trademark Office's 21st Century Strategic Plan, and Adam Jaffe's and Josh Lerner's book, Innovation and its Discontents. Relying on the record of both an oversight and legislative hearing, related hearing records from previous Congresses, and informal meetings with a number of patent constituents, the Subcommittee was able to develop a compromise package in the form of H.R. 1908 that would effectively address many of the identified problems in the U.S. patent system.

The Subcommittee also directed attention to the question of whether the protection mechanisms afforded industrial designs are appropriate. Specific attention was placed on industrial design rights as they pertain to fashion designs, exterior automobile parts,

and vessel hull designs. The Subcommittee's inquiries in this area led to H.R. 6531, the Vessel Hull Design Protection Amendment of 2008, which provided a technical amendment to address a loophole in protection provided to vessel hull designs.

In addition, the Subcommittee directed its attention, through an oversight hearing, to investigating some of the criticisms against gene patenting. Through this hearing, it was identified that in some cases gene patents may impede use and development of gene-based diagnostic testing. Following the hearing, the Chairman of the Subcommittee engaged in an exchange of letters with the National Institutes of Health which explored the impact of gene patents on gene-based diagnostic testing. Particular attention was placed on exploring the use of the Bayh-Dole Act's march-in provisions as a means to address the problems identified. In further support of this investigation, the Chairman of the Subcommittee requested that the Government Accountability Office investigate federal agency policies pertaining to march-in rights. A report on their findings is expected sometime in the first half of 2009.

The Chairman of the Subcommittee also engaged in an exchange of letters with the United States Patent and Trademark Office and the Federal Drug Administration to clarify how they determine patent term extension in light of a recent decision by the Federal Circuit in Cardiac Pacemakers v. St. Jude.

Finally, in exercising its oversight responsibility over the United States Patent and Trademark Office, the Subcommittee held an oversight hearing on the agency's operations. Some attention was placed on merits of recent internal reorganizations within the agency, however much of the focus was on the agency's efforts to address a growing patent application backlog problem. Showcased at the hearing was a Government Accountability Office report, Hiring Efforts Are Not Sufficient to Reduce the Patent Application Backlog. Following the hearing, the Subcommittee continued to engage with the agency concerning its efforts to address the backlog, as well as other issues related to agency operations.

List of oversight hearings

American Innovation at Risk: The Case for Patent Reform, February 15, 2007 (Serial No. 110–8)

An Update—Piracy on University Networks, March 8, 2007 (Serial No. 110–29)

Reforming Section 115 of the Copyright Act for the Digital Age, March 22, 2007 (Serial No. 110–33)

Federal Judicial Compensation, April 19, 2007 (Serial No. 110–48)

Patent Reform Act of 2007, H.R. 1908, April 26, 2007 (Serial No. 110–65)

Ensuring Artist Fair Compensation: Updating the Performance Right and Platform Parity for the 21st Century, July 31, 2007 (Serial No. 110–49)

International Piracy: The Challenges of Protecting Intellectual Property in the 21st Century, October 18, 2007 (Serial No. 110–67)

Stifling or Stimulating—The Role of Gene Patents in Research and Genetic Testing, October 30, 2007 (Serial No. 110–60)

Prioritizing Resources and Organization for Intellectual Property Act of 2007, H.R. 4279, December 13, 2007 (Serial No. 110–76)

Design Law—Are Special Provisions Needed to Protect Unique Industries?, February 14, 2008 (Serial No. 110–107)

U.S. Patent and Trademark Office, (USPTO), February 27, 2008 (Serial No. 110–115)

Promoting the use of Orphan Works: "Balancing the Interests of Copyright Owners and Users" on March 13, 2008 (Serial No. 110–131)

Performance Rights Act, H.R. 4789, June 11, 2008 (Serial No. 110–141)

False Claims Act Correction Act of 2007, H.R. 4854, June 19, 2008 (Serial No. 110–137)

Fair Copyright in Research Works Act, H.R. 6845, September 11, 2008 (Serial No. 110–204)

American Innovation at Risk: The Case for Patent Reform, Serial No. 110–8

This hearing was held to examine whether comprehensive patent reform was required to address perceived inadequacies in the current patent system which hamper innovation and hurt the American economy. The New York Times has noted that "[something] has gone very wrong with the United States patent system, and the Financial Times has opined that "[i]t is time to restore the balance of power in U.S. patent law. A number of studies released in recent years, include one by the National Academies of Science and another by the Federal Trade Commission, have highlighted several problems with the patent system such as decreased patent quality, prevalence of subjective elements in patent practice, patent abuse, and the lack of meaningful alternatives to the patent litigation process. The Constitution mandates that Congress "promote the progress of . . . science and the useful arts . . . by securing for limited times to . . . inventors the exclusive right to their . . . discoveries." Flaws in the patent system must be addressed in order to fulfill this Constitutional mandate.

The following witnesses appeared and submitted a written statement for the record: Adam B. Jaffe, Professor of Economics and Dean of Arts and Sciences, Brandeis University, Whaltham, MA; Suzanne Michel, Chief Intellectual Property Counsel and Deputy Assistant Director for Policy Coordination, Federal Trade Commission, Washington, DC; Mark Myers, Co-Chair of the National Academy of Sciences Report Patent System for 21st Century, Unionville, PA; and Daniel B. Ravicher, Executive Director, Public Patent Foundation, New York, NY.

An Update—Piracy on University Networks, Serial No. 110–29

The hearing was held to follow-up the October 2004 Subcommittee hearing that focused on implementation of policies and programs to educate college students about online piracy of digital works and development of programs to thwart the practice. The Internet has changed the way that the public enjoys entertainment products, including music, movies, and software. One of the advantages of digital formats such as CDs and DVDs is that they offer extremely high audio and video reproduction quality. Digital for-

mats, however, make works very susceptible to piracy since every digital copy offers a perfect reproduction, and people can easily copy and distribute them on a global basis over the Internet. In this hearing, the Subcommittee explored and evaluated efforts made by colleges to stop illegal downloading and file-sharing, and determine whether their efforts have gone far enough.

The following witnesses appeared and submitted a written statement for the record: Cary H. Sherman, President, Recording Industry Association of America, Washington, DC; John C. Vaughn, Executive Vice President, Association of American Universities, Washington, DC; Gregory J. Marchwinski, President and Chief Executive Officer, Red Lambda, Longwood, FL; and Jim Davis, Associate Vice Chancellor for Information Technology, University of California, Los Angeles, CA.

Reforming Section 115 of the Copyright Act for the Digital Age, Serial No. 110–33

The purpose of this hearing was to explore whether the Section 115 compulsory license still has relevance in the age of digital music downloading. Section 115 of the Copyright Act creates a compulsory license for making and distributing non-dramatic musical works (e.g., songs that a copyright holder would otherwise have the exclusive right to control. While compulsory licenses allow others to make phonorecords without the consent of the copyright holder, the compulsory license system does not allow others to make actual copies of released "sound recordings;" thus, while a person can sell a "cover" version of a song released by another artist as long as he or she pays a royalty, that person can not sell exact copies of another's record without permission.

The following witness appeared and submitted a written statement for the record: Marybeth Peters, Register of Copyrights, U.S. Copyright Office, Washington, DC.

Federal Judicial Compensation, Serial No. 110–48

This hearing explored the issue of judicial compensation and whether the decline in real wages of federal judges is impacting the continuity, quality, and experience on the federal bench. Article III, section 1, of the Constitution guarantees that federal judges shall "receive for their services, a compensation, which shall not be diminished during their continuance in office." While the dollar figure on wages has not been decreased, the real wages of federal judges have decreased. As Chief Justice Roberts noted in his 2006 Year-End Report on the Federal Judiciary, Federal judges now earn less per year than many large law firms' first-year associates who are fresh out of law school and may still be awaiting bar exam results. Since 1987, district judges' salaries have been adjusted at the same rate as those of Members of Congress. In 2007 they earned $165,200. Since 1969, average U.S. worker's wages, once adjusted for inflation, have risen 17.8 percent in buying power. Real pay for judges has declined 23.9 percent during the same time, creating a 41.7% gap. The witnesses at this hearing reiterated Chief Justice Roberts' assertion that the departures of 38 judges who have left the federal bench in the past six years, including 17 in the last two years, are largely the result of that pay gap and that

departing judges often cite financial pressures as their reason for leaving. The Chief Justice argued in his year-end report from 2006 that "[t]he dramatic erosion of judicial compensation will inevitably result in a decline in the quality of persons willing to accept a lifetime appointment as a federal judge." Following this oversight hearing, Chairman Conyers and Subcommittee Chairman Berman introduced H.R. 3753, bipartisan legislation sponsored by both the Majority and Minority Leaders to provide a 29% across the board increase in base salary for federal judges. The bill was ordered reported by the Committee by voice vote with an amendment offered by Reps. Berman and Smith. This amendment provided a 29% pay raise for federal judges and made changes to the judicial pension system. Article III judges are eligible to receive a 100% annuity upon retirement if they meet certain age and service requirements. The substitute adopted by the Committee lengthened service requirements for federal judges who wish to receive the full benefit of the pay raise as an annuity upon retirement. The substitute also increased the workload of senior judges and reduced the annuity for those judges who retire and earn salaries in excess of the amount of their annuity. The text of H.R. 3753 as ordered reported was adopted as an amendment in the nature of a substitute by the Senate Judiciary committee and further amended before being ordered reported. No further action was taken on the legislation in either body.

The following witnesses appeared and submitted a written statement for the record: The Honorable Stephen G. Breyer, Presiding Justice, U.S. Supreme Court, Washington, DC and the Honorable Samuel A. Alito, Presiding Justice, U.S. Supreme Court, Washington, DC.

Ensuring Artist Fair Compensation: Updating the Performance Right and Platform Parity for the 21st Century, Serial No. 110–49

The purpose of this hearing was to explore the benefits and drawbacks of repealing the broadcaster exemption from paying public performance royalties to owners of sound recordings. Currently, owners of "musical works" receive royalties for public performances of their works on terrestrial radio broadcasts, whereas copyright owners of sound recordings do not. In the digital environment, however, owners of musical works and owners of sound recordings both have the right to receive public performance royalties. This has created an imbalance in the marketplace between traditional radio broadcasters and webcasters.

The following witnesses appeared and submitted a written statement for the record: The Honorable Paul W. Hodes, Member of Congress, 2nd District of New Hampshire; Marybeth Peters, U.S. Register of Copyrights, U.S. Copyright Office, Washington, DC; Judy Collins, Recording Artist; Charles A. Warfield, Jr., President & Chief Operating Officer, ICBC Broadcast Holding, Incorporated, New York, NY; and Sam Moore, Recording Artist.

International Piracy: The Challenges of Protecting Intellectual Property in the 21st Century, Serial No. 110–67

The purpose of this hearing on international piracy was to discuss the challenges that face intellectual property owners who seek to protect their works under international law and the functioning of various legal regimes and enforcement mechanisms available in other countries. The emphasis will be on the evolution of intellectual property laws, the willingness and ability of governments and law enforcement entities to adequately enforce intellectual property laws, and the political and social dynamics that impact intellectual property enforcement in other nations. Special attention was placed on Russian efforts to fulfill its commitments under its 2006 bilateral agreement with the United States and the recent World Trade Organization (WTO) enforcement actions the United States has brought against China that relate to enforcement of intellectual property rights.

The following witnesses appeared and submitted a written statement for the record: Victoria A. Espinel, Assistant U.S. Representative for Intellectual Property & Innovation, Office of the U.S. Trade Representative, Washington, DC; Eric H. Smith, President, International Intellectual Property Alliance, Washington, DC; Loren Yager, Director of International Affairs and Trade, U.S. General Accountability Office, Washington, DC; and Mark MacCarthy, Senior Vice President for Global Public Policy, Visa Incorporated, Washington, DC.

Stifling or Stimulating—The Role of Gene Patents in Research and Genetic Testing, Serial No. 110–60

The purpose of this hearing was to explore the role of gene patents on further genetic research and gene-based diagnostic testing. Recent developments in human genome research has paved the way for further research and development efforts that offer promising new ways of diagnosing and treating disease. While the possibilities of advancing medical knowledge abound, some are concerned that the ability to patent genes will hinder the development and rollout of gene-based technologies to combat and diagnose illness. Others are fearful that without patent protection, there will be little incentive for companies to make the investments needed to bring new gene-based technologies to market. This hearing looked into these and other issues related to gene patents, including the legal basis for genes as patentable subject matter, how these patents are being used and licensed by commercial and academic institutions, whether there is a distinction in the quality of gene patents compared to patents in other technologies, and in what ways can perceived negative effects of gene patents be mitigated.

The following witnesses appeared and submitted a written statement for the record: Lawrence M. Sung, J.D., Ph. D., Law School Professor and Intellectual Property Law Program Director, University of Maryland, School of Law, Baltimore, MD; E. Jonathan Soderstrom, J.D., Ph.D., Managing Director, Office of Cooperative Research, Yale University, New Haven, CT; Dr. Marc M. Grodman, Chair of the Board and Chief Executive Officer, Bio-Reference Laboratories, Elmwood Park, NJ; and Jeffrey P. Kushan, Partner,

Sidley Austin, LLP, on behalf of Biotechnology Industry Organization, Washington, DC.

Design Law—Are Special Provisions Needed to Protect Unique Industries?, Serial No. 110–107

The purpose of this hearing was to explore the scope of industrial design protection. The objective of industrial design protection is similar to other intellectual property protections: it promotes the creation of new, unique and appealing designs for products by granting exclusive economic rights for a limited time. Many countries have established industrial design laws directed specifically at protecting these types of work. The United States, however, provides protection for industrial designs through design patents, trade dress, copyright and vessel hull design protection. The purpose of this oversight hearing was to explore whether these current means of protecting designs are adequate for industries that make significant use of new designs to attract customers and whether the scope of vessel hull design protection should be expanded to include other subject matter like auto parts and apparel.

The following witnesses appeared and submitted a written statement for the record: The Honorable William D. Delahunt, Member of Congress, 10th District of Massachusetts; William T. Fryer, III, Professor of Law, University of Baltimore, School of Law, Baltimore, MD; Narciso Rodriguez, Designer, on behalf of the Council of Fashion Designers of America, New York, NY.; Steve Maiman, Proprietor, Stony Apparel, Los Angeles, CA; Carl L. Olsen, President, Ark Design, on behalf of the Alliance of Automobile Manufacturers, Washington, DC; and Jack Gillis, Director of Public Affairs, Consumer Federation of America, Washington, DC.

U.S. Patent and Trademark Office, Serial No. 110–115

The purpose of this hearing was to review the United States Patent and Trademark Office (USPTO) operations. The USPTO's work primarily consists of receiving and examining patent and trademark applications. The quality and timeliness of the USPTO's work has a direct impact on the willingness of United States companies to use these systems. Over the last several years, patent pendency—the time it takes to process patent applications—has steadily risen, prompting concern in the patent community. Several reasons have been cited for the rise in the pendency for patent applications, including increased demand for patent applications, a chronic lack of human and financial resources, poor technology planning, and various applicant practices that slow down or delay the application process. The growing patent pendency and associated backlog of patent applications awaiting review could put the United States innovation system in jeopardy, as companies move away from using the patent system and towards secrecy as a means to protect their inventions. This could have serious repercussions on the way research is conducted and is likely to harm American technological innovation.

The following witnesses appeared and submitted a written statement for the record: The Honorable Jon W. Dudas, Undersecretary of Commerce for Intellectual Property, Director of U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC;

Robin M. Nazzaro, Director of National Resources and Environment, U.S. General Accountability Office, Washington, DC; Robert D. Budens, President, Patent Office Professional Association, (POPA), Alexandria, VA; and Alan J. Kasper, First Vice President, American Intellectual Property Law Association, Sughrue, Mion, PLLC, Washington, DC.

Promoting the use of Orphan Works: Balancing the Interests of Copyright Owners and Users, Serial No. 110–131

The purpose of this hearing was to review possible solutions that would address the frustrations and problems associated with orphan works under U.S. Copyright Law. Issues surrounding orphan works were discussed in the Report on Orphan Works published by the Register of Copyrights on January 31, 2006, the ensuing congressional hearing on the Report on Orphan Works. The term "orphan works" refers to copyrighted works whose owners cannot be located. Efforts to use orphan works are stymied because the owner cannot be found to grant permission. Given the possibility of large damage awards for use of copyrighted works without permission, a large number of copyrighted works are effectively off limits to reuse until they enter the public domain, and thus run the risk of being lost forever from the public consciousness.

The following witnesses appeared and prepared a statement for the record: Marybeth Peters, Register of Copyrights, U.S. Copyright Office, Washington, DC; Allan Robert Adler, Vice President of Legal and Governmental Affairs, Association of American Publishers, Incorporated, Washington, DC; Corinne P. Kevorkian, President and General Manager, Schumacher, A Division of F. Schumacher & Company, New York, NY; Karen C. Coe, Associate Legal Counsel, United States Holocaust Memorial Museum, Washington, DC; Victor S. Perlman, General Counsel and Managing Director, American Society of Media Photographers, Incorporated, Philadelphia, PA; and Maya Gura, Director of Marketing and Sales, PicScout, San Francisco, CA.

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY [1]

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F. JAMES SENSENBRENNER, Wisconsin
HOWARD COBLE, North Carolina
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California

Tabulation of subcommittee legislation and activity

Legislation referred to the Subcommittee	380
Legislation on which hearings were held	41
Legislation reported favorably to the full Committee	30
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	2
Legislation pending before the full Committee	0
Legislation reported to the House	32
Legislation discharged from the Committee	1
Legislation pending in the House	2
Legislation passed by the House	30
Legislation pending in the Senate	22
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	8
Legislation enacted into Public Law as part of other legislation	—
Days of legislative hearings	24
Days of oversight hearings	28

JURISDICTION OF THE SUBCOMMITTEE

The Subcommittee on Crime, Terrorism, and Homeland Security has jurisdiction over the Federal Criminal Code, drug enforcement, sentencing, parole and pardons, internal and homeland security, Federal Rules of Criminal Procedure, prisons, criminal law enforcement, and other appropriate matters as referred by the Chairman, and relevant oversight.

LEGISLATIVE ACTIVITIES

H.R. 79, the "Powder-Crack Cocaine Penalty Equalization Act of 2007"

Summary.—H.R. 79 addresses the unfair disparity between crack and powder cocaine sentencing laws. It amends the Controlled Substances Act and the Controlled Substances Import and Export Act by substantially increasing penalties for powder cocaine and eliminating a separate penalty for crack cocaine. The bill also expands

[1] Subcommittee chairmanship and assignments approved January 27, 2007, and February 28, 2007.

nating a separate penalty for crack cocaine. The bill also expands the current mandatory minimum sentence of five years for possession of crack cocaine to possession of any mixture of cocaine.

Legislative History.—H.R. 79 was introduced on January 4, 2007 and referred to the Judiciary Committee and the Energy and Commerce Committee. On February 26, 2008, the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on four bills relating to crack cocaine laws, including H.R. 79. Testimony was received from Rep. Charles B. Rangel (D–NY), sponsor of H.R. 460, Rep. Sheila Jackson-Lee (D–TX), sponsor of H.R. 4545, Judge Reggie Walton, U.S. District Court Judge for the District of Columbia; Judge Ricardo H. Hinojosa, Chairman of the United States Sentencing Commission and U.S. District Court Judge for the Southern District of Texas; Gretchen Shappert, U.S. Attorney for the Western District of North Carolina; Joe Cassilly, State's Attorney for Harford County, Maryland; Michael Short, convicted of federal drug offense and commuted by President Bush; and Michael Nachmanoff, Federal Public Defender for the Eastern District of Virginia.

H.R. 137, the "Animal Fighting Prohibition Enforcement Act of 2007"

Summary.—H.R. 137 increases existing criminal penalties for animal fighting violations from misdemeanor to felony status with a maximum sentence of three years. The bill also makes it unlawful to knowingly sell, buy, transport or deliver a knife, gaff, or other sharp instrument designed to be attached to the leg of a bird for use in animal fighting.

Legislative History.—H.R. 137 was introduced by Rep. Elton Gallegly on January 4, 2007, and referred to the Judiciary Committee and Agriculture Committee. On February 6, 2007, the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on the bill, and testimony was received by Wayne Pacelle, President & CEO, The Humane Society of the United States and from Jerry Leber, President, United Gamefowl Breeders Association. The Subcommittee met in open session on February 6, 2007, and ordered the bill favorably reported by a voice vote. The Full Committee met in open session on February 7, 2008 and ordered the bill favorably reported, with amendment, by voice vote. On March 1, 2007, the Agriculture Committee was discharged. On March 26, 2007, the House suspended the rules and passed the bill, as amended, by vote, 389 to 39. On April 10, 2007, the Senate passed the bill by Unanimous Consent. On May 3, 2007, the bill became law, Public Law No. 110–22.

H.R. 261, the Federal Prison Bureau Nonviolent Offender Relief Act of 2007"

Summary.—H.R. 261, the "Federal Prison Bureau Nonviolent Offender Relief Act of 2007" would amend the federal criminal code to create a good time policy, which would release a prisoner who has served one half or more of his or her term of imprisonment if that prisoner: (1) has attained age 45; (2) has never been convicted of a crime of violence; and (3) has not engaged in any violation in-

volving violent conduct, including institutional disciplinary regulations.

Legislative History.—Representative Sheila Jackson-Lee (D–TX) introduced H.R. 261 on January 5, 2007. The Subcommittee held one day of hearings on H.R. 261 simultaneously with hearings on H.R. 4283, the "Literacy Education and Rehabilitation Act of 2007"; H.R. 4300, the "Juvenile Justice Accountability and Improvement Act of 2007"; and H.R. 4063, the Restitution for the Exonerated Act of 2007". On December 6, 2007, testimony was received by Professor Jennifer Woolard, Assistant Professor, Department of Psychology, Georgetown University. Ms. Deborah LaBelle, Director of the Juvenile Life Without Parole Initiative, Ann Arbor, MI; Professor Jonathan Turley, the J.B. and Maurice C. Shapiro Professor of Public Interest Law at George Washington Law School; Pastor Fred Mosley, Cleveland, Ohio; Mr. Ray Krone, exonerated from death row in Arizona after his innocence was conclusively established; The Honorable Drew Wrigley, United States Attorney for the District of North Dakota; and Mr. Lance Ogiste, Counsel to the Brooklyn District Attorney and member of National District Attorney's Association. There was no further action on H.R. 261.

H.R. 400, "The War Profiteering Prevention Act of 2007"

Summary.—H.R. 400 strengthens the tools available to Federal law enforcement to combat contracting fraud during times of war, military action, or relief or reconstruction activities. The bill creates a new criminal fraud offense in title 18 of the United States Code to prohibit fraudulent acts involving the provision of goods or services in connection with a mission of the United States Government overseas. It also makes this new offense a predicate crime for criminal forfeiture, as well as for Federal money laundering and racketeering offenses.

Legislative History.—Rep. Neil Abercrombie introduced on January 11, 2007, H.R. 400 was referred to the Subcommittee on February 2, 2007. The Subcommittee held 1 day of hearings on H.R. 400 on June 19, 2007. Testimony was received from the Honorable Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction; Thomas F. Gimble, Principal Deputy Inspector General, United States Department of Defense; Barry M. Sabin, Deputy Assistant Attorney General, United States Department of Justice; and Alan Grayson, Grayson & Kubli, P.C. On July 24, 2007, the Subcommittee ordered the bill, H.R. 400, favorably reported, by voice vote. On August 1, 2007, the Full Committee ordered the bill, favorably reported with an amendment, by voice vote. On October 9, 2007, the bill passed the House, under suspension of the rules, by a recorded vote of 375–3.

H.R. 423, the "Kristen's Act Reauthorization of 2007"

Summary.—H.R. 423 reauthorizes Kristen's Act (P.L. 106–468), and authorizes grants to States, public agencies and nonprofit organizations for the purpose of finding missing adults. Grants are to be used to maintain a national resource center and information clearinghouse; maintain a national database for the purpose of tracking missing adults; coordinate public and private programs that locate missing adults and reunite them with their families;

provide assistance and training to law enforcement agencies, State and local governments, nonprofit organizations and other individuals involved in the criminal justice system in matters related to missing adults; provide assistance to families in locating missing adults; and assist in public notification of missing adults and victim advocacy.

Legislative History.—H.R. 423 was introduced by Rep. Sue Wilkins Myrick on January 11, 2007 and referred to the Judiciary Committee. On July 15, 2008, the Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on H.R. 423, and related bills H.R. 6064, the "National Silver Alert Act," and H.R. 5898, the "Silver Alert Grant Program Act of 2008." Testimony was received from Rep. Lloyd Doggett (D–TX), sponsor of H.R. 6064; Rep. Gus Bilirakis (R–FL), sponsor of H.R. 5898; and Rep. Sue Wilkins Myrick (R–NC), sponsor of H.R. 423. On July 30, 2008, the Full Committee met in open session on related bill H.R. 6064, and ordered the bill favorably reported with an amendment that incorporated most of H.R. 423. On September 17, 2008, the House voted to suspend the rules and passed H.R. 6064, as amended, by voice vote.

H.R. 460, the "Crack-Cocaine Equitable Sentencing Act of 2007"

Summary.—H.R. 460, the "Crack-Cocaine Equitable Sentencing Act of 2007," addresses the unfair disparity between crack and powder cocaine sentencing laws. It amends the Controlled Substances Act and the Controlled Substances Import and Export Act by eliminating separate penalties for crack cocaine. It also eliminates the mandatory minimum penalties for simple possession of crack cocaine.

Legislative History.—H.R. 460 was introduced on January 12, 2007 and referred to the Judiciary Committee and the Energy and Commerce Committee. On February 26, 2008, the Subcommittee held one day of hearings on this bill and three others relating to crack cocaine laws. Testimony was received from Rep. Charles B. Rangel (D–NY), sponsor of H.R. 460, Rep. Sheila Jackson-Lee (D–TX), sponsor of H.R. 4545, Judge Reggie Walton, U.S. District Court Judge for the District of Columbia; Judge Ricardo H. Hinojosa, Chairman of the United States Sentencing Commission and U.S. District Court Judge for the Southern District of Texas; Gretchen Shappert, U.S. Attorney for the Western District of North Carolina; Joe Cassilly, State's Attorney for Harford County, Maryland; Michael Short, convicted of federal drug offense, whose sentence was commuted by President Bush; and Michael Nachmanoff, Federal Public Defender for the Eastern District of Virginia.

H.R. 545, the "Native American Methamphetamine Enforcement and Treatment Act of 2007"

Summary.—H.R. 545 amends the Omnibus Crime Control and Safe Streets Act of 1968 to include or reaffirm territories and Indian tribes as eligible grant recipients under programs to: (1) curtail the manufacture, sale, and use of methamphetamine; (2) aid children in homes in which methamphetamine or other drugs are unlawfully manufactured, distributed, dispensed, or used; and (3) reduce methamphetamine use by pregnant and parenting women.

Legislative History.—Rep. Tom Udall introduced on January 17, 2007, H.R. 545 was referred to the Subcommittee on February 2, 2007. The subcommittee held 1 day of hearings on H.R. 545 on February 6, 2007. Testimony was received from two witnesses: Congressman Tom Udall of New Mexico, and Ben Shelly, Vice President of the Navajo Nation. On February 6, 2007, the Subcommittee ordered the bill to be favorably reported without amendment, by voice vote. On February 7, 2007, the Committee met in open session and ordered H.R. 545 to be favorably reported without amendment, by a voice vote, a quorum being present. On March 22, 2007, the bill passed the House, under suspension of the rules, by a recorded vote of 423–0.

H.R. 660, the "Court Security Improvement Act of 2007"

Summary.—H.R. 660 was introduced by Chairman John Conyers, Jr. on January 24, 2007. This legislation requires the Director of the U.S. Marshals Service to consult with the Judicial Conference regarding security requirements for the U.S. judicial branch and to redact certain personal information of judges from financial disclosure reports. In addition, the bill makes it a federal offense to file (or attempt or conspire to file) in any public record any false lien or encumbrance against the real or personal property of any U.S. officer or employee based on performance of their official duties. Public disclosure of restricted personal information about a federal officer or employee, witness, or juror (or immediate family members) with the intent to threaten or cause harm to such individuals is prohibited under the bill. The legislation also prohibits the possession of dangerous weapons in federal court facilities.

Legislative History.—The subcommittee on Crime, Terrorism and Homeland Security held a hearing on H.R. 660 on May 3, 2007. Testimony was received from Robert M. Bell, Chief Judge, Maryland Court of Appeals; John F. Clark, United States Marshal for the Eastern District of Virginia, United States Department of Justice; and David Bryan Sentelle, Judge, United States District Court for the Western District of North Carolina, and Chair, Judicial Conference's Committee on Judicial Security. On June 7, 2007, the subcommittee met and ordered the bill to be favorably reported without an amendment by voice vote. On June 13, 2007, the Committee met and ordered the bill to be favorably reported with an amendment, by voice vote.

H.R. 740, the "Preventing Harassment through Outbound Number Enforcement (PHONE) Act of 2007"

Summary.—The purpose of H.R. 740 is to prevent and mitigate identity theft and to ensure privacy by establishing criminal penalties for caller ID "spoofing." The bill targets spoofing by prohibiting the use of caller ID information to commit fraud or other abusive acts. The bill provides for felony penalties of up to five years in prison for violations committed for commercial gain. Abusive use of another person's caller ID information without commercial motives is classified as a misdemeanor under the bill.

Legislative History.—Rep. Bobby Scott introduced on January 31, 2007, H.R. 740 was referred to the Subcommittee on February 2,

2007. The Subcommittee held one day of hearings on H.R. 740 on February 6, 2007. Testimony was received from two witnesses: Congressman Tim Murphy of Pennsylvania, and Barry M. Sabin, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice. On February 6, 2007, the Subcommittee ordered the bill to be favorably reported by a voice vote, without an amendment. On February 7, 2007, the Full Committee met in open session and ordered the bill to be favorably reported without an amendment, by a voice vote. On March 21, 2007, the bill passed the House, under suspension of the rules, by a recorded vote of 413–1.

H.R. 916, The "John R. Justice Prosecutors and Defenders Incentive Act of 2007"

Summary.—H.R. 916 amends the Omnibus Crime Control and Safe Streets Act of 1968 to add a program for student loan repayment for prosecutors and public defenders. Representative David Scott (D–GA) introduced the bill on February 8, 2007. On Tuesday, April 24, 2007, the Subcommittee held a legislative hearing on H.R. 916,; H.R. 1700, the "COPS Improvement Act of 2007"; and H.R. 933, the "Witness Security and Protection Act of 2007."

Legislative History.—Committee heard testimony from six witnesses: Ms. Laurie Robinson, Director, Master of Science Program, Department of Criminology University of Pennsylvania; The Honorable Douglas H. Palmer, Mayor of Trenton, New Jersey and President of the United States Conference of Mayors; Mr. Edmund H. Mosca, Chief of Police, Old Saybrook Department of Police Services, Old Saybrook, CT; The Honorable Kamala D. Harris, District Attorney, City of San Francisco, CA; Mr. Mark Epley, Senior Counsel, Office of the Deputy Attorney General United States Department of Justice, Washington, DC; and Mr. John Monaghan, Consultant, New York City Law Department, NY.

On April 26, 2007, the Subcommittee ordered the bill to be favorably reported without amendment by voice vote and on May 2, 2007, the full Committee ordered the bill to be reported favorably as amended by voice vote. On May 15, 2007, on motion to suspend the rules and pass H.R. 916 the House of Representatives agreed to the bill by yeas and nays 341–73. On May 16, 2007 H.R. 916 was received in the Senate and referred to the Committee on the Judiciary. There was no further action on the bill.

H.R. 923, the "Emmet Till Unsolved Civil Rights Crime Act"

Summary.—H.R. 923, the "Emmett Till Unsolved Civil Rights Crime Act" establishes an Unsolved Crimes Section in the Civil Rights Division of the Department of Justice (DOJ) and an Unsolved Civil Rights Crime Investigative Office in the Civil Rights Unit of the Federal Bureau of Investigation (FBI). The legislation makes the Chief of the Section and the Chief Investigator of the Office responsible for investigating violations of criminal civil rights statutes in which the alleged violation occurred before January 1, 1970 and resulted in death.

Legislative History.—Representative John Lewis (D–GA) introduced H.R. 923 on February 8, 2007. The Committee's Subcommittee on Civil Rights and the Subcommittee on Crime, Terrorism and

Homeland Security jointly held one day of hearings on H.R. 923. Testimony was received from Ms. Myrlie Evers-Williams, activist, community leader and widow of slain civil rights activist Medgar Evers; Richard Cohen, Esq., President and CEO, Southern Poverty Law Center; G. Douglas Jones, Esq., former United States Attorney (N.D. Ala); Rita Schwerner-Bender, attorney, activist and widow of slain civil rights activist Michael Schwerner; Alvin Sykes, President of the Emmett Till Justice Campaign, Inc.; and Grace Chung-Becker, Deputy Assistant Attorney General of the Criminal Section of the Department of Justice.

On June 12, 2007, the Subcommittee on Civil Rights and the Subcommittee on Crime, Terrorism and Homeland Security met jointly and ordered the bill H.R. 923 favorably reported, as amended, by voice vote. On June 13, 2007, the full Committee favorably reported H.R. 923, as amended, by a voice vote. On June 20, 2007, on motion to suspend the rules and pass the bill, H.R. 923 was agreed to by the House of Representatives by a recorded vote of 422–2. On June 21, 2007 H.R. 923 was received in the Senate and referred to the Committee on the Judiciary. On September 24, 2008, the Senate Judiciary Committee discharged H.R. 923 by unanimous consent and passed the Senate by unanimous consent without amendment on the same date. On November 7, 2008, H.R. 923 was signed by President Bush and became Public Law 110–344.

H.R. 933, the "Witness Security and Protection Act of 2007"

Summary.—H.R. 933 would amend the federal judicial code to establish in the U.S. Marshals Service, a Short Term State Witness Protection Section to provide protection for witnesses in state and local trials involving homicide or a serious violent felony or serious drug offense, pursuant to cooperative agreements with state and local district attorneys and the U.S. attorney for the District of Columbia.

Legislative History.—Representative Elijah Cummings (D–MD) introduced H.R. 933 on February 8, 2007. On April 24, 2007, the Subcommittee held a legislative hearing on H.R. 933; "H.R. 1700, the COPS Improvement Act of 2007"; and "H.R. 916, the John R. Justice Prosecutors and Defenders Incentive Act of 2007." The subcommittee heard testimony from six witnesses: Ms. Laurie Robinson, Director, Master of Science Program, Department of Criminology University of Pennsylvania; The Honorable Douglas H. Palmer, Mayor of Trenton, New Jersey and President of the United States Conference of Mayors; Mr. Edmund H. Mosca, Chief of Police, Old Saybrook Department of Police Services, Old Saybrook, CT; The Honorable Kamala D. Harris, District Attorney, City of San Francisco, CA; Mr. Mark Epley, Senior Counsel, Office of the Deputy Attorney General United States Department of Justice, Washington, DC; and Mr. John Monaghan, Consultant, New York City Law Department, NY. There was no further action on the bill.

H.R. 1199, the "Drug Endangered Children Act of 2007"

Summary.—H.R. 1199, the "Drug Endangered Children Act of 2007," extends the Drug Endangered Children grant program for an additional 2 years. Congress first authorized this grant program

in section 755 of the USA PATRIOT Improvement and Reauthorization Act of 2005, which authorized $20 million for each of the fiscal years 2006 and 2007. H.R. 1199 extends the program, at its current authorization level, for fiscal years 2008 and 2009.

Legislative History.—Representative Dennis Cardoza introduced H.R. 1199 on February 27, 2007. H.R. 1199 was referred to the Subcommittee on April 20, 2007. The Subcommittee held 1 day of hearings on H.R. 1199 on May 22, 2007. The Subcommittee received testimony from Representative Dennis Cardoza, the sponsor of the legislation. On July 24, 2007, the Subcommittee ordered the bill H.R. 1199 favorably reported, by voice vote. On July 25, 2007, the Full Committee ordered the bill H.R. 1199 favorably reported, without amendment, by voice vote. On September 24, 2007, the bill passed the House, under suspension of the rules, by a recorded vote of 389–4. On September 24, 2008, the Senate passed the bill by Unanimous Consent. On October 7, 2008, the bill was signed by the President and became Public Law No. 110–345.

H.R. 1525, the "Internet Spyware (I–SPY) Prevention Act of 2007"

Summary.—H.R. 1525 clarifies and enhances existing fraud and computer crime law, targeting abuses perpetrated on Internet users by persons who maliciously employ various covert software applications, programs, applets, or computer code commonly known as spyware. H.R. 1525 also provides resources and guidance to the Department of Justice for the prosecution of these offenses as well as fraudulent online identity theft.

Legislative History.—Representative Zoe Lofgren (D–CA) introduced on March 14, 2007, H.R. 1525 which was referred to the Subcommittee on March 30, 2007. The Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on H.R. 1525 on May 1, 2007. Testimony was received from Representative Zoe Lofgren (D–CA) and Representative Bob Goodlatte (R–VA). On May 1, 2007, the Subcommittee ordered the bill to be to favorably report to H.R. 1525 without amendment, by voice vote. On May 2, 2007, the full Committee met in open session and ordered the bill, H.R. 1525, favorably reported with an amendment, by voice vote, a quorum being present. On May 22, 2007, the legislation passed the House, under suspension of the rules, by voice vote.

H.R. 1592—the "Local Law Enforcement Hate Crimes Prevention Act of 2007"

Summary.—H.R. 1592 provides assistance to state and local law enforcement in the investigation and prosecution of hate crimes, and would amend chapter 13 of title 18, United States Code, to make violent crimes against a person motivated by bias against characteristics for which there is a history of such bias-motivated violence a felony. It would also amend the Hate Crime Statistics Act to require the collection of data on violent crimes motivated by bias against the victim's perceived gender or gender identity, as well as data on crimes committed by and directed against juveniles.

Legislative History.—H.R. 1592, the "Local Law Enforcement Hate Crimes Prevention Act of 2007," was introduced by House Judiciary Committee Chairman John Conyers, Jr., on March 20,

2007. The Subcommittee on Crime, Terrorism, and Homeland Security held hearings on H.R. 1592 on April 17, 2007. Testimony was received from Mark L. Shurtleff, Attorney General of the State of Utah; Timothy Lynch, Director, Project on Criminal Justice, Cato Institute; Frederick M. Lawrence, Dean, the George Washington University Law School; David Ritcheson, Harris County, Texas; Brad W. Dacus, President, Pacific Justice Institute and Jack McDevitt, Associate Dean, Northeastern University. On April 24, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill H.R. 1592 favorably reported by voice vote, a quorum being present. On April 25, 2007, the Committee met in open session and ordered the bill H.R. 1592 favorably reported, with amendments, by a roll call vote of 20 to 14, a quorum being present. (H. Rept. No. 110–113.) On June 3, 2007, H.R. 1592 was passed by the House by a recorded vote of 237 to 180.

H.R. 1593—the "Second Chance Act of 2007"

Summary.—H.R. 1593 is designed to reduce recidivism, increase public safety, and help State and local governments better address the growing population of ex-offenders returning to their communities by increasing federal support of offender-based programming. The bill focuses on four areas: development and support of programs that provide alternatives to incarceration, expansion of the availability of substance abuse treatment, strengthening families of ex-offenders, and the expansion of comprehensive re-entry services.

Legislative History.—H.R. 1593, the "Second Chance Act 2007," was introduced by Representative Danny K. Davis on March 20, 2007. The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held hearings on H.R. 1593 on March 20, 2007. Testimony was received from five witnesses: Stefan LoBuglio, Chief, Pre-Release and Re-entry Services, Montgomery County, MD, Department of Correction and Rehabilitation; Steve Lufburrow, President and CEO, Goodwill Industries of Houston, TX; George McDonald, President, Doe Fund, Inc.; Dr. Roger H. Peters, Ph.D, Chairman and Professor, Department of Mental Health Law and Policy, University of South Florida; and Jack G. Cowley, National Director, Alpha USA—Prisons & Re-Entry. On March 27, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill H.R. 1593 favorably reported, by voice vote, a quorum being present. On March 28, 2007, the Full Committee met in open session and ordered the bill favorably reported without amendment, by voice vote, a quorum being present. (H. Rept. No. 110–140). On November 13, 2007, H.R. 1593 was passed by the House by a recorded vote of 347 to 62. On March 11, 2008, H.R. 1593 was passed by the Senate, without amendment, by unanimous consent. The President signed H.R. 1593 on April 9, 2008, which became Public Law No. 110–199.

H.R. 1615, the "Securing Aircraft Cockpits Against Lasers Act of 2007"

Summary.—H.R. 1615 addresses the growing problem of individuals intentionally aiming lasers at the cockpits of aircraft, particularly at the critical stages of take-off and landing. This practice

constitutes a threat to aviation security and passenger safety. H.R. 1615 adds a section following 18 USC §38 to impose criminal penalties upon any individual who knowingly aims a laser pointer at an aircraft within the special aircraft jurisdiction of the United States. The criminal penalties include fines of up to $250,000 and imprisonment of up to five years.

Legislative History.—Rep. Rick Keller introduced on March 21, 2007. H.R. 1615 was referred to the Subcommittee on March 30, 2007. The Committee's Subcommittee on Crime, Terrorism, and Homeland Security held 1 day of hearings on H.R. 1615 on May 1, 2007. Testimony was received from Representative Ric Keller (R-FL), the bill's principal sponsor. On May 1, 2007, the Subcommittee ordered the bill to be favorably reported H.R. 1615 without amendment, by voice vote. On May 2, 2007, the Full Committee met in open session and ordered H.R. 1615 favorably reported with an amendment, by voice vote, a quorum being present. On May 22, 2007, the legislation passed the House, under suspension of the rules, by voice vote.

H.R. 1700, the "COPS Improvement Act of 2007"

Summary.—H.R. 1700 amends the Omnibus Crime Control and Safe Streets Act of 1968 to expand the authority of the Attorney General to make grants for public safety and community policing programs (COPS ON THE BEAT grant program).

Legislative History.—Representative Anthony Weiner (D-NY) introduced H.R. 1700 on March 26, 2007. On Tuesday, April 24, 2007, the Subcommittee held a legislative hearing on H.R. 1700; H.R. 916, the "John R. Justice Prosecutors and Defenders Incentive Act of 2007"; and H.R. 933, the "Witness Security and Protection Act of 2007."

The Subcommittee heard testimony from six witnesses: Ms. Laurie Robinson, Director, Master of Science Program, Department of Criminology, University of Pennsylvania; The Honorable Douglas H. Palmer, Mayor of Trenton, New Jersey and President of the United States Conference of Mayors; Mr. Edmund H. Mosca, Chief of Police, Old Saybrook Department of Police Services, Old Saybrook, CT; The Honorable Kamala D. Harris, District Attorney, City of San Francisco, CA; Mr. Mark Epley, Senior Counsel, Office of the Deputy Attorney General, United States Department of Justice, Washington, DC; and Mr. John Monaghan, Consultant, New York City Law Department, NY.

On April 26, 2007, the Subcommittee ordered reported the bill favorably reported without amendment by voice vote and on May 2, 2007, the full Committee ordered the bill to be reported favorably with amendment by voice vote. On May 15, 2007, on motion to suspend the rules and pass H.R. 1700 the House of Representatives agreed to the bill by yeas and nays 381–34. On May 16, 2007, H.R. 1700 was received in the Senate and referred to the Committee on the Judiciary. There was no further action on the bill.

H.R. 1759, the "Match Act of 2007"

Summary.—The Managing Arson Through Criminal History (MATCH) Act of 2007 would require jurisdictions to establish and maintain jurisdiction-wide arsonist registries and make such reg-

istries available on the Internet to other law enforcement agencies. The act requires criminal arsonists to register in each jurisdiction in which such arsonists reside, are employed, or are students. The act would require the Attorney General to maintain a national database, incorporating the various jurisdiction databases, at the Bureau of Alcohol, Tobacco, Firearms, and Explosives to be known as the National Arsonist Registry.

Legislative History.—H.R. 1759 was introduced by Representative Mary Bono-Mack (R–CA) on March 29, 2007. The Subcommittee held one day of hearings on November 6, 2007, receiving testimony from Representative Bono-Mack; Representative Adam Schiff (D–CA); Fire Chief Tracy Pansini, of the Burbank, California Fire Department; and Fire Chief William Soqui of the Cathedral City Fire Department, Cathedral City, California.

On November 6, 2007, the Subcommittee met and ordered the bill H.R. 1759 favorably reported by voice vote without amendment. On November 7, 2007, the full Committee ordered the bill favorably reported with an amendment by voice vote. On December 5, 2007, on motion to suspend the rules and pass the bill, H.R. 1759 was passed by the House of Representatives by voice vote. On December 6, 2007, H.R. 1759 was received by the Senate and referred to the Committee on the Judiciary. There was no further action on the bill.

H.R. 1783, the "Elder Justice Act"

Summary.—H.R. 1783 addresses the growing national problem of elder abuse. The bill amends Title XX of the Social Security Act and sets forth a comprehensive plan for preventing and combating elder abuse, neglect and exploitation, including the development of the Elder Justice Coordinating Council within the Office of the Secretary of Health and Human Services. It authorizes funding for numerous programs to promote elder justice, including State and local adult protective services, and requires the Department of Justice to develop policies and plans that support federal prosecution of elder abuse. It requires the Attorney General to research and report on State laws and practices relating to elder abuse and to develop a long-term plan and objectives. It requires the Comptroller General to make recommendations regarding Federal law. It authorizes the Attorney General to award grants for training and assistance to local and State prosecutors, courts, police and other first responders in elder justice matters, and to facilitate and coordinate programs for victims of elder abuse.

Legislative History.—H.R. 1783 was introduced by Rep. Rahm Emanuel on March 29, 2007 and referred to the Ways and Means Committee, Judiciary Committee, Energy and Commerce Committee, and Education and Labor Committee. The subcommittee held one day of hearings on April 17, 2008. Testimony was received from Representative Rahm Emanuel (D–IL), sponsor of H.R. 1783; Rep. Joe Sestak (D–PA), sponsor of H.R. 5352; Rep. Ron Klein (D–FL), sponsor of H.R. 5464; Robert Blancato, Elder Justice Coalition; Sherry Friedlander, A Child is Missing Alert and Recovery Center; and Vernon Keenan, Georgia Bureau of Investigation. On May 13, 2008, the Subcommittee met in open session and ordered the bill favorably reported, without amendment, by voice vote. On June 11,

2008, the Committee met in open session and ordered the bill favorably reported with an amendment, by voice vote.

H.R. 1889, the "Private Prison Information Act of 2007"

Summary.—H.R. 1889 requires prisons and other correctional facilities holding federal prisoners under a contract with the federal government to make the same information available to the public that federal prisons and correctional facilities are required to release under the Freedom of Information Act (FOIA).

Legislative History.—Rep. Tim Holden (D–PA) introduced H.R. 1889, the Private Prison Information Act of 2007 on April 17, 2007. The Subcommittee on Crime, Terrorism and Homeland Security held a hearing on the bill in conjunction with a hearing on the Prison Litigation Reform Act (PLRA) on November 8, 2007. During the November 2007 hearing the Honorable Tim Holden, was the only witness to testify in reference to H.R. 1889. The Subcommittee held a second hearing addressing the legislation on June 26, 2008. Testimony was received and heard from Alex Friedmann, Vice President, the Private Corrections Institute, Inc; Tom Jawetz, Immigration Detention Staff Attorney for the American Civil Liberties Union's National Prison Project; and Mike Flynn, Director of Government Relations for the Reason Foundation.

H.R. 1943, the "Stop AIDS in Prison Act of 2007"

Summary.—H.R. 1943, would direct the Bureau of Prisons to develop a comprehensive policy to provide HIV testing, treatment, and prevention for inmates in federal prisons and upon reentry into the community. The bill would require initial testing and counseling of inmates upon entry into the prison system and then ongoing testing available up to once a year upon the request of the inmate, or sooner if an inmate is exposed to the HIV/AIDS virus or becomes pregnant.

Legislative History.—H.R. 1943 was introduced by Representative Maxine Waters (D–CA) on April 19, 2007; the Subcommittee held one day of hearings on May 22, 2007. Witnesses were: Mr. Devon Brown, Director of the Department of Corrections for the District of Columbia; Mr. Vincent Jones, Executive Director of the Center for Health Justice in West Hollywood, California; Mr. Philip Fornaci, Director of the D.C. Prisoner's Project for the Washington Lawyer's Committee for Civil Rights and Urban Affairs; RADM Newton E. Kendig, M.D., the Assistant Director of the Health Services Division for the Federal Bureau of Prisons; and Mr. Willie Mitchell, Chairman of the Board for San Antonio Fighting Back.

On July 24, 2007, the Subcommittee on Crime, Terrorism and Homeland Security ordered the bill H.R. 1943 favorably reported, by voice vote. On July 25, 2007, the full Committee ordered the bill favorably reported without amendment, by voice vote. On September 25, 2007, H.R. 1943 was agreed to by voice vote in the House of Representatives on motion to suspend the rules and pass the bill and on September 26, 2007, was received by the Senate and referred to the Senate Judiciary Committee. On September 25, 2008 H.R. 1943 was favorably reported by the Senate Judiciary Committee without amendment and placed on Senate Legislative

Calendar under General orders (Calendar 1085) and no further action taken on the bill.

H.R. 2286 the "Bail Bond Fairness Act of 2007"

Summary.—H.R. 2286 would amend the Federal criminal code to prohibit a judicial officer from declaring forfeited a bail bond for violation of specified collateral release conditions, other than failing to appear in court, by amending Rule 46(f) of the Federal Rules of Criminal Procedure. Historically, the sole purpose of affording bail to a defendant has been to ensure a defendant's appearance in court. Currently however, Federal judicial officers have merged the purposes of bail and other conditions of release, ordering bonds forfeited in cases in which the defendant appears as ordered but he fails to comply with some collateral condition of release. Consequently, the risks to the bondsmen being too great, no bonds are written in the Federal system.

Legislative History.—H.R. 2286 was introduced by Representative Robert Wexler (D–FL) on May 10, 2007, and the Subcommittee held one day of hearings on H.R. 2286 on June 7, 2007. Testimony was received and heard from Rep. Wexler; the Honorable Ric Keller (R–FL); Ms. Linda Braswell, President, Professional Bail Agents of the United States; and the Honorable Tommy E. Miller, United States Magistrate-Judge, United States District Court, Eastern District of Virginia; Mr. Edward Gallagher, General Counsel for The Surety and Fidelity Association of America; and Richard A. Hertling, Principal Deputy Assistant Attorney General, United States Department of Justice.

On June 7, 2007, the Subcommittee on Crime, Terrorism and Homeland Security ordered the bill H.R. 2286 favorably reported, by voice vote. On June 12, 2007, the Committee met in open session and ordered the bill H.R. 2286 favorably reported without amendment, by voice vote. On June 25, 2007, on motion to suspend the rules and agree to the bill by voice vote, H.R. 2286 was agreed to by the House of Representatives and referred to the Senate on June 26, 2007. There was no further action on H.R. 2286.

H.R. 2352, the "School Safety Enhancements Act of 2007"

Summary.—H.R. 2352 amends the Omnibus Crime Control and Safe Streets Act of 1968 by re-authorizing and modifying the school security grant program and creating an interagency Task Force to develop and promulgate a set of advisory school safety guidelines. It amends the Higher Education Act of 1965 by requiring participating institutions to conduct annual campus safety assessments and develop and implement a campus emergency response plan.

Legislative History.—H.R. 2352 was introduced on May 16, 2007 and referred to the Judiciary Committee. The Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on April 17, 2008. Testimony was received from Rep. Steven R. Rothman (D–NJ), the sponsor of the bill. On May 13, 2008, the Subcommittee met in open session and ordered the bill favorably reported, with an amendment, by voice vote. On May 14, 2008, the Committee met in open session and ordered the bill favorably reported with an amendment, by voice vote. The bill also was referred to the Committee on Education and Labor, which discharged

its referral on September 12, 2008. On September 27, 2008, the House suspended the rules and passed the bill, as amended, by voice vote.

H.R. 2489, the "Genocide Accountability Act of 2007"

Summary.—On May 24, 2007, Representative Howard Berman introduced H.R. 2489, the "Genocide Accountability Act of 2007." H.R. 2489 strengthens the ability of the United States to prosecute perpetrators of genocide by amending title 18 of the United States Code to establish Federal criminal jurisdiction over the crime of genocide, wherever the crime is committed. The Act would close a procedural loophole in current law that does not permit the United States Department of Justice to prosecute non-Americans in United States courts for genocide committed abroad.

Legislative History.—Introduced on May 24, 2007, H.R. 2489 was referred to the Subcommittee on June 25, 2007. The Subcommittee held a hearing on H.R. 2489 on October 23, 2007. Testimony was received from Eli Rosenbaum, Director, Office of Special Investigations, Criminal Division, United States Department of Justice; Diane F. Orentlicher, Professor, Washington College of Law, American University; Jerry Fowler, Director, Committee on Conscience, United States Holocaust Memorial Museum; and Gayle Smith, Senior Fellow, Center for American Progress. On November 1, 2007, the Subcommittee ordered the bill, H.R. 2489, favorably reported by voice vote. On November 7, 2007, the Committee ordered the bill, H.R. 2489, favorably reported by voice vote. For further action, see S. 888, which became Public Law 110–151 on December 21, 2007.

H.R. 2740, the "MEJA Expansion and Enforcement Act of 2007"

Summary.—Introduced by Representative David Price, H.R. 2740 would make contractors and contract personnel under Federal contracts criminally liable for crimes committed overseas. It would amend the Military Extraterritorial Jurisdiction Act ('MEJA'), which criminalizes offenses committed outside the United States by members of the Armed Forces and certain Defense Department contractors, but does not cover all contractors providing services in an overseas military operation. In addition to closing this gap in current law, H.R. 2740 would designate the Justice Department to be the lead agency responsible for investigating allegations of contractor criminal misconduct.

Legislative History.—Introduced on June 15, 2007, H.R. 2740 was referred to the Subcommittee on July 16, 2007. The Subcommittee held 1 day of hearings on H.R. 2740, on June 19, 2007. Testimony was received from Erica Razook, Legal Advisor to the Business and Human Rights Program, Amnesty International; and Scott Horton, Adjunct Professor of Law, Columbia University School of Law. On July 24, 2007, the Subcommittee ordered the bill favorably reported, by voice vote. On August 2, 2007, the Committee ordered the bill favorably reported with an amendment, by voice vote. On October 4, 2007, the bill passed the House, considered under a rule, by a recorded vote of 389–30.

H.R. 2878, the "Enhanced Financial Recovery and Equitable Retirement Treatment Act of 2007"

Summary.—H.R. 2878 would increase the retirement benefits of Assistant U.S. Attorneys to the level of federal law enforcement officers, which is intended to strengthen the Department of Justice's ability to win critical cases by ensuring the retention of skilled, experienced federal prosecutors. The bill brings the retirement benefits of AUSAs into line with the retirement benefits of federal law enforcement officers.

Legislative History.—The bill was introduced by Representative Artur Davis (AL 7) on June 27, 2007. The Subcommittee held one day of hearings on H.R. 2878 on November 1, 2007. Testimony was received from: The Honorable Brian A. Benczkowski, Principal, Deputy Assistant Attorney General Office of Legislative Affairs United States Department of Justice; Ms. Amy Baron-Evans, Sentencing Resource Counsel, Federal Public and Community Defenders, Federal Defender Office; Steve Cook, Esq., Vice-President National Association of Assistant United States Attorneys; and Larry D. Thompson, Esq., Senior Vice President Government Affairs Pepsico, Inc. There was no further action on H.R. 2878.

H.R. 3013, "Attorney-Client Privilege Protection Act of 2007"

Summary.—H.R. 3013 was introduced on July 12, 2007 by Rep. Robert "Bobby" C. Scott and would restore judicial oversight to the important protections of attorney-client privilege and attorney work product doctrine, while preserving prosecutorial discretion necessary to fight corporate crime. Under the bill, an agent or attorney of the United States may base cooperation credit on the facts that are disclosed, but is prohibited from basing cooperation credit upon whether an organization disclosed materials that are protected by attorney-client privilege or attorney work product. This legislation would prohibit a U.S. agent or attorney from conditioning a charging decision or a cooperation agreement on any of the following (1) any valid assertion of the attorney-client privilege or privilege for attorney work product; (2) the provision of counsel to, or contribution to the legal defense fees or expenses of, an employee of the organization; (3) entry into a joint-defense, information-sharing, or common-interest agreement with an employee of the organization if there is a common interest in defending against an investigation or enforcement matter; (4) the sharing of relevant information with an employee; or (5) a failure to terminate an employee's employment, or otherwise sanction an employee, because of the employee's exercised his or her constitutional rights or other legal protections. H.R. 3013 would not affect any other federal statute that may authorize, in the course of an examination or inspection, a U.S. agent or attorney to require or compel the production of attorney-client privileged material or attorney work product. The bill also clarifies that the prohibition against conditioning a charging decision does not apply to charging an organization (or affiliated person) for certain conduct under a federal law which makes that conduct in itself an offense.

Legislative History.—The Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on the issue of Attorney Client Privilege in the context of corporate investigations on March 8,

2007. Testimony was received and heard from Barry M. Sabin, Deputy Attorney General, U.S. Department of Justice; Andrew Weissman, Partner, Jenner and Block; Richard White, Senior Vice President, Secretary, and General Counsel, The Auto Club Group; William Sullivan, Jr., Partner, Winston & Strawn; and Karen J. Mathis, President, American Bar Association. On July 24, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met and ordered the bill H.R. 3013 favorably reported by voice vote. On August 1, 2007, the Committee met and ordered the bill favorably reported without amendment by voice vote. On November 13, 2007 the House passed H.R. 3013 by voice vote on a motion to suspend the rules.

H.R. 3480, the "Let Our Veterans Rest in Peace Act of 2007"

Summary.—H.R. 3480 directs the U.S. Sentencing Commission to review and, if appropriate, amend its sentencing guidelines and policy statements to provide adequate sentencing enhancements for any offense involving the desecration, theft, or trafficking in a grave marker, headstone, monument, or other object intended to permanently mark a veteran's grave. Requires the Commission to ensure that the sentences, guidelines, and policy statements for these crimes are appropriately severe and reasonably consistent with other relevant directives, sentencing guidelines, and policies.

Legislative History.—Representative Christopher Carney (D–PA) introduced H.R. 3480 on September 6, 2007. There were no hearings on this legislation. On May 13, 2008, the Subcommittee ordered the bill, H.R. 3480, favorably reported by voice vote without amendment and on May 14, 2008, the full Committee ordered the bill, H.R. 3480, favorably reported with an amendment by voice vote. On May 21, 2008, on motion to suspend the rules and pass H.R. 3480, the House of Representatives passed the bill by voice vote and referred the bill to the Senate. On October 2, 2008 the Senate passed H.R. 3480 without amendment by Unanimous Consent. On October 10, 2008, President Bush signed H.R. 3480, which became Public Law 110–384.

H.R. 3546/S. 231, to Reauthorize the Edward Byrne Memorial Justice Assistant Grant Program at Fiscal Year 2006 Levels through 2012

Summary.—H.R. 3546 and S. 231 each amend the Omnibus Crime Control and Safe Streets Act of 1968 to authorize appropriations for the Edward Byrne Memorial Justice Assistance Grant Program in the amount of $1,095,000,000 per fiscal year through FY 2012. Presently, appropriation authority for the program expires at the end of FY 2009. The Edward Byrne Memorial Justice Assistance Grant Program (Byrne-JAG) allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system, which states and local governments have come to rely on to ensure public safety.

Legislative History.—Representative Hank Johnson (GA–4) introduced H.R. 3546 on September 17, 2007. The Subcommittee held one day of hearings on H.R. 3546, on May 20, 2008. Testimony was received from the Honorable Domingo Herraiz, Director, Bureau of Justice Assistance, United States Department of Justice, Wash-

ington, DC; the Honorable Dustin McDaniel, National Association of Attorneys General, Washington, DC; Mr. James Fox, President, National District Attorneys' Association, Alexandria, VA; Sheriff Craig Webre, President, National Sheriff's Organization, Alexandria, VA; Director Ronald C. Rueker, President, International Association of Chiefs of Police Alexandria, VA; and Mr. Ronald Brooks, President, National Narcotic Officers' Association Coalition, San Francisco, CA. On June 10, 2008, the Subcommittee ordered the bill favorably reported, without amendment, by voice vote and on June 18, 2008, the full Committee ordered the bill favorably reported without amendment, by voice vote. On June 25, 2008 on motion to suspend the rules, and pass H.R. 3546, the bill passed the House of Representatives by yeas and nays 406–11 and referred the bill to the Senate. On July 14, 2008, on motion to suspend the rules, and pass S. 231, the House passed the bill by voice vote. On July 30, 2008, President Bush signed S. 231, which became Public Law 110–294.

H.R. 3971, the "Deaths in Custody Reporting Act of 2008" (was H.R. 2908 at the hearing, later amended to H.R. 3971)

Summary.—H.R. 3971, the "Deaths in Custody Reporting Act of 2007," promotes greater safety for prison and jail inmates by lowering prisoner morality rates. To this end, the bill requires States that receive certain criminal justice assistance grants to report on a quarterly basis to the Attorney General certain information regarding the death of any person who is under arrest, in the process of being arrested, en route to incarceration after arrest, or incarcerated in State or local facilities. H.R. 3971 also requires the Attorney General to study and report to Congress on deaths of persons in custody. The report must identify best practices for optimizing prisoner safety and lowering prisoner mortality rates.

Legislative History.—Representative Bobby Scott (D–VA) introduced H.R. 2908 on June 28, 2007. The Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on July 24, 2007. Testimony was received from Charles Sullivan, Director of National CURE; Jeffrey Sedgwick, Director of the U.S. Department of Justice Bureau of Justice Statistics; Jenni Gainsborough, Director of the Washington Office of Penal Reform International; and Mary Scott, surviving mother of Jonathan Magbie, who died while in the custody of the District of Columbia Jail on September 20, 2004.

On November 1, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered the bill H.R. 3971 (an amended H.R. 2908) favorably reported. On November 7, 2007, the full Committee ordered H.R. 3971 favorably reported with an amendment by voice vote. On January 23, 2008, on motion to suspend the rules and pass the bill, H.R. 3971 was agreed to by the House of Representatives. On January 24, 2008 H.R. 3971 was received in the Senate and referred to the Committee on the Judiciary. On September 25, 2008, the Senate Judiciary Committee ordered the bill reported favorably with an amendment in the nature of a substitute and placed on the Senate Legislative Calendar under General Orders. There was no further action on H.R. 3971.

H.R. 3992, the "Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act of 2008"

Summary.—Introduced by Representative Robert C. "Bobby" Scott, H.R. 3992, is a reauthorization of the "Mentally Ill Offender Treatment and Crime Reduction Act of 2004" (Public Law 108–414). The law increases public safety by enabling coordination between the criminal justice and mental health care systems to increase treatment among this segment of the population.

Legislative History.—Introduced on October 30, 2007, H.R. 3992 was referred to the Subcommittee on November 1, 2007. On November 1, 2007, the Subcommittee ordered to favorably report H.R. 3992 by voice vote. On November 7, 2007, the full Committee met in open session and ordered the bill, H.R. 3992, favorably reported by voice vote, a quorum being present. On January 23, 2008, the legislation passed the House, under suspension of the rules, by voice vote. For further action, see S. 2304, which became Public Law 110–416 on October 14, 2008.

H.R. 4056/S. 2565, the "Federal Law Enforcement Congressional Badge of Bravery Act of 2007"

Summary.—H.R. 4056, authorizes the Attorney General to award a Congressional Badge of Bravery to federal law enforcement officers and state and local officers who sustain a physical injury in the line of duty. Sets forth requirements for agencies in nominating a law enforcement officer for a badge. This measure establishes a formal process by which Congress will be able to recognize acts of bravery by all of our Nation's law enforcement officers who become injured in the course of their duties.

Legislative History.—H.R. 4056 was introduced by Representative Brad Ellsworth (IN 8) on November 1, 2007. On April 15, 2008, on motion to suspend the rules and pass H.R. 4056, the House of Representatives passed the bill and referred it to the Senate, where it was referred to the Judiciary Committee. On June 26, 2008, the Senate passed S. 2565 encompassing the elements of H.R. 4056 with amendments and referred it to the House. On July 22, 2008, on motion to suspend the rules and pass S. 2565, the House passed the bill by voice vote. On July 31, 2008, President Bush signed S. 2565, which became Public Law 110–298.

H.R. 4063, the "Restitution for the Exonerated Act of 2007"

Summary.—H.R. 4063, the "Restitution for the Exonerated Act of 2007," would authorize a grant program to fund programs to assist people who were wrongfully convicted and spent at least six months in federal or state prison.

Legislative History.—H.R. 4063 was introduced by Representative Donald Payne (D–NJ) on November 1, 2007. The Subcommittee held one day of hearings on H.R. 4063 simultaneously with hearings on H.R. 261, the "Federal Prison Bureau Nonviolent Offender Relief Act of 2007"; H.R. 4283, the "Literacy Education and Rehabilitation Act of 2007"; and H.R. 4300, the "Juvenile Justice Improvement and Accountability Act."

On December 6, 2007, testimony was received by Professor Jennifer Woolard, Assistant Professor, Department of Psychology, Georgetown University. Ms. Deborah LaBelle, Director of the Juve-

nile Life Without Parole Initiative, Ann Arbor, Michigan; Professor Jonathan Turley, the J.B. and Maurice C. Shapiro Professor of Public Interest Law at George Washington Law School; Pastor Fred Mosley, Cleveland, Ohio; Mr. Ray Krone, exonerated from death row in Arizona after his innocence was conclusively established; The Honorable Drew Wrigley, United States Attorney for the District of North Dakota; and Mr. Lance Ogiste, Counsel to the Brooklyn District Attorney and member of National District Attorney's Association. There was no further action on H.R. 4063.

H.R. 4081, the "Prevent All Cigarette Trafficking Act of 2007"

Summary.—Introduced by Representative Weiner, H.R. 4081 aims to prevent tobacco smuggling and to ensure the collection of tobacco taxes. This legislation will combat unlawful cigarette trafficking by updating existing anti-trafficking laws and introducing new tools to combat illegal remote sales, such as those conducted over the Internet.

Legislative History.—Introduced on November 5, 2007, H.R. 4081 was referred to the Subcommittee on December 3, 2007. The Subcommittee held 1 day of hearings on H.R. 4081 on May 1, 2008. Testimony was received from Representative Anthony Weiner (D–NY); Representative Dale E. Kildee (D–MI); Arian Melendez, Chairman, Reno-Sparks Indian Colony; Matthew L. Myers, President, Campaign for Tobacco-Free Kids; Steve Rosenthal, New York State Association of Wholesale Marketers; John Colledge, Independent Consultant; and David Lapp, Chief Counsel, Tobacco Enforcement Unit, Office of the Attorney General of Maryland. On July 16, 2008, the Committee ordered the bill, H.R. 4081, favorably reported with an amendment, by voice vote. On September 10, 2008, the bill passed the House, under suspension of the rules, by a recorded vote of 379–12.

H.R. 4109, the "Prison Remedies Abuse Act of 2007 (PLRA)"

Summary.—Congress passed the PLRA in 1996 as part of an emergency appropriations bill. Although the PLRA made major changes in the law, it was the subject of only one congressional hearing and extremely limited debate. Provisions of the PLRA have been the subject of six Supreme Court decisions interpreting competing interpretations by Federal Courts of Appeals. At the time the bill passed, Congress stated two main reasons for the Act: (1) to reduce frivolous lawsuits by prisoners and to decrease the amount of intrusive consent decrees governing prison conditions. The purpose of H.R. 4109 was introduced to correct some of the unintended problems that have resulted from passage of the 1996 "Prison Litigation Reform Act" (PLRA). The PLRA Act has successfully blocked prisoner access to the federal courts in "frivolous" lawsuits, it has also prevented many legitimate cases from being filed. H.R. 4109 modifies 42 U.S.C. 1997e by eliminating the physical injury claim required to sue under the PLRA. This legislation would preserve the PLRA's goal of promoting administrative resolution of disputes, while preventing the dismissal of meritorious claims purely for failure to exhaust. Section 3 of the bill provides that before filing suit, a prisoner must present it his or her claim to prison officials. If a prisoner files a claim without first pre-

senting to prison officials (and the court does not dismiss the claim as frivolous or malicious), the court must stay the case for up to 90 days and direct prison officials to consider the claim through administrative processes. Cases that are not resolved administratively during the 90-day period will then proceed in court, unless the court is notified by the parties that the case is resolved.

In addition, H.R. 4109 would exempt people under the age of 18 from the PLRA. Current federal law permits prisoners to file suit in forma pauperis, or without prepayment of filing fees, provided that the prisoner pays those fees over time. Also, the PLRA permanently bans prisoners who file three suits that were dismissed as "frivolous, malicious, or fail[ed] to state a claim upon which relief may be granted." This bill would modify the life-time ban so that a prisoner would be prohibited from bringing a suit if he or she has had three dismissals within the preceding 5 years. In addition, the bill would allow indigent prisoners to file claims in forma pauperis, unless the action is dismissed at the initial screening, in which case, the prisoner would have to pay the filing fee over time.

H.R. 4109 would amend language in 18 U.S.C. 3626 that restricts the power of federal courts to fashion and implement injunctive orders remedying prison conditions that violate the law. Finally, this legislation would also eliminate the provision in the PLRA that prohibits granting attorneys' fees in prison cases as well as make a technical amendment to who the PLRA applies to.

Legislative History.—Chairman Robert C. "Bobby" Scott introduced H.R. 4109, "The Prison Remedies Act of 2007" on November 7, 2007. The Subcommittee on Crime Terrorism and Homeland Security held a hearing on November 8, 2007, titled "Review of the Prison Litigation Reform Act: A Decade of Reform or an Increase in Prison and Abuses?" That hearing examined the many unintended consequences of the PLRA that have surfaced since its enactment. The Subcommittee heard and received testimony from: Margo Schlanger, Professor of Law, Washington University on behalf of the American Bar Association; David A. Keene, Chairman, American Conservative Union; Pat Nolan, Vice President, Prison Fellowship Ministries; Garrett Cunningham, former prisoner in the Texas Department of Criminal Justice Luther Unit; and Ryan Bounds, Deputy Assistant Attorney General and Chief of Staff, Office of Legal Policy; United States Department of Justice.

On April 22, 2008, the Subcommittee held a second hearing (Part II) on the legislation H.R. 4109. The Subcommittee heard and received testimony from Stephen B. Bright, Southern Center for Human Rights; John J. Gibbons, Newark, NJ; Ernest D. Preate, Jr., JD; Sarah V. Hart, Assistant District Attorney, Philadelphia District Attorney's Office; and Jeanne S. Woodford, former Warden of San Quentin State Prison, 1997, and the Chief Adult Probation Officer, City and County of San Francisco, CA.

H.R. 4175, the "Privacy and Cybercrime Enforcement Act of 2007"

Summary.—Chairman John Conyers, Jr. introduced H.R. 4175, the "Privacy and Cybercrime Enforcement Act of 2007." The legislation provides new tools to federal prosecutors to combat identity theft and other computer crimes. The bill also provides victims of identity theft with the ability to seek restitution in federal court for

the loss of time and money spent restoring their credit and remedying the harms of identity theft. In addition, the bill strengthens consumer privacy by requiring companies to give rapid notice of breaches to law enforcement.

Legislative History.—Introduced on November 14, 2007, H.R. 4175 was referred to the Subcommittee on December 14, 2007. The Subcommittee held a hearing on H.R. 4175 on December 18, 2007. Testimony was received from Andrew Lourie, Acting Principal Deputy Assistant Attorney General and Chief of Staff to the Criminal Division, U.S. Department of Justice, Craig Magaw, Special Agent, Criminal Investigative Division, U.S. Secret Service, U.S. Department of Homeland Security; Joel Winston, Associate Director, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission; Jaimee Napp, Executive Director, Identity Theft Action Council of Nebraska; Robert W. Holleyman, II, President and CEO, Business Software Alliance, and Lillie Coney, Associate Director, Electronic Privacy Information Center. No further action was taken on the bill.

H.R. 4283 the "Literacy, Education and Rehabilitation Act of 2007"

Summary.—The "Literacy, Education, and Rehabilitation Act of 2007" or LERA, would award credit toward the service of a sentence to prisoners who participate in designated educational, vocational, treatment, assigned work, or other developmental programs. Legislative History—The Subcommittee held one day of hearings on the bill (prior to its introduction) simultaneously with hearings on H.R. 261, the "Federal Prison Bureau Nonviolent Offender Relief Act of 2007"; H.R. 4300, the "Juvenile Justice Accountability and Improvement Act of 2007"; and H.R. 4063, the Restitution for the Exonerated Act of 2007."

Legislative History.—On December 6, 2007, testimony was received by Professor Jennifer Woolard, Assistant Professor, Department of Psychology, Georgetown University. Deborah LaBelle, Director of the Juvenile Life Without Parole Initiative, Ann Arbor, MI; Professor Jonathan Turley, the J.B. and Maurice C. Shapiro Professor of Public Interest Law at George Washington Law School; Pastor Fred Mosley, Cleveland, Ohio; Mr. Ray Krone, exonerated from death row in Arizona after his innocence was conclusively established; The Honorable Drew Wrigley, United States Attorney for the District of North Dakota; and Mr. Lance Ogiste, Counsel to the Brooklyn District Attorney and member of National District Attorney's Association. LERA was introduced by Representative Bobby Scott (D–VA) on December 15, 2007. There was no further action on H.R. 4283.

H.R. 4300, the "Juvenile Justice Accountability and Improvement Act of 2007"

Summary.—H.R. 4300 would afford every youthful offender sentenced to life imprisonment a meaningful opportunity to have their case reviewed every 15 years. The United States is the only nation that sentences juveniles to life in prison with no hope of parole. Under H.R. 4300, States would be mandated to offer parole opportunities or risk losing 10% of certain funding that they would otherwise receive through the Safe Streets Act of 1968 and a parallel

requirement would exist in the federal system. Further, grants would be awarded to the states for improving the quality of legal representation of child defendants, which would include expenses for lawyers, investigation, expert witnesses and expenses for appeals up to and including before the United States Supreme Court.

Legislative History.—H.R. 4300 was introduced by Representative Bobby Scott (D–VA) and Representative John Conyers, Jr. (D–MI) on December 6, 2007. The Subcommittee held one day of hearings on H.R. 4300 simultaneously with hearings on H.R. 261, the Federal Prison Bureau Nonviolent Offender Relief Act of 2007"; H.R. 4283, the "Literacy Education and Rehabilitation Act of 2007"; and H.R. 4063, the Restitution for the Exonerated Act of 2007" on December 6, 2007. The subcommittee held an additional hearing on September 11, 2008, and testimony was received by Bryan Stevenson, Executive Director of the Equal Justice Initiative in Montgomery; Richard G. Dudley, Jr., M.D.; Raphael Johnson, Reformed Juvenile Offender; and Elizabeth Calvin, Children Rights Advocate, Human Rights Watch.

Testimony was received by Professor Jennifer Woolard, Assistant Professor, Department of Psychology, Georgetown University. Ms. Deborah LaBelle, Director of the Juvenile Life Without Parole Initiative, Ann Arbor, MI; Professor Jonathan Turley, the J.B. and Maurice C. Shapiro Professor of Public Interest Law at George Washington Law School; Pastor Fred Mosley, Cleveland, Ohio; Mr. Ray Krone, exonerated from death row in Arizona after his innocence was conclusively established; The Honorable Drew Wrigley, United States Attorney for the District of North Dakota; and Mr. Lance Ogiste, Counsel to the Brooklyn District Attorney and member of National District Attorney's Association. There was no further action on H.R. 4300.

H.R. 4545, the "Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007"

Summary.—H.R. 4545, the "Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007" addresses the problem of disparity between crack cocaine and powder cocaine sentencing laws. It amends the Controlled Substances Act and the Controlled Substances Import and Export Act by increasing the amounts of crack cocaine that would trigger the imposition of various mandatory minimum prison terms and by increasing potential fines. The bill eliminates the five-year mandatory minimum prison term for first time possession of crack cocaine. The bill directs the U.S. Sentencing Commission to review and amend, if appropriate, penalties for drug trafficking offenses. The bill authorizes the Attorney General to make grants to States, units of local government, territories and Indian tribes to improve drug treatment programs for offenders in prisons, jails and juvenile facilities and to strengthen rehabilitation efforts through support services. The bill authorizes the Attorney General to make grants to eligible partnerships to reduce the use of alcohol and other drugs by defendants during incarceration, parole and court supervision.

Legislative History.—H.R. 4545 was introduced by Ms. Sheila Jackson-Lee (D–TX) on December 13, 2007 and referred to the Judiciary Committee and the Energy and Commerce Committee. On

February 26, 2008, the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on this bill and three others relating to crack cocaine laws. Testimony was received from Rep. Sheila Jackson-Lee (D–TX), sponsor of H.R. 4545, Rep. Charles B. Rangel (D–NY), sponsor of H.R. 460, Judge Reggie Walton, U.S. District Court Judge for the District of Columbia; Judge Ricardo H. Hinojosa, Chairman of the United States Sentencing Commission and U.S. District Court Judge for the Southern District of Texas; Gretchen Shappert, U.S. Attorney for the Western District of North Carolina; Joe Cassilly, State's Attorney for Harford County, Maryland; Michael Short, convicted of federal drug offense and commuted by President Bush; and Michael Nachmanoff, Federal Public Defender for the Eastern District of Virginia.

H.R. 5035, the "Fairness in Cocaine Sentencing Act of 2008"

Summary.—H.R. 5035, the "Fairness in Cocaine Sentencing Act of 2008," addresses the unfair disparity between crack and powder cocaine sentencing laws. It amends the Controlled Substances Act and the Controlled Substances Import and Export Act by eliminating separate penalties for crack cocaine. It eliminates the mandatory minimum penalties for simple possession of crack cocaine, thereby allowing judges to impose a just punishment based on the circumstances of each case. It eliminates previous law that prohibited courts from granting probation or vacating a sentence involving the manufacture, distribution, dispensing or possession to manufacture, distribute or dispense cocaine. Finally, the bill acknowledges the strong rehabilitative value of substance abuse treatment and authorizes money to establish State and federal pretrial diversion and post-conviction drug court programs.

Legislative History.—H.R. 5035 was introduced by Rep. Robert C. "Bobby" Scott on January 17, 2008 and referred to the Judiciary Committee and the Energy and Commerce Committee. On February 26, 2008, the Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on this bill and three others relating to crack cocaine laws. Testimony was received from Rep. Charles B. Rangel (D–NY), sponsor of H.R. 460, Rep. Sheila Jackson-Lee (D–TX), sponsor of H.R. 4545, Judge Reggie Walton, U.S. District Court Judge for the District of Columbia; Judge Ricardo H. Hinojosa, Chairman of the United States Sentencing Commission and U.S. District Court Judge for the Southern District of Texas; Gretchen Shappert, U.S. Attorney for the Western District of North Carolina; Joe Cassilly, State's Attorney for Harford County, Maryland; Michael Short, convicted of federal drug offense and commuted by President Bush; and Michael Nachmanoff, Federal Public Defender for the Eastern District of Virginia.

H.R. 5057, the "Debbie Smith Reauthorization Act of 2008" (reauthorizing Title II of PL 108–405)

Summary.—H.R. 5057 reauthorizes the Debbie Smith DNA Backlog Grant Program to help reduce the backlog of untested DNA samples in the Nation's crime labs. The Debbie Smith DNA Backlog Grant Program, which began in 2000, expires at the end

of FY 2009. H.R. 5057, the "Debbie Smith Reauthorization Act," would renew the law and authorize $151 million for each fiscal year 2009–2014.

Legislative History.—Rep. Carolyn Maloney (D–NY) introduced H.R. 5057 on January 17, 2008. The Subcommittee held one day of hearings on H.R. 5057, on April 10, 2008. Testimony was received from Representative Maloney; Dr. David W. Hagy, Director, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice; Peter Marone, Director, State of Virginia Crime Labs; Peter Neufeld, Esq., Co-founder and Co-Director of the Innocence Project; and Allen Newton, who was exonerated through post-conviction DNA testing, with additional material submitted by Human Rights Watch and the American Civil Liberties Union.

On May 13, 2008, the Subcommittee ordered the bill H.R. 5057 favorably reported, without amendment, by voice vote and on June 11, 2008, the full Committee met and ordered the bill favorably reported with an amendment, by voice vote. On July 14, 2008, on motion to suspend the rules and pass H.R. 5057, the House of Representatives passed the bill by voice vote and referred the bill to the Senate. On September 25, 2008, the Senate passed H.R. 5057 as an amendment in the nature of a substitute by Unanimous Consent and referred the bill back to the House. On September 27, 2008, on motion to suspend the rules and pass H.R. 5057, the House passed the bill and on October 8, 2008, President Bush signed H.R. 5057, which became Public Law 110–360.

H.R. 5352, the "Elder Abuse Victims Act of 2008"

Summary.—H.R. 5352 addresses the growing problem of elders victimized by criminal conduct. It requires the Attorney General to research and report on State laws and practices relating to elder abuse and to develop a long-term plan and objectives. It requires the Comptroller General to make recommendations regarding Federal law. It authorizes the Attorney General to award grants for training and assistance to local and State prosecutors, courts, police and other first responders in elder justice matters, and to facilitate and coordinate programs for victims of elder abuse.

Legislative History.—H.R. 5352 was introduced on February 12, 2008 and referred to the Judiciary Committee. The Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on April 17, 2008. Testimony was received from Representative Rahm Emanuel (IL–5), sponsor of H.R. 1783; Rep. Joe Sestak (PA–7), sponsor of H.R. 5352; Rep. Ron Klein (FL–22), sponsor of H.R. 5464; Robert Blancato, Elder Justice Coalition; Sherry Friedlander, A Child is Missing Alert and Recovery Center; and Vernon Keenan, Georgia Bureau of Investigation. On May 13, 2008, the Subcommittee met in open session and ordered the bill favorably reported, without amendment, by voice vote. On June 11, 2008, the Committee met in open session and ordered the bill favorably reported with an amendment, by voice vote.

The bill also was referred to the House Ways and Means Committee. That referral was discharged on September 22, 2008. On September 23, 2008, the House suspended the rules and passed H.R. 5352, as amended, by voice vote: 387–28.

H.R. 5464, the "A Child Is Missing Alert and Recovery Center Act"

Summary.—H.R. 5464 addresses the need for a quick response by law enforcement when a child "goes missing." The bill authorizes annual grants to the A Child Is Missing Alert and Recovery Center, a national non-profit organization, to operate and expand the program and technologies necessary to assist law enforcement agencies in the rapid recovery of missing individuals.

Legislative History.—H.R. 5464 was introduced on February 14, 2008 and referred to the Judiciary Committee. The Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on April 17, 2008. Testimony was received from Rep. Ron Klein, the sponsor of the bill; Sherry Friedlander-Olsen, founder and CEO of A Child is Missing Alert and Recovery Center; and Vernon Keenan, Director of Georgia Bureau of Investigation. On May 13, 2008, the Subcommittee met in open session and ordered the bill favorably reported without amendment, by voice vote. On May 14, 2008, the Committee met in open session and ordered the bill favorably reported without amendment, by a voice vote. On July 14, 2008, the House suspended the rules and passed the bill by voice vote.

H.R. 5689, the "Smuggled Tobacco Prevention Act of 2008"

Summary.—Introduced by Representative Lloyd Doggett, H.R. 5689 amends the Internal Revenue Code to require all packages of tobacco products for export to be clearly labeled for export to prevent illegal reentry into the U.S. The bill also prohibits retaliation against whistleblowers, raises the $1,000 civil penalty for tobacco product violations to $10,000, and allows a State tobacco tax authority to bring a civil action in U.S. district court for collection of State cigarette taxes.

Legislative History.—Introduced on April 3, 2008, H.R. 5689 was referred to the Subcommittee on April 14, 2008. The Subcommittee held 1 day of hearings on H.R. 5689 on May 1, 2008. Testimony was received from Representative Anthony Weiner (D–NY); Representative Dale E. Kildee (D–MI); Arian Melendez, Chairman, Reno-Sparks Indian Colony; Matthew L. Myers, President, Campaign for Tobacco-Free Kids; Steve Rosenthal, New York State Association of Wholesale Marketers; John Colledge, Independent Consultant; and David Lapp, Chief Counsel, Tobacco Enforcement Unit, Office of the Attorney General of Maryland. No further action was taken on the bill.

H.R. 5898, the "Silver Alert Grant Program Act of 2008"

Summary.—H.R. 5898 addresses the growing problem of elderly persons who "go missing" as a result of dementia or other illness. It authorizes a grant program for State-administered notification systems to help locate missing persons suffering from Alzheimer's disease and other dementia related illnesses. The grants are to be used to establish and implement State Silver Alert systems or to make improvements to existing State Silver Alert programs.

Legislative History.—H.R. 5898 was introduced on April 24, 2008 and referred to the Judiciary Committee. On July 15, 2008, the Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on H.R. 5898, and related bills H.R. 6064, the

"National Silver Alert Act," and H.R. 423, "Kristen's Act Reauthorization of 2007." Testimony was received from Rep. Lloyd Doggett (TX–25), sponsor of H.R. 6064; Rep. Gus Bilirakis (FL–9), sponsor of H.R. 5898; and Rep. Sue Wilkins Myrick (NC–09), sponsor of H.R. 423. On July 30, 2008, the Committee met in open session on related bill H.R. 6064, and ordered that bill favorably reported with an amendment that incorporated much of H.R. 5898. On September 17, 2008, the House voted to suspend the rules and passed H.R. 6064, as amended, by voice vote.

H.R. 5938, the "Former Vice President Protection Act of 2008"

Summary.—H.R. 5938, authorizes the United States Secret Service to protect the former Vice Presidents of the United States, their spouses, and their children under the age of 16, for not more than six months after the Vice President leaves office. The bill would also allow protection to continue should circumstances warrant the extension.

Legislative History.—Representative John Conyers (D-MI) introduced H.R. 5938 on May 1, 2008. The Committee on the Judiciary held no hearings on H.R. 5938. On May 13, 2008, the Subcommittee ordered the bill H.R. 5938 favorably reported, without amendment, by voice vote, and on May 14, 2008, the full Committee ordered the bill favorably reported without amendment. On June 9, 2008, on motion to suspend the rules and pass H.R. 5938, the House of Representatives passed the bill and referred it to the Senate. On July 30, 2008, H.R. 5938 passed the Senate with amendments by Unanimous Consent and was referred back to the House. On September 15, 2008 on motion to suspend the rules and pass H.R. 5938, the House passed the bill. On September 26, 2008, President Bush signed the bill, which became Public Law 110–326.

H.R. 6083, To authorize funding to conduct a national training program for State and local prosecutors.

Summary.—H.R. 6083 will authorize the United States Attorney General to grant funding for providing State and local prosecutors with specialized training to prosecute difficult crimes such as child/elder abuse, identity theft, gang-related activities, and in complex evidentiary issues such as the use of DNA.

Legislative History.—H.R. 6083 was introduced by Representative John Spratt (SC 5) on May 19, 2008. The Committee on the Judiciary held no hearings on H.R. 6083. On July 16, 2008 the full Committee ordered H.R. 6083 favorably reported with an amendment, by voice vote. On July 31, 2008, on motion to suspend the rules and pass H.R. 6083, the House of Representatives passed the bill by voice vote and referred the bill to the Senate. On September 30, 2008, the Senate passed the bill by unanimous consent without amendment and on October 15, 2008, President Bush signed the bill, which became Public Law 110–424.

H.R. 6295/S. 3598, Drug Trafficking Vessel Interdiction Act of 2008

Summary.—H.R. 6295 makes the operation of a self-propelled, stateless, semi-submersible or fully submersible vessel on an international voyage, a felony offense under title 18 United States Code. Illicit self-propelled submersibles or SPSSes are a growing national

security threat identified by the United States Coast Guard and require Congressional action.

Legislative History.—Representative Dan Lungren (CA–3) introduced H.R. 6295 on June 18, 2008. The Committee held no hearings on this legislation and had no mark up. On July 27, 2008, upon motion to suspend the rules and pass H.R. 6295, the House of Representatives agreed to the bill by voice vote. On September 25, 2008, Senator Inouye (HI) introduced S. 3598, an amended form of H.R. 6295, which on the same date passed by Unanimous Consent without amendment and was referred to the House of Representatives. On September 29, 2008, on motion to suspend the rules and pass the bill, the House passed S. 3598 without amendment by voice vote. On October 3, 2008, President Bush signed the bill, which became Public Law 110–407.

H.R. 6064, the "National Silver Alert Act"

Summary.—H.R. 6064, Title I, the "National Silver Alert Act," addresses the growing problem of older adults who "go missing" each year as a result of dementia, diminished capacity, foul play or other unusual circumstances. It establishes a national Silver Alert program, based on the successful Amber Alert program for children. The Act authorizes the Attorney General to provide grants to States for local Silver Alert plans and communications networks. The Act also authorizes the Attorney General to award grants under the Sammy Kirk Electronic Monitoring Program to States and local governments for programs providing voluntary electronic monitoring services to elderly individuals. Title II of H.R. 6064, "Kristen's Act Reauthorization of 2008," reauthorizes an existing grant program, and directs the Attorney General to make competitive grants to public agencies and nonprofit private organizations for maintenance of a national resource center and information clearinghouse, a national database for tracking missing adults, training, and other related activities.

Legislative History.—H.R. 6064 was introduced on May 15, 2008 and referred to the Judiciary Committee. On July 15, 2008, the Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on H.R. 6064, and related bills H.R. 5898, the "Silver Alert Grant Program Act of 2008," and H.R. 423, "Kristen's Act Reauthorization of 2007." Testimony was received from Rep. Lloyd Doggett (TX–25), sponsor of H.R. 6064; Rep. Gus Bilirakis (FL–9), sponsor of H.R. 5898; and Rep. Sue Wilkins Myrick (NC–9), sponsor of H.R. 423. On July 30, 2008, the Committee met in open session and ordered the bill favorably reported, with an amendment, by voice vote. The amendments merged two other bills, H.R. 5898, the "Silver Alert Grant Program Act" and H.R. 423, the "Kristen's Act Reauthorization of 2007," with the main bill, H.R. 6064. On September 17, 2008, the House voted to suspend the rules and passed H.R. 6064, as amended, by voice vote.

H.R. 6491, the "Organized Retail Crime Act of 2008"

Summary.—H.R. 6491 addresses the serious problem of organized retail crime and its use of the internet to perpetuate crime. H.R. 6491 adds to existing federal laws that prohibit the transportation, sale or receipt of stolen goods by adding language indicating

that such conduct is prohibited when committed through organized retail crime. The bill also adds the new crime of facilitation of organized retail crime. It makes it unlawful for online marketplace operators to facilitate organized retail crime by failing to conduct internal investigations and "take-down" suspected sites; by failing to maintain certain records; by failing to require high volume sellers to publicly disclose certain identifying information on the Internet; and by failing to provide certain contact information to businesses who have a reasonable suspicion that online products offered for sale were obtained by ORC. The bill provides for civil forfeiture and a civil cause of action for injunctive relief or damages against online marketplace operators. Finally, H.R. 6491 directs the United States Sentencing Commission to review and, if appropriate, amend the sentencing guidelines for organized retail crime.

Legislative History.—H.R. 6491 was introduced on July 15, 2008, and referred to the Judiciary Committee. On September 11, 2008, the Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on H.R. 6491 and related bills, and testimony was received by Rep. Brad Ellsworth (D–IN), sponsor of H.R. 6491; Frank Muscato, Organized Retail Crime Field Investigator, Walgreens; Sheriff Grady Judd, Polk County Sheriff's Office; Steve DelBianco, Executive Director, Net Choice; Edward Torpoco, Senior Regulatory Counsel, eBay Inc.; and Joseph J. LaRocca, Vice President, Loss Prevention, National Retail Federation. The Subcommittee on Crime, Terrorism, and Homeland Security previously had held one day of hearings on the general problem of organized retail crime on October 25, 2007, and testimony was received by Brad Brekke, Vice-President of Assets Protection, Target Corporation; David Hill, Detective, Montgomery County Police Department; Karl F. Langhorst, Director of Loss Prevention, Randalls/Tom Thumb Food and Pharmacy; and Robert Chestnut, Senior Vice-President of Rules, Trust and Safety, eBay Inc.

H.R. 6503, the "Missing Alzheimer's Disease Patient Alert Program Reauthorization of 2008"

Summary.—The Missing Alzheimer's Disease Patient Alert Program, administered by the Department of Justice, is the only federal program that currently provides grant funding to locate vulnerable elderly individuals who go missing. H.R. 6503 reauthorizes and modifies this program. The bill authorizes the Attorney General to award competitive grants to nonprofit organizations for planning, designing, establishing, and operating locally based, proactive programs to protect and locate missing patients with Alzheimer's disease and related dementias, and other missing elderly individuals.

Legislative History.—H.R. 6503 was introduced on July 15, 2008 and was referred to the Judiciary Committee. The Subcommittee on Crime, Terrorism, and Homeland Security did not have a hearing specifically on this bill, but held one day of hearings, on July 15, 2008, on the problem of elders who go missing as a result of dementia and diminished capacity. Testimony was received from Rep. Lloyd Doggett (TX–25), sponsor of H.R. 6064; Rep. Gus Bilirakis (FL–9), sponsor of H.R. 5898; and Rep. Sue Wilkins Myrick (NC–9), sponsor of H.R. 423. On July 30, 2008, the Committee met

in open session and ordered H.R. 6503 favorably reported without amendment, by voice vote.

H.R. 6597, the "Animal Cruelty Statistics Act of 2008"

Summary.—H.R. 6597 recognizes the importance of data regarding animal cruelty crimes and directs the Attorney General to make appropriate changes to existing crime databases so that data on animal cruelty crimes will be collected and made available to the public.

Legislative History.—H.R. 6597 was introduced by Mr. John Conyers, Jr. on September 24, 2008, and referred to the Judiciary Committee. The Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on July 31, 2008. Testimony was received from Liz Ross, Federal Policy Advisor, Animal Welfare Institute; the Honorable Charles W. Stenholm, Former Member of Congress and Senior Policy Advisor at Olsson Frank Weeda Terman Bode Matz PC; Dr. John Boyd, Jr., President, National Black Farmers Association; Dr. Douglas G. Corey, DVM and Past President of the American Association of Equine Practitioners; Dr. Nicholas Dodman, DVM and Professor, Section Head and Program Director, Animal Behavior Department of Clinical Sciences, Tufts' Cummings School of Veterinary Medicine and founding member of Veterinarians for Equine Welfare; and Wayne Pacelle, President and Chief Executive Officer of the Humane Society of the United States.

H.R. 6598, the "Prevention of Equine Cruelty Act of 2008"

Summary.—H.R. 6598 seeks to stop the slaughter of horses for human consumption that currently occurs across our borders in Mexico and Canada. The bill makes it illegal to possess, ship, transport, purchase, sell, deliver or receive any horse with the intent that it is to be slaughtered for human consumption. The bill also makes it illegal to engage in the above conduct with respect to horse flesh or carcass with the intent that it be used for human consumption. The crime is punishable as either a misdemeanor or felony depending on the circumstances of the offense.

Legislative History.—H.R. 6598 was introduced by Mr. John Conyers, Jr. (MI–14) on September 24, 2008, and referred to the Judiciary Committee. The Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on July 31, 2008. Testimony was received from Liz Ross, Federal Policy Advisor, Animal Welfare Institute; the Honorable Charles W. Stenholm, Former Member of Congress and Senior Policy Advisor at Olsson Frank Weeda Terman Bode Matz PC; Dr. John Boyd, Jr., President, National Black Farmers Association; Dr. Douglas G. Corey, DVM and Past President of the American Association of Equine Practitioners; Dr. Nicholas Dodman, DVM and Professor, Section Head and Program Director, Animal Behavior Department of Clinical Sciences, Tufts' Cummings School of Veterinary Medicine and founding member of Veterinarians for Equine Welfare; and Wayne Pacelle, President and Chief Executive Officer of the Humane Society of the United States. The Committee met in open session to consider H.R. 6598 on September 10, 2008, September 17, 2008 and September

23, 2008. On September 23, 2008, the Committee ordered the bill favorably reported with an amendment, by a voice vote.

H.R. 6713, the "E-fencing Enforcement Act of 2008"

Summary.—H.R. 6713 addresses the serious problem of organized retail crime and its use of the internet to perpetuate crime by imposing duties on online marketplace providers with respect to high volume online sellers. These duties include a duty to retain contact information about high volume sellers and to disclose that information to certain persons with standing when a report has been made by or to law enforcement regarding theft by that seller. It also imposes a duty to initiate an internal investigation, based on available or easily obtained information, and to take-down a site when there is good reason to believe the goods or items offered for sale were unlawfully acquired. It expressly acknowledges that existing law already criminalizes knowing participation by online marketplace providers in passing stolen property. The bill creates a civil cause of action for persons aggrieved by a provider's failure to comply with these duties.

Legislative History.—H.R. 6713 was introduced by Rep. Bobby C. Scott (VA–03) on July 31, 2008, and referred to the Judiciary Committee. On September 11, 2008, the Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on H.R. 6713 and related bills, and testimony was received by Rep. Brad Ellsworth (IN–08), sponsor of H.R. 6491; Frank Muscato, Organized Retail Crime Field Investigator, Walgreens; Sheriff Grady Judd, Polk County Sheriff's Office; Steve DelBianco, Executive Director, Net Choice; Edward Torpoco, Senior Regulatory Counsel, eBay Inc.; and Joseph J. LaRocca, Vice President, Loss Prevention, National Retail Federation.

The Subcommittee on Crime, Terrorism, and Homeland Security previously had held one day of hearings on the general problem of organized retail crime on October 25, 2007, and testimony was received by Brad Brekke, Vice-President of Assets Protection, Target Corporation; David Hill, Detective, Montgomery County Police Department; Karl F. Langhorst, Director of Loss Prevention, Randalls/Tom Thumb Food and Pharmacy; and Robert Chestnut, Senior Vice-President of Rules, Trust and Safety, eBay Inc.

H.R. 6838, the "Campus Safety Act of 2008"

Summary.—H.R. 6838 will help institutions of higher learning understand how to respond and even help prevent tragedies such as campus shootings. The bill creates a National Center of Campus Public Safety, which will be administered through Department of Justice. The Center will train campus public safety agencies, promote research into strengthening campus safety, and be a clearinghouse for disseminating safety information. The Director of the Center will have authority to award grants to institutions of higher learning to help them meet their enhanced public safety goals.

Legislative History.—Representative Bobby Scott (VA–3) introduced H.R. 6838 on September 8, 2008. The Subcommittee held no hearings on the bill. On September 27, 2008, on motion to suspend the rules and pass H.R. 6838, the House of Representatives passed

the bill and referred it to the Senate. There was no further action on H.R. 6838.

S. 973, the "Restitution for Victims of Crime Act of 2007," H.R. 4110, the "Restitution for Victims of Crime Act of 2007," and H.R. 845, the "Criminal Restitution Improvement Act"

Summary.—S. 973, H.R. 4110, and H.R. 845 each propose reforms to federal restitution laws to address the roughly 87% of uncollected restitution and fines. Each of the proposals also authorizes the government to seek a court order to freeze a defendant's assets in anticipation that the defendant will have to pay restitution to a crime victim.

Legislative History.—Senator Byron Dorgan of North Dakota introduced S. 973 on March 22, 2007, Representative Carol Shea-Porter (NH–1) introduced H.R. 4110 on November 7, 2007, and Representative Steve Chabot (OH–1) introduced H.R. 845 on February 6, 2007. On April 3, 2008 the Subcommittee held simultaneous hearings on S. 973, H.R. 4110, and H.R. 845. The subcommittee heard testimony from Senator Dorgan; Jonathan Turley, Professor of Law, George Washington University Law School; David B. Smith, Esq., English & Smith; Andrew Weissman, Esq., Jenner & Block, LLP; and, Judge Paul G. Cassell, Professor, University of Utah, S.J. Quinney College of Law. There was no further action on these legislative proposals.

S. 2135, the "Child Soldiers Accountability Act of 2008"

Summary.—On October 3, 2007, Senator Richard Durbin introduced S. 2135, the "Child Soldiers Accountability Act of 2008." S. 2135 makes it a federal crime to recruit or use child soldiers under the age of 15 and allows for the prosecution of individuals, regardless of whether or not the crime was committed in the U.S. The bill imposes penalties of up to 20 years to life in prison, and also allows the U.S. government to deport or deny entry to individuals who have recruited children as soldiers.

Legislative History.—Introduced on October 3, 2007, S. 2135 was referred to the Subcommittee on February 4, 2008. The Subcommittee held 1 day of hearings on S. 2135 on April 8, 2008. Testimony was received from Grace Akallo, a former child soldier; Tom Malinowski, Washington Advocacy Director, Human Rights Watch. On May 6, 2008, the Subcommittee ordered the bill, S. 2135, favorably reported, by voice vote. On September 8, 2008, the bill passed the House, as amended, under suspension of the rules, by a recorded vote of 371–0. On September 16, 2008, the Senate agreed to House amendment by Unanimous Consent. On October 3, 2008, the bill was signed by the President and became Public Law No. 110–340.

S. 3434, the "Combating Organized Retail Crime Act of 2008"

Summary.—S. 3434 addresses the serious problem of organized retail crime and its use of the internet to perpetuate crime by expanding existing criminal code and imposing duties on online retail providers. It expands the reach of existing federal crimes on stolen goods by decreasing the value of goods that would trigger federal jurisdiction. It directs the United States Sentencing Commission to

review and, if appropriate, amend the federal sentencing guidelines as they apply to organized retail crime. The bill imposes duties on both online retail marketplace operators and operators of physical marketplaces to report suspicious activities to the Attorney General and in certain circumstances to terminate a vendor or user's sales activities. Online marketplace operators must maintain certain records for three years and must require sellers to display their contact information along with product information. The bill imposes civil penalties and grants a State Attorney General the authority to bring a civil action on behalf of citizens of its State for injunctive relief, damages, or civil penalties.

Legislative History.—S. 3434 was introduced on August 1, 2008. On September 11, 2008, the Subcommittee on Crime, Terrorism, and Homeland Security held one day of hearings on S. 3434 and two related House bills, and testimony was received by Rep. Brad Ellsworth (IN–08), sponsor of H.R. 6491; Frank Muscato, Organized Retail Crime Field Investigator, Walgreens; Sheriff Grady Judd, Polk County Sheriff's Office; Steve DelBianco, Executive Director, Net Choice; Edward Torpoco, Senior Regulatory Counsel, eBay Inc.; and Joseph J. LaRocca, Vice President, Loss Prevention, National Retail Federation. The Subcommittee on Crime, Terrorism, and Homeland Security previously had held one day of hearings on the general problem of organized retail crime on October 25, 2007, and testimony was received by Brad Brekke, Vice-President of Assets Protection, Target Corporation; David Hill, Detective, Montgomery County Police Department; Karl F. Langhorst, Director of Loss Prevention, Randalls/Tom Thumb Food and Pharmacy; and Robert Chestnut, Senior Vice-President of Rules, Trust and Safety, eBay Inc.

S. 3641, A bill to authorize funding for the National Crime Victim Law Institute to provide support for victims of crime under Crime Victims Legal Assistance Programs as a part of the Victims of Crime Act of 1984

Summary.—S. 3641 reauthorizes funding for the National Crime Victim Law Institute in support of crime victims legal assistance programs.

Legislative History.—Senator Kyl (AZ) introduced S. 3641 on September 27, 2008, and on the same date passed it by Unanimous Consent without amendment and referred it to the House of Representatives Committee on the Judiciary. On October 2, 2008, on motion to suspend the rules and pass the bill, S. 3641 passed the House by recorded vote 295–115. On October 15, 2008, President Bush signed the bill, which became Public Law 110–431.

OVERSIGHT ACTIVITIES

Hearing on: "Making Communities Safer: Youth Violence and Gang Interventions that Work"

Summary.—This hearing on February 15, 2007 examined several successful evidence based approaches that reduce youth violence and have kept young people out of gangs. Collaborative and comprehensive approaches to community violence that create working partnerships between law enforcement and prevention/intervention

groups are proven to work. Prevention and intervention programs keep children from getting into trouble and pull children out of trouble. These programs also save lives, and significantly reduce taxpayer costs. For every child diverted from a lifetime of crime, we save between $1.3 and $1.5 million—a conservative estimate, since potential benefits such as better salaries and reduced public service costs outside the justice system are difficult to measure. Testimony was received and heard from Professor Delbert (Del) Elliott, Director of the Center for the Study and Prevention of Violence, University of Colorado; Dr. Jeffrey Butts, Senior Researcher, Chapin Hall Center for Children, University of Chicago; Dr. David Kennedy, Director, Center for Crime Prevention and Control, John Jay College of Criminal Justice; Mr. Teny Gross, Executive Director, Institute for the Study and Practice of Nonviolence, Providence, RI; Ms. Mai Fernandez, Legal and Strategy Director, Latin American Youth Center, Washington, DC; Chief James Corwin, Chief of Police, Kansas City, MO; Professor Lawrence W. Sherman, Director, Jerry Lee Center of Criminology, University of Pennsylvania; and Mr. Paul Logli, Chairman of the Board, National District Attorneys Association.

Hearing on Criminal Justice Responses to Offenders with Mental Illness

Summary.—On March 27, 2007, the Subcommittee held a hearing on Criminal Justice Responses to Offenders with Mental Illness. People with mental illness are overrepresented in all parts of the criminal justice system; in their contact with law enforcement, in the courts, in jails and prisons, and in parole and probation caseloads across the country. Current statistics reflect this disturbing trend. As a recent Department of Justice (DOJ) report on the problem revealed, more than half of all prison and jail inmates, including 56 percent of state prisoners, 45 percent of federal prisoners and 64 percent of local jail inmates, were found to have a mental health problem. The incidence of mental illness in America's prisons and jails is well above that of the general population; the mental illness incidence in the general population is approximately 5% compared to an average 16% (high of 28%) in jails and prisons. Moreover, individuals with mental illnesses are more likely to be incarcerated for non-violent crimes, are more likely to recidivate, and are more likely to serve a longer portion or the maximum amount of their sentence than the general prison population.

This hearing explored causes and potential solutions to this problem and the Subcommittee heard testimony from: The Honorable Steven Leifman, Judge, Criminal Division of Miami-Dade County Court, Florida's 11th Judicial Circuit, Miami, Florida; Lieutenant Richard Wall, Los Angeles Police Department (LAPD), Los Angeles, CA; Sheriff David G. Gutierrez, Lubbock, TX; Mr. Phillip Perry, Bonneville Mental Health Court, Idaho Supreme Court, Boise, Idaho; and Mr. Leon Evans, Executive Director, Jail Diversion Program, San Antonio, TX.

Hearing on the Katrina Impact on Crime and the Criminal Justice System in New Orleans

Summary.—After Hurricane Katrina, many reported that New Orleans was experiencing an extraordinary wave of crime, particularly violent crime. The Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security decided to hold a hearing in New Orleans to gather information about the effects of Hurricane Katrina on crime and criminal justice in New Orleans, assess the continuing and unique challenges facing New Orleans and determine whether the federal government might further assist New Orleans.

Legislative History.—The Subcommittee on Crime, Terrorism, and Homeland Security held a field hearing on April 10, 2007 at Dillard University in New Orleans, Louisiana. Testimony was received in four separate panels of witnesses by Mayor C. Ray Nagin, Mayor of New Orleans; Oliver Thomas, Jr., President of the New Orleans City Council; Rep. William J. Jefferson (LA–02); Dr. Marvalene Hughes, President of Dillard University; Eddie Jordan, Orleans Parish District Attorney; Warren Riley, Chief of Police, New Orleans Police Department; Marlin N. Gusman, Orleans Parish Criminal Sheriff; Jim Letten, United States Attorney for the Eastern District of Louisiana; James Bernazzani, FBI Special Agent In Charge, New Orleans; David Harper, ATF Special Agent In Charge, New Orleans; William James Renton, Jr., DEA Special Agent in Charge, New Orleans; Jacques Thibodeaux, Acting Chief Deputy U.S. Marshal, Eastern District of Louisiana; Judge Ernestine Gray, Orleans Parish Juvenile Court; Dr. Howard Osofsky, Chair, Louisiana State University Health Sciences Center, Department of Psychiatry; Reverend John Raphael, New Hope Baptist Church, New Orleans; Peter Scharf, Research Professor of Criminal Justice and Executive Director, Center for Society, Law and Justice at Texas State University.

Hearing on Employer Access to Criminal Background Checks and the Accuracy and Reliability of Such Checks

Summary.—The Subcommittee held a hearing on April 26, 2007 on employer access to criminal background checks and the accuracy and reliability of such checks. There is private sector interest in obtaining access to criminal history record information for the purpose of screening an individual's suitability for employment, licensing, or placement in positions of trust. Currently, FBI rap sheets are only shared with federal agencies, state law enforcement agencies, and for certain private employers while many more employers also want access to that information. On the other hand, individuals who do have a criminal record want reasonable assurances that the information is accurate and complete, that they have a meaningful opportunity to see the information and correct inaccuracies, and that the information is used fairly in the screening process and does not unfairly exclude them from employment opportunities.

The hearing explored the balance between the growing desire of private industry to directly access criminal history background checks and the need to ensure reliability of background checks thereby reducing unfair barriers to employment of people with

criminal records. The Subcommittee heard testimony from: Floyd Clarke, Vice President, Corporate Compliance, Mac Andrews & Forbes Holdings; Barry LaCroix, Executive Office of Public Safety, Massachusetts Criminal History Record Systems Board; Maurice Emsellem, National Employment Law Project; Mr. Frank Campbell, Deputy Assistant Attorney General, Office of Legal Policy, United States Department of Justice; Mr. Ronald P. Hawley, Executive Director, SEARCH, The National Consortium for Justice Information and Statistics; Mr. Robert Davis, International Vice President and National Legislative Director, Transportation Communications International Union; and Sharon Dietrich, Managing Attorney, Employment and Public Benefits, Community Legal Services.

Hearing on Mandatory Minimum Sentencing Laws—The Issues

Summary.—The Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on June 26, 2007 that explored mandatory minimum sentencing and the potential to reform federal law in this area. Witnesses discussed several high profile cases where mandatory minimum statutes have resulted in particularly unfair sentences. Testimony was received and heard from the Honorable Paul G. Cassell, Judge of the United States District Court for the District of Utah, representing the U.S. Judicial Conference; Mr. Richard B. Roper, III, United States Attorney, Northern District of Texas; The Honorable Ricardo H. Hinojosa, Chair of the United States Sentencing Commission; Marc Mauer, Executive Director, The Sentencing Project; Mr. T.J. Bonner, the National President of the National Border Patrol Council of the American Federation of Government Employees of the AFL-CIO; and Serena Nunn, recent graduate of University of Michigan School of Law and former federal offender who served more than a decade in prison for conspiracy to distribute cocaine as a result of her boyfriend's drug dealing.

One of the cases examined during the hearing was the convictions of Border Patrol Agents Ignacio Ramos and Jose Compean. On March 8, 2006, a jury found U.S. Border Patrol Agents Ramos and Compean guilty of: (1) assault with a dangerous weapon (2) assault resulting in serious bodily injury, and aiding and abetting an assault resulting in serious bodily injury; (3) discharge of a firearm in relation to a crime of violence (4) tampering with an official proceeding and (5) deprivation of rights under color of law. The discharge of a firearm in relation to a crime of violence, required a mandatory 10-year sentence.

United States District Court Judge Kathleen Cardone sentenced the two agents to 11 years and 1 day, and 12 years respectively. She stated that she considered the conduct of the victim and the risks to the agents in prison in sentencing them to lenient sentences, but she could not reduce the 10-year mandatory, consecutive sentence required under section 924.

The Drug Enforcement Administration's Regulation of Medicine

Summary.—The subcommittee held a hearing on July 12, 2007. The purpose of the hearing was to explore numerous DEA programs and policies, including the DEA's "Oxycontin Action Plan,"

which targets for prosecution medical doctors who prescribe large amounts of pain medication to their patients and "Operation Meth Merchant," which targets suppliers and convenience store owners/clerks who sell ephedrine. The hearing also touched upon the DEA's policy of prosecuting medical marijuana users and their use of questionable tactics to arrest these users. The following witnesses appeared and submitted written statements for the record: Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, United States Drug Enforcement Administration, United States Department of Justice; David Murray, Director of Counter Drug Technology, ONDCP; Dr. Edward J. Heiden, Ph.D., Heiden Associates Inc.,; Valerie Corral, Founder of WAMM, Wo/Men's Alliance for Medical Marijuana; Siobhan Reynolds, President, Pain Relief Network; and John Flannery, Attorney, Campbell, Miller, Zimmerman, PC.

Hearing to Reauthorize the Juvenile Justice and Delinquency Act

Summary.—The Subcommittee on Crime, Terrorism, and Homeland Security held a joint hearing with the Education and Labor Subcommittee on Healthy Families and Communities on the "Reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974" on July 12, 2007. During the hearing the committees jointly reviewed the implementation of the Juvenile Justice and Delinquency Prevention Act of 1974 by the Department of Justice Office of Juvenile Justice and Delinquency Prevention during the past five years, and considered reauthorization of the Act.

The following witnesses testified before the committees on this issue: Mr. Derrick Johnson, Vice-Chair, Arizona Juvenile Justice Commission, Phoenix, Arizona; Mr. David Freed, Cumberland County District Attorney, Carlisle, Pennsylvania; Mr. Paul Lawrence, Goffstown District Court, New Hampshire State Juvenile Justice Advisory Group, Goffstown, New Hampshire; Mr. Robert Shepherd, Jr., Emeritius Professor of Law, University of Richmond School of Law, Richmond, Virginia; Mr. Shannon Jones, former participant in the Community Intensive Supervision Program, Pittsburgh, Pennsylvania; and Ms. Jennifer Woolard, Ph.D., Assistant Professor of Psychology, Georgetown University, Washington, D.C.

Confidential Informants

Summary.—The Subcommittee on Crime, Terrorism, and Homeland Security and the Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a joint Oversight Hearing on Law Enforcement Confidential Informant Practices on July 19, 2007. This oversight hearing explored law enforcement practices and their impact on civil and constitutional rights. Certain practices relating to the use of confidential informants, particularly in drug enforcement, have been criticized. Despite its impact on the criminal justice system, the practice has been subject to scant federal oversight. This hearing explored the impact of the use of confidential informants on plea bargaining, its affect on poor and minority communities. The hearing also explored policies designed to curb the potential for abuse of the use of confidential informants. The following witnesses testifed: Wayne M. Murphy, Assistant District Di-

rector of Intelligence, FBI; Professor Alexandra Natapoff, Loyola Law School; Commander Pat O'Burke, Deputy Commander, Narcotics Service, Texas Department of Public Safety; Dorothy Johnson Speight, Founder, Mothers In Charge; Ronald E. Brook, President, National Narcotic Officers' Association Coalition; and Reverend Markel Hutchins, Minister and Civil Rights Leader.

Hearing on the Implementation of the "Law Enforcement Officers Safety Act of 2004" (Pub. L. No. 108–277) and additional legislative efforts aimed at expanding the authority to carry concealed firearms, including H.R. 2726, the "Law Enforcement Officers Safety Act of 2007"

Summary.—The Subcommittee held a hearing on September 6, 2007 on the implementation of the "Law Enforcement Officers Safety Act of 2004" (Pub. L. No. 108–277) and additional legislative efforts aimed at expanding the authority to carry concealed firearms, including H.R. 2726, the "Law Enforcement Officers Safety Act of 2007."

During the course of the hearing, the Subcommittee examined three major issues. First, how the "Law Enforcement Officers Safety Act of 2004" (Pub. L. No. 108–277) is being implemented. Second, the Subcommittee examined arguments in favor and against expanding the scope of H.R. 218. Finally, the Subcommittee considered legislative proposals that would allow Federal judges, prosecutors and other DOJ employees whose "duties include representing the U.S. government in a court of law" to carry concealed weapons in Federal courthouses and other public and private places. Witnesses for the hearing were: Chief Scott Knight, the International Association of Chiefs of Police; Sheriff Craig Webre, President, National Sheriff's Association, Alexandria, VA; and a representative of the Fraternal Order of Police.

Gang Crime Hearing

Summary.—The Subcommittee held a hearing on October 2, 2008 on "Gang Crime Prevention and the Need to Foster Innovative Solutions at the Federal Level." This hearing focused on determining an appropriate response to gang crime in the United States. Witnesses discussed several pending Congressional legislative proposals, alternative approaches to stemming violence, and the appropriateness of federal law enforcement in criminal activity traditionally addressed by the states. The legislative proposals examined were S. 456, sponsored by Senator Dianne Feinstein (D–CA), H.R. 3547, sponsored by Representative Adam Schiff (CA 29th), which is similar to S. 456 and H.R. 3846, the Youth Prison Reduction through Opportunities, Mentoring, Intervention, Support and Education Act, sponsored by Rep. Robert C. "Bobby" Scott.

There were two panels of witnesses. Panel I consisted of Members of Congress including: the Honorable Adam B. Schiff, (D–CA); Honorable Joe Baca, (D–CA); the Honorable Elijah E. Cummings, (D–MD); the Honorable Jerry McNerney, (D–CA); and the Honorable Nick Lampson, (D–TX). Panel II consisted of juvenile justice experts including: the Honorable Jerrauld C. Jones, Judge, Norfolk Juvenile and Domestic Relations District Court; Dr. Peter Scharf, Executive Director, Center for Society, Law and Justice, Austin,

Texas; and Brian W. Walsh, Senior Legal Research Fellow, Center for Legal and Judicial Studies, the Heritage Foundation, Washington, D.C.

Hearing on "Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System"

Summary.—The Subcommittee on Crime, Terrorism and Homeland Security and the Subcommittee on Commercial and Administrative Law held a joint hearing titled "Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System" on October 11, 2007. Witnesses at the hearing were Professor Donald C. Shields, former Attorney General Richard Thornburgh, and former Alabama U.S. Attorney Doug Jones.

The Judiciary Committee's ongoing investigation into the firing of U.S. Attorneys revealed accusations of politicization within the Department of Justice and this hearing was an extension of that investigation. Questions whether political considerations have improperly influenced prosecutorial judgment have been raised in numerous cases around the country. The witnesses for this hearing testified about the proper role of the Department and its rightful independence from political influence in administering justice.

Hearing on Organized Retail Theft Prevention: Fostering a Comprehensive Public-Private Response

Summary.—On October 25, 2007, the Subcommittee held a hearing on Organized Retail Theft Prevention: Fostering a Comprehensive Public-Private Response. The significant growth in retail theft and the need to foster comprehensive, innovative solutions to prevent such acts from occurring has been recently highlighted in several media publications. In fact, a recent CNNMoney.com article suggested that as many as 79% of major retailers have been victims of organized retail theft within the past year. This hearing explored this issue and considered public as well private sector solutions that can be implemented to address this growing problem.

The Subcommittee heard testimony from four witnesses: Mr. Brad Brekke, Vice-President of Assets Protection, Target Corporation; Mr. David Hill, Detective, Montgomery County Police Department; Mr. Karl F. Langhorst, Director of Loss Prevention, Randalls/Tom Thumb Food and Pharmacy; and Mr. Robert Chestnut, Senior Vice-President of Rules, Trust and Safety, eBay Inc.

Oversight Hearing on State-Run Juvenile Boot Camps

Summary.—The Subcommittee held a hearing on December 13, 2007 on State-run alternative juvenile correctional facilities, commonly referred to as "boot camps." This hearing focused on the alleged abuses at state juvenile correctional facilities, commonly known as "boot camps."

Boot camps are modeled after military training camps, and can be either public or private. In October 2007, the Committee on Education and Labor held a hearing on privately run boot camps in which the Government Accounting Office provided testimony detailing widespread allegations of abuse. In fact, the GAO report cites 1619 staff members being involved in allegations of abuse in 33 states in 2005 alone. The study found that ineffective manage-

ment led to hiring untrained staff, lack of proper nourishment for participants, and reckless and abusive operating practices. The study concluded that these factors played significant roles in three deaths.

Witnesses testified about the ineffectiveness of the 'boot camp' concept, and poor oversight, which has led to serious abuses including deaths and included Adora Obi Nweze, President of the Florida NAACP; Professor Doris MacKenzie, University of Maryland; and Audrey Gibson, State Representative of Florida's 15th State District (Jacksonville).

Hearing on Enforcement of Federal Criminal Law to Protect Americans Working for U.S. Contractors in Iraq

Summary.—On December 18, 2007, the Subcommittee held a hearing on "Enforcement of Federal Criminal Law to Protect Americans Working for U.S. Contractors in Iraq" to probe charges concerning a lack of federal law enforcement protection for Americans who work as contract employees in Iraq, and concerning allegations of illegal conduct by some corporate contractors there. As a key example, the hearing will focus on charges that one of those Americans was raped and falsely imprisoned in violation of federal law but that no enforcement action has been taken.

The subcommittee heard testimony from Jamie Leigh Jones, a former employee of Kellogg Brown and Root (KBR) in Iraq; Representative Ted Poe (D–TX); and Professor Scott Horton of Columbia University, an expert on the laws governing contractors.

Enforcement of Federal Espionage Laws

Summary.—On January 29, 2008, the subcommittee held a hearing to examine federal efforts to enforce current espionage laws and successful prosecutions under these laws. The hearing also examined the coordination between law enforcement agencies in investigating and prosecuting espionage cases and whether additional resources or laws are needed to continue effectively combating espionage.

The following witnesses appeared and submitted a written statement for the record: The Honorable J. Patrick Rowan, Principal Deputy Assistant Attorney General, National Security Division, United States Department of Justice; David G. Major, President, The Centre for Counterintelligence and Security Studies, Alexandria, VA; Larry M. Wortzel, Ph.D., Chairman, United States-China Economic and Security Review Commission.

DHS Oversight

Summary.—The subcommittee held a hearing of the Department of Homeland Security (DHS) Law Enforcement Operations on March 11, 2008. The purpose of the hearing was to examine witnesses from the DHS law enforcement agencies who presented testimony and answered questions about their law enforcement activities, interagency responsibilities and activities, their mission accomplishments, how they balance meeting the mission challenges while respecting the liberty interest of Americans, and their expected needs to meet arising challenges.

Witnesses for this hearing were: Dana A. Brown, Director, Federal Air Marshal Service and Assistant Director for Law Enforcement for Transportation Security Administration; Jeffrey Self, Southwest Border Chief, Office of Border Patrol, U.S. Customs and Border Protection; Ray Parmer, Deputy Director for Investigations, U.S. Immigration and Customs Enforcement; Michael Stenger, Assistant Director for Investigations, U.S. Secret Service; and Rear Admiral Wayne Justice, Assistant Commandant for Capability and Director of Response Policy, U.S. Coast Guard.

The application history for grants authorized by the "Innocence Protection Act" (Title IV of PL 108–405)

Summary.—The subcommittee held a hearing on April 10, 2008 on H.R. 5057, the "Debbie Smith Reauthorization Act of 2008" (reauthorizing Title II of PL 108–405) and on the application history for grants authorized by the "Innocence Protection Act" (Title IV of PL 108–405). The Innocence Protection Act authorizes the Attorney General to grant funding to states for post-conviction DNA testing of individuals to help ascertain whether individuals have been wrongly convicted. At the time of the hearing (and at the time of this writing) there had been 215 post-conviction exonerations through DNA testing in the United States since 1989.[222] The exonerations have been throughout the United States, spanning 32 states. Sixteen of the 215 exonorees were on death row, and the true suspects and/or perpetrators have been identified in 82 of the DNA exoneration cases.[223]

The success of post-conviction DNA is evident by the exonerations it has yielded and it has the potential to exonerate hundreds more of the wrongfully convicted. Unfortunately, post-conviction DNA testing has not been utilized because although Congress funded a total of $7 million for Innocence Project Grants for fiscal years 2005 through 2007, none of the funds were ever granted. According to the Department of Justice Office of Justice Programs (OJP), the standards for authorizing the grants were set too high for any state to meet. There have been three grant applications (Virginia, Connecticut, and Arizona) and none have been able to meet the current requirements.

In February 2008, OJP issued its solicitation for grants via the Innocence Protection Act using the updated language. The deadline for submissions was March 24, 2008 and there were five applications for grants (each of which was approved and the funding awarded during FY 2008). During this hearing members inquired as to how the new appropriations language affected the grant process, and how to further improve the program. Witnesses were: Honorable Carolyn B. Maloney (NY–14), sponsor of H.R. 5057; Debbie Smith, the namesake of H.R. 5057; David Hagy, Director, National Institute of Justice, Department of Justice Office of Justice Programs; Peter Marone, Director, State of Virginia Crime Labs; Peter Neufeld, Esq., Co-founder and Co-Director of the Innocence Project; and Allen Newton, who was exonerated through post-conviction DNA testing.

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[222] http://www.innocenceproject.org/Content/351.php
[223] Id.

Hearing on Federal Prison Industries—Examining the Effects of Section 827 of the National Defense Authorization Act of 2008

Summary.—The subcommittee held a hearing on Federal Prison Industries (FPI) and the effects of sections 807 of the National Defense Authorization Act of 2008 on May 6, 2008. FPI is a government corporation that employs offenders incarcerated in federal prisons and provides job training opportunities to prisoners by producing goods and services for federal agencies. Senator Carl Levin sponsored an amendment which eliminated the mandatory source requirement that mandated the federal government to purchase a product from FPI, if FPI produced the product and lowered FPI's maximum market share to 5%. This will require FPI to diversify its programs drastically and may make it impractical for FPI to continue as a profitable industry. The Bureau of Prisons and other organizations believe that this amendment will drastically reduce the number of jobs available for prisoners who work for FPI. The purpose of this hearing was to hear expert opinions on the likely effect of this change, and as to the value of keeping the program solvent and vibrant.

Besides the loss of inmate jobs, the Levin Amendment could make it more difficult for officials to manage prison facilities. While earlier House Judiciary Committee-passed bills have made reductions in FPI operations, they were always tempered with vocational training and other work or work-related alternatives, as well as emergency authorities for the Attorney General or other officials to assure that job losses resulting in drastic impacts could be avoided. None of these needed management tools are provided for in Section 827.

In 2007, Senator Carl Levin (D–MI) introduced section 827, an amendment to H.R. 1585, the "National Defense Authorization Act of 2007." This amendment passed without going through the Judiciary Committee on either the House or Senate side. The bill passed on December 28, 2007, but President Bush vetoed it. It eventually became law on January 28, 2008 as part of H.R. 4986, the "National Defense Authorization Act of 2008."

The Crime Subcommittee held a hearing on May 6, 2008 to explore how the Section 827 amendment had affected FPI operations. Testimony was received and heard from Harley G. Lappin, Director, Federal Bureau of Prisons, U.S. Department of Justice; with Paul Laird, Chief Operating Officer for Federal Prison Industries; John Gage, National President, American Federation of Government Employees; and Marc Morial, Director, National Urban League, New York, NY.

Oversight Hearing on FBI Whistleblowers

On May 21, 2008, the Subcommittee held a hearing to provide an opportunity for the Members to hear testimony from two FBI whistleblowers, including allegations of retaliation by the Bureau, as well as Senator Grassley's testimony about the myriad instances of retaliation by the FBI which have been conveyed to him as a senior member of the Senate Judiciary Committee. This hearing also provided a record for future debate on extending federal whistleblower protections to FBI agents and personnel.

The following witnesses appeared and submitted written statements for the record: Hon. Charles "Chuck" Grassley, Member of the United States Senate (R–Iowa); Bassem Youssef, Supervisory Special Agent and Unit Chief, Federal Bureau of Investigation; Michael German, Policy Counsel, American Civil Liberties Union, Former Special Agent, Federal Bureau of Investigation.

Hearing: Addressing Gangs: What's Effective? What's Not?

Summary.—This June 10, 2008, hearing focused on determining appropriate responses to gang crime in the United States. Witnesses discussed alternative approaches to stemming violence, the effectiveness of various approaches and the appropriateness of federal law enforcement in criminal activity traditionally addressed by the states. During the hearing, there was an extensive discussion of the Charles Hamilton Houston Institute for Race and Justice (Harvard Law School) report, No More Children Left Behind Bars. This report assesses the most comprehensive and up to date studies on the issue of evidenced-based crime reduction strategies and applies the information to the major legislative efforts that were pending in the Congress to address the issue. Witnesses will also address law enforcement approaches to addressing crime, and the effectiveness of those approaches.

Testimony was received and heard by Professor Charles Ogletree, Jr., Professor and Director of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School; Ely Flores, a former gang member turned community activist; Dr. Robert D. Macy, Ph.D., founded the Boston Children's Foundation; Dr. Frank Straub, Ph.D., Commissioner of Public Safety for the City of White Plains, NY; and Major John Buckovich, Richmond Police Department.

Online Pharmacies and the Problem of Internet Drug Abuse

Summary.—The purpose of this hearing on June 24, 2008, was to explore the increasing use of prescription controlled substances by teenagers and others for non-medical purposes, which has been exacerbated by their easy availability over the Internet. Over recent years, there has been a growing epidemic of controlled prescription drug abuse over the Internet, involving opioids, such as OxyContin and Vicodin, depressants such as Valium and Xanax, and stimulants such as Ritalin and Adderall. Tens of thousands of "prescriptions" are written each year for controlled and non-controlled prescription drugs through these Internet pharmacies, which do not require medical records, examinations, lab tests or follow-ups.

The following witnesses appeared and submitted a written statement for the record: Joseph T. Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA); Christine Jones, General Counsel, GoDaddy.com; William T. Winsley, Executive Director, Ohio State Board of Pharmacy; and Patrick J. Egan, Attorney at Law, Fox Rothschild LLP.

Hearing: Reauthorization of the U.S. Parole Commission

Summary.—The United States Parole Commission's (Parole Commission) authority was due to expire October 31, 2008. On July

16, 2008, the Subcommittee on Crime, Terrorism and Homeland Security held a hearing to examine the current and anticipated future role and operations of the U.S. Parole Commission in light of the elimination of federal parole. Testimony was received and heard from The Honorable Eleanor Holmes Norton, U.S. House of Representatives Delegate—District of Columbia; Kenneth Linn, Director, Federal CURE; The Honorable Edward F. Reilly, Jr., Chairman, United States Parole Commission; David B. Muhlhausen, Ph.D., Senior Policy Analyst, Center for Data Analysis, the Heritage Foundation; and Horace Crenshaw, District of Columbia Parolee.

H.R. 6509, United States Parole Commission Extension Act of 2008 was introduced on July 16, 2008 by Chairman John Conyers, Jr. Senator Patrick Leahy introduced S.3294, the Senate version of the United States Parole Commission Extension Act. The Senate passed S. 3294 by Unanimous Consent on July 21, 2008. The House passed S. 3294 by a voice vote on a motion to suspend the rules and the measure was signed into law on August 12, 2008.

OJP Oversight

Summary.—The Subcommittee held an oversight hearing of the Department of Justice Office of Justice Programs (OJP) on September 18, 2008. The mission of OJP is to increase public safety and improve the fair administration of justice across America through innovative leadership and programs. OJP serves a crucial role in supporting the Nation's criminal justice systems and as such its programs affect the quality of life for all Americans and to be sure, OJP's successes are many. However, OJP has also endured a number of controversies, which the subcommittee explored by examining testimony about its component organizations. Witnesses for this hearing were: (Panel One) Jeffrey Sedgwick, Acting Assistant Attorney General for OJP, (Panel Two) Bill Piper, Director of National Affairs for Drug Policy Alliance Network (DPA), a representative from the Consortium of Forensic Science Organizations, Shay C. Bilchik, Research Professor at the Georgetown Public Policy Institute, Charles Sullivan from Citizens United for the Rehabilitation of Errants (CURE) and two witnesses selected by the minority.

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW[1] [2]

ZOE LOFGREN, California, *Chairman*

LUIS V. GUTIERREZ, Illinois
HOWARD L. BERMAN, California
SHEILA JACKSON-LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
LINDA T. SANCHEZ, California
ARTUR DAVIS, Alabama
KEITH ELLISON, Minnesota
ANTHONY D. WEINER, New York

STEVE KING, Iowa
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
J. RANDY FORBES, Virginia
LOUIE GOHMERT, Texas

Tabulation of subcommittee legislation and activity

Public:	
Legislation referred to the Subcommittee	253
Legislation on which hearings were held	2
Legislation reported favorably to the full Committee	12
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 pending before the full Committee	2
Legislation reported to the House	13
Legislation discharged from the Committee	3
Legislation pending in the House	5
Legislation passed by the House	13
Legislation pending in the Senate	4
Legislation vetoed by the President (not overridden)	0
Legislation enacted into Public Law	6
Legislation enacted into Public Law as part of other legislation	4
Days of legislative hearings	2
Days of oversight hearings	33
Private:	
Claims:	
Legislation referred to the Subcommittee	15
Legislation on which hearings were held	0
Legislation reported favorably to the full Committee	0
Legislation pending before the full Committee	0
Legislation reported to the House	0
Legislation discharged from the Committee	0
Legislation pending in the House	0
Legislation passed by the House	0
Legislation pending in the Senate	0
Legislation enacted into Private Law	0
Immigration:	
Legislation referred to the Subcommittee	59
Legislation on which hearings were held	0
Legislation reported favorably to the full Committee	5
Legislation pending before the full Committee	0
Legislation reported to the House	5
Legislation discharged from the Committee	5

[1] Subcommittee chairmanship and assignments approved January 26, 2007, and February 28, 2007.

[2] Subcommittee name change from "Immigration, Border Security, and Claims" to "Immigration, Citizenship, Refugees, Border Security, and International Law" approved January 26, 2007.

Legislation pending in the House	1
Legislation passed by the House	4
Legislation pending in the Senate	4
Legislation enacted into Private Law	0

LEGISLATIVE ACTIVITIES

S. 1104/H.R. 1790, To increase the number of Iraqi and Afghani translators and interpreters who may be admitted to the United States as special immigrants, and for other purposes

Summary.—In the National Defense Authorization Act for Fiscal Year 2006, Congress authorized 50 special immigrant visas (SIVs) annually for Iraqi and Afghani translators who were employed for at least a year by the U.S. Armed Forces. The SIVs were meant to protect Iraqi and Afghani translators whose lives were at risk because of their service to the United States. But the need for these visas far outweighed the supply, and soon there were large backlogs of approved petitioners awaiting available SIVs. S. 1104 expands the SIV program by increasing from 50 to 500 the number of SIVs available annually for the following two fiscal years. The bill also expands eligibility for the SIVs by including both translators and interpreters working for the Chief of Mission or the United States Armed Forces in Iraq or Afghanistan.

Legislative History.—S. 1104 was introduced by Senator Richard Lugar (R–IN) on April 12, 2007. A similar bill, H.R. 1790, was introduced in the House by Representative Jeff Fortenberry (R–NE) on March 29, 2007. On April 12, 2007, S. 1104 was passed by unanimous consent in the Senate and sent to the House. On May 17, 2007, the full Committee ordered the bill favorably reported with an amendment by voice vote. On May 22, 2007, the bill was passed by the House as amended under suspension of the rules by a recorded vote of 412 to 8. The Senate agreed to the House amendment by unanimous consent on May 24, 2007. S. 1104 became Public Law 110–36 on June 15, 2007.

Carry forward of unused special immigrant visas for Iraqi and Afghani translators (No Stand-Alone Bill)

Summary.—The special immigrant visas (SIVs) made available in the National Defense Authorization Act for Fiscal Year 2006 for Iraqi and Afghani translators would expire at the end of each fiscal year if such visas went unused in that fiscal year. A provision allowing for unused visas to be rolled over and reclaimed during the following fiscal year was added to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Division J of the Consolidated Appropriations Act, 2008).

Legislative History.—The provision allowing for the "roll over" of unused SIVs was added by the Senate in section 699J of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, which became Division J of H.R. 2764, the Consolidated Appropriations Act, 2008. H.R. 2764 became Public Law 110–161 on December 26, 2007.

Extension of refugee benefits to special immigrant visa beneficiaries (No Stand-Alone Bill)

Summary.—Unlike persons admitted to the United States as refugees, persons admitted under special immigrant visas (SIVs) are not eligible to receive resettlement assistance, benefits from entitlement programs, or other benefits available to refugees. A provision extending refugee benefits to SIV beneficiaries for up to 6 months was added to the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008 (Division G of the Consolidated Appropriations Act, 2008).

Legislative History.—The provision extending refugee benefits to SIV beneficiaries was added by the Senate in section 525 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, which became Division G of H.R. 2764, the Consolidated Appropriations Act, 2008. H.R. 2764 became Public Law 110–161 on December 26, 2007.

H.R. 1, the "Implementing Recommendations of the 9/11 Commission Act of 2007"

Summary.—Section 711 allows the Secretary of Homeland Security, in consultation with the Secretary of State, the discretion to allow countries to join the Visa Waiver Program (VWP) even if they do not meet the existing three percent visa refusal rate in the Immigration and Nationality Act (INA). Sec. 711 allows the Secretary to waive the three percent requirement if the country can meet all of the following requirements:

1. The Secretary of Homeland Security determines that the totality of the country's security risk mitigation measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;
2. There has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals of the country and conditions exist to continue such reduction;
3. The country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue through agreements with the country; and
4. The rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent or the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established as required by this Act.

Prior to adding new countries to the VWP, Section 711 requires that the Department of Homeland Security can verify that an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States. In addition, Section 711 requires that an electronic travel authorization system is implemented, under which a

traveler in the VWP electronically provides information ahead of travel and receives permission to travel to the U.S. under the VWP.

Section 721 requires the the Secretary of Homeland Security to nominate an official to serve as the Director of the Human Smuggling and Trafficking Center (HSTC). This section also requires that the Secretary ensure that the HSTC is staffed by no fewer than 40 full-time equivalent positions, including detailees from various intelligence, immigration, border security, and travel offices of the U.S. Government with expertise in these areas. To attract the best and brightest detailees to the HSTC, this section requires the Secretary and the heads of other relevant agencies to promulgate regulations providing incentives, including financial incentives, bonuses, and protection of promotion capability in parent agencies. Finally, this section requires the Secretary to fund the HSTC in addition to a report within 180 days by the President on the HSTC.

Section 722 requires the Secretary of Homeland Security, in consultation with the Director of the National Counterterrorism Center, to designate an official in the Department of Homeland Security, to establish a program to oversee the implementation of the Secretary's responsibilities with respect to terrorist travel. This official shall assist the Secretary of Homeland Security in improving the Department's ability to prevent terrorists from entering the United States or remaining in the United States undetected. This section also requires a report to Congress 180 days after enactment of H.R. 1.

Section 723 allows the Secretary of Homeland Security to enter into a memorandum of agreement to initiate a pilot program with not less than one State to determine if an enhanced driver's license, which is machine-readable and tamper proof, may permit the individual to use the driver's license to meet the documentation requirements to enter the United States from Canada or Mexico at land and sea ports of entry. This section requires a report to Congress on this pilot program within 180 days after the initiation of the pilot program.

This section requires the Secretary of Homeland Security to complete a cost-benefit analysis of the Western Hemisphere Travel Initiative and develop proposals for reducing the execution fee charged for the passport card.

Section 725 requires the Secretary of Homeland Security to establish a model ports-of-entry program (initially for 20 ports) for the purpose of providing a more efficient and welcoming international arrival process in order to facilitate and promote business and tourist travel to the United States while also improving security.

Section 731 requires a report to Congress by the Secretary of Homeland Security not later than 180 days after the date of the enactment regarding ongoing initiatives of the Department of Homeland Security to improve security along the northern border of the United States. This section also requires the Government Accountability Office, not later than 270 days after the date of the submission of the report by the Secretary, to issue a report reviewing the report of the Secretary, including a list of recommendations regarding any additional actions necessary to protect the northern border of the United States.

Legislative History.—In the House, Representative Bennie Thompson introduced H.R. 1 on January 5, 2007 that included a similar provision to section 721. The House passed H.R. 1 on January 9, 2007. On July 9, 2007, the Senate considered H.R. 1 on the Senate floor and insisted on an amendment that included similar provisions as sections 711, 722, 723, 724, and 731. A conference committee was agreed to in the House on July 17, 2007. On July 25, 2007, a conference report was filed that included all sections described above with some modification in language. On July 26, 2007, the Senate agreed to the conference report and on the following day, July 27, 2007, the House also agreed to the conference report. The conference report became Public Law 110–153 on August 3, 2007.

H.R. 2940, To amend section 212 of the Immigration and Nationality Act with respect to discretionary determinations waiving an alien's inadmissibility based on certain activities, and for other purposes

Summary.—After the attacks on 9/11, Congress sought to exclude and remove terrorists from the United States by strengthening the application of the terrorism bars in the nation's immigration laws. These bars, and their increased application, affected groups and individuals that were not, in fact, terrorist organizations, including allies, members of humanitarian organizations, and even victims of terrorism. H.R. 2940 provides discretionary authority to the Secretaries of State and Homeland Security to waive certain national security grounds of inadmissibility for groups and individuals. A provision providing similar, but somewhat more limited, discretionary authority was added to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Division J of the Consolidated Appropriations Act, 2008).

Legislative History.—H.R. 2940 was introduced by Representative Edward Perlmutter (D–CO) on June 28, 2007. Similar language to that in H.R. 2940 was added by the Senate in section 691 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, which became Division J of H.R. 2764, the Consolidated Appropriations Act, 2008. H.R. 2764 became Public Law 110–161 on December 26, 2007.

S. 1651, the "Refugee Crisis in Iraq Act"

Summary.—S. 1651, the "Refugee Crisis in Iraq Act," establishes a comprehensive framework for assisting Iraqi refugees and other nationals whose lives are in danger because of their association with the U.S. Government's mission in Iraq. Language similar to that in S. 1651 was added to Subtitle C of Title XII of the National Defense Authorization Act for Fiscal Year 2008:

Section 1242 requires the Department of State to establish or use existing refugee processing mechanisms in Iraq and surrounding countries for Iraqis threatened because of their association with the United States Government.

Section 1243 establishes refugee program processing priorities in and around Iraq. The bill includes among refugees of special humanitarian concern: Iraqis who worked with the U.S. government in Iraq; Iraqis who were employed in Iraq by a U.S.-based media

or nongovernmental organization; Iraqis who were employed in Iraq by an organization closely associated with the U.S. mission in Iraq that has received official U.S. funding; Iraqis who have immediate family members in the United States; and Iraqis who are members of a religious or minority community and have close family members in the United States.

Section 1244 establishes a new special immigrant visa program for certain Iraqis whose lives are in danger because of their association with the U.S. Government in Iraq. The section specifically provides 5,000 special immigrant visas each year for five years for Iraqis who worked for the U.S. Government in Iraq for at least one year, have been seriously threatened as a result of such employment; have a positive recommendation or evaluation from a senior supervisor; and have been approved by the U.S. Ambassador in Iraq or his designee.

Section 1245 requires the Secretary of State to designate a Senior Coordinator for Iraqi Refugees and Internally Displaced Persons. This Senior Coordinator shall be responsible for overseeing the U.S. resettlement of refugees of special humanitarian concern, the new SIV program in Iraq, and the development and implementation of other appropriate policies and programs concerning Iraqi refugees and internally displaced persons.

Section 1247 allows Iraqi nationals who were denied asylum or withholding of removal on or after March 1, 2003 on the basis of changed country conditions to reopen their asylum proceedings if the Iraqi national has remained in the United States since the date of such denial.

Legislative History.—S. 1651 was introduced by Senator Edward Kennedy (D–MA) on June 19, 2007. Similar language to that in S. 1651 was added by the Senate in Subtitle C of Title XII of the National Defense Authorization Act for Fiscal Year 2008, H.R. 4986. H.R. 4986 became Public Law 110–181 on January 28, 2008.

H.R. 1119, the "Purple Heart Family Equity Act of 2007"

Summary.—Under the existing federal charter of the Military Order of the Purple Heart (MOPH) prior to Public Law 110–207, members of the MOPH were only allowed to invite parents and lineal descendants to join the MOPH as associate members. H.R. 1119 amended the Military Order of the Purple Heart's federal charter to allow members to invite their spouses to join as associate members both for male and female recipients of the Purple Heart medal.

Legislative History.—H.R. 1119, the "Purple Heart Family Equity Act of 2007" was introduced by Representative Susan Davis (D–CA) on February 16, 2007. On March 1, 2007, a similar bill was introduced and passed by unanimous consent in the Senate, S. 743. On July 27, 2007, the Immigration Subcommittee forwarded the bill favorably to the full committee by voice vote. On August 2, 2007, the full committee ordered the bill to be reported by voice vote. On November 6, 2007, the bill was passed by the House under suspension of the rules by voice vote. On April 14, 2008, the Senate passed H.R. 1119 by unanimous consent in the Senate. H.R. 1119 became Public Law 110–207 on April 30, 2008.

H.R. 3079, To amend the joint resolution that approved the covenant establishing the Commonwealth of the Northern Mariana Islands, and for other purposes

Summary.—Since the time that the Commonwealth of the Northern Mariana Islands (CNMI) became a U.S. territory under a "Covenant" agreement in 1976, it has set and controlled its own immigration laws and procedures. Over the following three decades, the CNMI allowed for the large-scale importation of foreign guest workers to staff imported garment factories. But the lack of regulations and resources to protect these guest workers led to widespread abuse and large increases in human trafficking and sex slavery. Such abuses have gone largely unaddressed for the last 30 years. To rectify this situation, Representative Donna Christensen introduced H.R. 3079, which would move CNMI immigration to U.S. Government control. Specifically, H.R. 3079 would amend the Covenant with the CNMI to extend U.S. immigration laws over the Commonwealth, with certain provisions designed to meet the needs of the CNMI economy. Language similar to that in S. 3079 was added to Subtitle A of Title VII of the National Defense Authorization Act for Fiscal Year 2008:

Section 701 provides a statement of congressional intent. The statement provides that it is the intention of Congress to ensure the security of the U.S. and the CNMI and to minimize potential adverse economic and fiscal effects to the CNMI.

Section 702 amends the Joint Resolution establishing a Covenant between the U.S. and the CNMI by extending the Immigration and Nationality Act (INA) to the CNMI, subject to a transition period through December 31, 2014. The section sets forth special provisions to take effect during the transition period, including provisions waiving the numerical limitations for certain nonimmigrant "H" workers on the CNMI, provisions allowing for the admission of CNMI nonimmigrant investors, and provisions allowing for additional guest workers to meet legitimate business demands. The section temporarily prohibits the removal of persons lawfully admitted under the Commonwealth's immigration laws, provides employment authorization for such persons, and requires the Secretary of the Interior, in consultation with the Secretary of Homeland Security and the Governor of Guam, to file a report to Congress with recommendations related to the provision of long-term status for such persons.

Section 702 also amends the INA by replacing the Guam-only Visa Waiver Program (VWP) with a new Guam-CNMI VWP. Stays are extended from 15 days to up to 45 days in Guam or the CNMI. The section directs the Secretary of Homeland Security to monitor such admissions and suspend the entry of nationals from a country whose nationals have created an unacceptable number of program violations or pose security or law enforcement risks. The section provides that persons seeking U.S. entry from the CNMI shall be processed under existing immigration authority regarding entry from Guam, Puerto Rico, and the U.S. Virgin Islands. The section also authorizes additional countries to be added to the Guam-CNMI VWP, as well as the creation of additional Guam or CNMI-only nonimmigrant visas.

Legislative History.—H.R. 3079 was introduced by Representative Donna Christensen (D–VI) on July 18, 2007. A similar bill, S. 1634, was introduced in the Senate by Senator Daniel Akaka (D–HI) on June 15, 2007. On December 11, 2007, H.R. 3079 was passed by the House as amended under suspension of the rules by voice vote. Language similar to that in H.R. 3079 was subsequently added by the Senate to Subtitle A of Title VII of S. 2739, the Consolidated Natural Resources Act of 2008. S. 2739 became Public Law 110–229 on May 8, 2008.

S. 2829, A bill to make technical corrections to section 1244 of the National Defense Authorization Act for Fiscal Year 2008, which provides special immigrant status for certain Iraqis, and for other purposes

Summary.—Section 1244 of the National Defense Authorization Act for FY 08, enacted on January 28, 2008, created a new Special Immigrant Visa (SIV) program for Iraqis whose lives are at risk because of their valuable service to the U.S. Government. These special immigrant visas (SIVs) were intended to be available beginning in fiscal year 2008. But a drafting error rendered the SIVs unavailable until the following fiscal year (fiscal year 2009). S. 2829 corrects this error and creates a transition period for Iraqi and Afghani translators and interpreters who had applied for SIVs under a related program but could not access the SIVs because the visas had been exhausted.

Legislative History.—S. 2829 was introduced by Senator Edward Kennedy (D–MA) on April 8, 2008. A companion bill, H.R. 5837, was introduced in the House by Representative Zoe Lofgren (CA–D) on April 17, 2008. On April 28, 2008, S. 2829 was passed by unanimous consent in the Senate and sent to the House. On May 21, 2008, the bill was passed by the House without amendment under suspension of the rules by voice vote. S. 2829 became Public Law 110–242 on June 3, 2008.

S. 2516, the "Kendell Frederick Citizenship Assistance Act"

Summary.—S. 2516 directs the Department of Homeland Security (DHS) to use fingerprints taken at the time of enlistment in the United States Armed Forces or filing of applications for adjustment of status to lawful permanent residence to satisfy any naturalization background or security requirements if certain conditions are met. It requires DHS, in consultation with the Department of Defense (DOD) and the Federal Bureau of Investigations (FBI), to: (1) determine the format for fingerprints and other biometric information; (2) implement procedures for electronic transmission of such information that will safeguard privacy and civil liberties; and (3) provide for centralization of naturalization applications of active-duty personnel serving abroad and such applications' expedited processing.

S. 2516 also directs DHS to update appropriate Web sites to reflect changes in military naturalization laws within 30 days of any changes, and expresses the sense of Congress that DHS should make necessary updates to its application forms on military naturalization within 180 days of any changes. It requires DHS to report to the appropriate Congressional committees with respect to

the adjudication of military naturalization applications and directs the GAO to report to the appropriate Congressional committees with respect to implementation of this Act.

Legislative History.—On June 27, 2007, Representative Elijah Cummings (D–MD) introduced H.R. 2884, the Kendall Frederick Citizenship Act. On November 6, 2007, the House passed H.R. 2884 under suspension of the rules by voice vote. On December 28, 2007, Senator Barbara Mikulski (D–MD) introduced S. 2516, the "Kendall Frederick Citizenship Assistance Act." On March 11, 2008, the Senate passed S. 2516 with an amendment by unanimous consent. On June 9, 2008, the House passed S. 2516 under suspension of the rules by a voice vote. On June 26, 2008, the President signed into law S. 2516 (Public Law No. 110–251).

H.R. 2852/S. 1692, A bill to grant a Federal charter to Korean War Veterans Association, Incorporated.

Summary.—S. 1692 grants a federal charter to the Korean War Veterans Association, Incorporated (a nonprofit corporation incorporated under the laws of New York).

Legislative History.—On July 25, 2007, Majority Leader Steny Hoyer (D–MD) introduced H.R. 2852 to grant a federal charter to the Korean War Veterans Association which was referred to the Committee on the Judiciary on the same day. On July 16, 2007, H.R. 2852 was referred to the Immigration Subcommittee. No further action was taken on H.R. 2852. Also on July 25, 2007, Sen. Ben Cardin (D–MD) introduced a companion measure, S. 1692, which was referred to the Senate Committee on the Judiciary on the same day. On September 6, 2007, the Senate Judiciary Committee discharged S. 1692 favorably and without amendment. On September 12, 2007, S. 1692 passed the Senate without amendment by unanimous consent and bill was held at the desk in the House on September 14, 2007. On June 17, 2008, the House passed S. 1692 under suspension of the rules by voice vote. The bill became Public Law on June 20, 2008.

H.R. 5690, To remove the African National Congress from treatment as a terrorist organization for certain acts or events, provide relief for certain members of the African National Congress regarding admissibility, and for other purposes

Summary.—After the attacks on 9/11, Congress sought to exclude and remove terrorists from the United States by strengthening the application of the terrorism bars in the nation's immigration laws. These bars, and their increased application, affected groups and individuals that were not, in fact, terrorist organizations, including allies, members of humanitarian organizations, and even victims of terrorism. Among these groups was the African National Congress (ANC), which rose to power in South Africa after the defeat of the apartheid regime. H.R. 5690 corrects this result by removing the ANC from consideration as a terrorist organization and by giving discretionary authority to the Secretaries of State and Homeland Security to admit individuals regardless of activities undertaken in opposition to apartheid rule in South Africa.

Legislative History.—H.R. 5690 was introduced by Representative Howard Berman (D–CA) on April 3, 2008. A similar bill, S.

2979, was introduced in the Senate by Senator John Kerry (D–MA) on May 6, 2008. On April 30, 2008, the full Committee ordered H.R. 5690 favorably reported, with an amendment, by voice vote. On May 6, 2008, the bill, as amended, was passed by the House under suspension of the rules by voice vote. The bill was amended in the Senate, and the Senate passed the bill as amended by unanimous consent on June 26, 2008. On the same day, the House agreed to the Senate amendment by unanimous consent. H.R. 5690 became Public Law 110–257 on July 1, 2008.

Removal of HIV/AIDS as a ground of inadmissibility in the Immigration and Nationality Act (No Stand-Alone Bill)

Summary.—The Immigration and Nationality Act contained a provision which held HIV infection as a ground for denying admission of noncitizens, including both nonimmigrants and immigrants, to the United States. A provision removing this ground of inadmissibility was added by the Senate to H.R. 5501, the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008.

Legislative History.—The provision removing HIV/AIDS as a ground of inadmissibility in the Immigration and Nationality Act was added by the Senate as section 305 of H.R. 5501, the "Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008." H.R. 5501 became Public Law 110–293 on July 30, 2008.

H.R. 6633, the "Employee Verification Amendment Act of 2008"

Summary.—H.R. 6633 would have extended the Basic Pilot (also known as E-Verify) electronic employment eligibility confirmation program until November 2013. It also would have directed the Social Security Administration (SSA) and the Department of Homeland Security (DHS) to enter into an agreement which would: (1) provide funds to SSA for Basic Pilot/E-Verify program's full costs in quarterly advances; and (2) require an annual accounting and reconciliation of costs incurred and funds provided. H.R. 6633 also would have provided for funding continuation in the absence of an agreement. It also would have required that the Government Accountability Office (GAO) conduct studies regarding: (1) erroneous tentative nonconfirmations under the Basic Pilot/E-Verify program; and (2) such program's effects on small entities.

Legislative History.—On July 29, 2008, Representative Gabrielle Giffords introduced H.R. 6633, the Employee Verification Amendment Act of 2008. On July 31, 2008, the House passed H.R. 6633 under suspension of the rules by a recorded vote of 407 to 2 with 4 present. The Senate took no action on H.R. 6633.

On June 8, 2007, Representative David Price (D–NC) introduced H.R. 2638, the "Department of Homeland Security Appropriations Act, 2008." On June 15, 2007, the House passed H.R. 2638 by a recorded vote of 268–150. On July 26, 2007, the Senate passed H.R. 2638 with an amendment by a recorded vote of 89 to 4. On September 24, 2008, the House passed a motion to concur with Senate amendment of H.R. 2638 with an amendment. Section 143, Division A of H.R. 2838 extended the Basic Pilot electronic employment verification program until March 6, 2009. On September 27, 2008,

the Senate agreed to the House amendment to the Senate amendment to H.R. 2638 by a recorded vote of 78 to 12. On September 30, 2008, the President signed into law H.R. 2638, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110–329).

H.R. 5569, to extend for 5 years the EB–5 regional center pilot program, and for other purposes

Summary.—Congress created the fifth employment-based preference (EB–5) immigrant visa category in 1990 for immigrants seeking to enter the United States to invest in a commercial enterprise that will benefit the U.S. economy and create at least 10 full-time jobs. The basic amount required to invest is $1 million, although that amount can be reduced to $500,000 if the investment is made in a rural or high unemployment area. Approximately 10,000 numbers are available in this green card category each year. To encourage immigration through the EB–5 category, Congress created a temporary pilot program in 1993. The Immigrant Investor Pilot Program allocates 3,000 visas each year for EB–5 investors who invest in "designated regional centers." The pilot program has been renewed several times. H.R. 5569 would have extended the program for five years, but Public Law 110–329 extended the EB–5 regional center pilot program only until March 6, 2009.

Legislative History.—On March 10, 2008, H.R. 5569 was introduced in the House by Representative Zoe Lofgren (D–CA) and referred to the House Committee on the Judiciary. On March 11, 2008, the bill was referred to the Immigration Subcommittee. On March 12, 2008, the Subcommittee forwarded the bill to the full committee by voice vote. On April 2, 2008, the full committee ordered the bill favorably reported. On June 9, 2008, the bill was considered and passed by voice vote by the House through suspension of the rules. The bill was subsequently sent to the Senate, but no further action was taken. On September 24, 2008, the House passed a motion to concur with Senate amendment of H.R. 2638, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, with an amendment. Section 144 of Division A extended the EB–5 regional pilot center to March 6, 2009. On September 27, 2008, the Senate agreed to the House amendment to the Senate amendment to H.R. 2638 by a recorded vote of 78 to 12. On September 30, 2008, the President signed into law H.R. 2638, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110–329).

S. 2135, the "Child Soldiers Accountability Act"

Summary.—S. 2135 makes it easier to prosecute and remove persons who have recruited or used children in armed conflicts anywhere in the world. The bill criminalizes the recruitment and use of child soldiers, and it expands jurisdiction to cover persons in the U.S. regardless of where a crime may have taken place. The bill also creates new grounds of removal and inadmissibility for the recruitment or use of child soldiers.

Legislative History.—S. 2135 was introduced by Senator Richard Durbin (IL–D) on October 3, 2007. The bill was related to a similar bill previously filed by Senator Durbin, S. 1175, as well as two

House bills—H.R. 2620 introduced by Representative Jim Marshall (GA–D) and H.R. 3028 introduced by Representative Jeff Fortenberry (NE–R). On December 19, 2007, S. 2135 was passed by unanimous consent in the Senate and sent to the House. On September 8, 2008, the House amended the bill and passed it, as amended, under suspension of the rules by a recorded vote of 371 to 0. The Senate agreed to the House amendment by unanimous consent on September 15, 2008. S. 2135 became Public Law 110–340 on October 3, 2008.

H.R. 5571, to extend for 5 years the program relating to waiver of the foreign country residence requirement with respect to international medical graduates

Summary.—The Immigration and Nationality Act allows for foreign doctors to train in the United States under the "J–1" visa program, otherwise known as nonimmigrants in the Exchange Visitor Program. This Exchange Visitor Program seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Accordingly, many exchange visitors, including doctors in training, are subject to a requirement that they must return to their home country to share with their countrymen the knowledge, experience, and impressions gained during their stay in the United States. Unless U.S. Citizenship and Immigration Services (USCIS) approves a waiver of this requirement in those cases, the exchange visitors must depart from the United States and live in their home country for two years before they are allowed to apply to return to the U.S. A waiver of the two year foreign residency requirement (commonly referred to as the "Conrad 30 J Waiver Program") is available for doctors who have trained in the United States under the J–1 visa if a state or an interested government agency sponsors the physician exchange visitor to work in a health manpower shortage area for three years as a nonimmigrant in H–1B status (temporary worker in a specialty occupation). The Secretary of Health and Human Services determines which areas have a health manpower shortage. The authorization for the Conrad 30 J Waiver Program sunsetted on June 1, 2008. H.R. 5571, as enacted, extended this waiver through March 6, 2009, although H.R. 5571 would have extended the waiver program for five years.

Legislative History.—On March 10, 2008, Rep. Zoe Lofgren (D–CA) introduced H.R. 5571 to extend the Conrad 30 J Waiver Program for five years. The bill was referred to the House Committee on the Judiciary on the same day. On March 11, 2008, the bill was referred to the Immigration Subcommittee. On March 12, 2008, the Subcommittee forwarded the bill to the full committee by voice vote. On April 2, 2008, the full committee ordered the bill favorably reported. On May 19, 2009, the bill was considered by the House under suspension of the rules. On May 21, 2008, the bill was passed by the House by voice vote. On June 2, 2008, the bill was received in the Senate and referred to the Senate Committee on the Judiciary. On September 26, 2008, the Senate Judiciary Committee discharged the bill by unanimous consent and the bill was passed by the Senate with an amendment to shorten the reauthorization period through March 6, 2009. On September 27, 2008, the

bill as amended by the Senate passed the House under suspension of the rules by voice vote. The bill became Public Law on November 8, 2008.

S. 2840, the "Military Personnel Citizenship Processing Act"

Summary.—S. 2840 creates an Office of the FBI Liaison within the Department of Homeland Security to monitor the functions of the FBI in the naturalization process. The Office will assist in the expeditious completion of all such functions pertaining to naturalization applications filed by, or on behalf of, current or former members of the Armed Forces, current spouses and children of service members, and deceased individuals eligible for posthumous citizenship under 8 U.S.C. Sec. 1440–41.

S. 2840 also requires USCIS to process and adjudicate applications filed by current or former members of the Armed Forces and their spouses and children no later than six months after receiving such applications. If an application is still pending after six months, S. 2840 requires that USCIS provide the applicant with an explanation for its inability to meet the deadline and an estimate of the date by which the application will be adjudicated. It also requires that the USCIS Director submit an annual report to relevant Congressional committees that identifies applications still pending after one year due to delays in conducting required background checks.

Finally, S. 2840 calls for a Government Accountability Office report outlining the average length of time taken by USCIS to process and adjudicate applications for naturalization filed by members of the Armed Forces, deceased members of the Armed Forces, and their spouses and children. S. 2840 and the amendments made by this Act will expire five years from the date of enactment.

Legislative History.—On April 10, 2008, Senator Charles Schumer introduced S. 2840, the Military Personnel Citizenship Processing Act. On September 24, 2008, the Senate passed S. 2840 with an amendment by unanimous consent. On September 28, 2008, the House passed S. 2840 under suspension of the rules by a recorded vote of 416 to 0. On October 9, 2008, the President signed into law S. 2840 (Public Law No. 110–382).

H.R. 5570/S. 3606, the "Special Immigrant Nonminister Religious Worker Program Act"

Summary.—H.R. 5570, the Religious Worker Visa Extension Act of 2008, reauthorized the Special Immigrant Non-minister Religious Worker Program that would have sunset on September 30, 2008. The Special Immigrant Non-minister Religious Worker Program allows non-minister religious workers to obtain special immigrant status in the U.S. so that they may do the work required of their faith. The original bill, H.R. 5570, extended the program for five years, if the Department of Homeland Security issued regulations to eliminate or reduce fraud in the Religious Worker Program by December 31, 2008; but if not, the reauthorization would expire after 15 months. In addition, H.R. 5570 requires that the Inspector General of the Department of Homeland Security to issue a report on the effectiveness of the regulations by September 30, 2010.

Legislative History.—On March 10, 2008, Representative Zoe Lofgren (D–CA) introduced H.R. 5570. The bill was referred to the House Committee on the Judiciary on the same day. On March 11, 2008, the bill was referred to the Immigration Subcommittee. On March 12, 2008, the Subcommittee forwarded the bill to the full committee by voice vote. On April 2, 2008, the full committee ordered the bill favorably reported. On April 15, 2009, the bill was considered by the House under suspension of the rules and passed by voice vote. On April 16, 2008, the bill was received in the Senate and referred to the Senate Committee on the Judiciary on August 1, 2008. No further action was taken on H.R. 5570. On September 26, 2008, S. 3606 was introduced in the Senate. Also on that same day, the bill, with an amendment to shorten the period of reauthorization to March 6, 2009, was considered and passed by unanimous consent in the Senate. S. 3606, which extended the religious worker program until March 6, 2009 in addition to requiring fraud regulations and a report as in H.R. 5571, was introduced in the Senate by Sen. Orrin Hatch (UT–R) and passed without amendment by unanimous consent. On September 27, 2008, the House passed S. 3606 by voice vote under suspension of the rules.

H.R. 7311, the "William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008"

Summary.—H.R. 7311 amends the Trafficking Victims Protection Act of 2000, the Immigration and Nationality Act, and several other laws to further combat human trafficking, both domestically and around the world:

Section 201 amends section 101(a)(15)(T) of the Immigration and Nationality Act (INA) to provide additional flexibility with the use of T visas for trafficking victims and their family members. Specifically, the section further expands T-visa eligibility to cover persons brought into the country for investigations or as witnesses and persons unable to assist law enforcement because of physical or psychological trauma. The section further allows parents and siblings who are in danger of retaliation to join the trafficking victims in the United States. Finally, the section authorizes the Secretary of Homeland Security to extend the period of T-visa status and waive the disqualification for lack of good moral character for T-visa holders applying for adjustment to permanent resident status if the disqualification was incident to the trafficking.

Section 202 requires the Secretary of Homeland Security to create an information pamphlet for work-based non-immigrant visa applications. The pamphlet will detail the illegality of human trafficking and reiterate worker rights and information for related services.

Section 203 sets forth new protections for trafficked domestic household workers and preventative measures to be followed by the State Department. The section requires the issuance of information pamphlets for A–3 and G–5 visa applicants and describes the required information to be included in the pamphlets. The section provides protections and remedies for A–3 and G–5 visa holders working in the United States, and it ensures protection from removal for visa holders wanting to file a complaint regarding a vio-

lation of contract or some Federal, State, or local law to allow time sufficient to participate fully in all legal proceedings.

Section 204 allows the Secretary of Homeland Security to stay the removal of an individual who has made a prima case for approval of a T or U visa under the INA.

Section 205 expands the authority of the Secretary of Homeland Security to permit continued presence of trafficking victims, including for aliens who have filed civil actions against their traffickers. It also allows for parole into the United States of certain relatives of trafficking victims with several limitations.

Section 211 clarifies that T-visa applicants have access to certain public benefits.

Section 212 provides that the Secretary of Health and Human Services (HHS) may provide interim assistance to a child upon receiving credible information that a child is a victim of trafficking. The section requires government officials to notify HHS within 48 hours of coming into contact with such a child, and it provides education on the identification of trafficking victims. The section also clarifies that long term assistance determinations are to be made by the Secretary of HHS, in consultation with the Attorney General, the Secretary of the Department of Homeland Security, and nongovernmental organizations with expertise on victims of severe form of trafficking.

Section 213 amends the Trafficking Victims Protection Act of 2000 to specifically authorize an assistance program for victims of severe forms of trafficking of persons and to establish a system for referring such victims to existing programs at HHS and the Department of Justice.

Section 222 amends the criminal code and the INA to further combat human trafficking, peonage, and involuntary servitude in the United States. The section creates a new crime for knowingly using force, threats of force, abuse or threatened abuse of law or legal process, and other threatening measures to obtain another person's labor or services. The section also creates a new crime for fraud in foreign labor contracting and it tightens immigration restrictions for human traffickers.

Section 235 requires enhanced procedures for preventing child trafficking at the U.S. border and U.S. ports of entry, and it sets forth comprehensive protections for child victims of trafficking and other unaccompanied alien children. Subsection (a) codifies and improves procedures for the repatriation of unaccompanied children from contiguous countries. It also provides that the Secretary of State shall develop a system for the safe repatriation of unaccompanied children and shall develop a pilot program for that purpose. Subsection (b) provides, with specified exceptions, that the care and custody of unaccompanied alien children in the United States shall be the responsibility of the Secretary of HHS. It requires notification of HHS by government authorities within 48 hours of encountering an unaccompanied alien child and it provides for the transfer of such children to HHS within 72 hours. Subsection (c) improves procedures for the placement of unaccompanied children in safe and secure settings. It requires that HHS take steps to assist children in complying with immigration orders, to assist children in accessing pro bono representation and to assign child advocates

for particularly vulnerable children. Subsection (d) revises procedures for obtaining special immigrant juvenile status and provides refugee assistance for children in such status. It also provides for adjudication of asylum applications by asylum officers. Subsection (e) provides specialized training, including training related to trafficking, to federal officials who come into contact with unaccompanied alien children.

Legislative History.—H.R. 7311 was introduced by Representative Howard Berman (CA–D) on December 9, 2008. A similar bill, H.R. 3887, had been previously introduced by Representative Tom Lantos on October 18, 2007, and a companion bill had been filed in the Senate by Senator Joseph Biden on May 22, 2008. On December 10, 2008, H.R. 7311 was passed by the House by unanimous consent. Later that same day, the Senate passed the bill without amendment by unanimous consent. H.R. 7311 became Public Law 110–457 on December 23, 2008.

H.R. 2399, the "Alien Smuggling and Terrorism Prevention Act of 2007"

Summary.—H.R. 2399 would provide strong new enforcement tools at the border, including increased criminal penalties for: alien smuggling, human trafficking and slavery; drug trafficking; and terrorism or espionage. The bill would also subject smugglers and traffickers to even higher penalties for transporting persons under inhumane conditions, such as in an engine or storage compartment, or for causing serious bodily injury, or for endangering them by running the vessel transporting them to ground in order to escape apprehension. H.R. 2399 would also direct the Department of Homeland Security to check against all available terrorist watch lists alien smugglers and smuggled individuals who are interdicted at U.S. land, air, and sea borders. It would tighten proof requirements for distinguishing covert transportation of family members or others for humanitarian reasons, for which the penalties are appropriately less severe when truly justified.

Legislative History.—On May 22, 2007, Rep. Baron Hill (D–IN) introduced H.R. 2399. On May 22, 2007, the House passed H.R. 2399 by a recorded vote of 412–0. The bill was received in the Senate and referred to the Senate Committee on the Judiciary on May 23, 2007 and no further action was taken. H.R. 2399 was added to H.R. 2830, the Coast Guard Authorization Act of 2007, which passed the House on May 24, 2008. H.R. 2830 was received in the Senate on May 28, 2008 and no further action was taken.

H.R. 3123, To extend the designation of Liberia under section 244 of the Immigration and Nationality Act so that Liberians can continue to be eligible for temporary protected status under that section

Summary.—Temporary Protected Status (TPS) is a temporary immigration status that may be granted by the Secretary of Homeland Security to nationals of certain countries beset by ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions. Liberia had long been one of these designated countries due to ongoing armed conflict. But the TPS designation was set to expire on October 1, 2007. Because conditions

in Liberia had not improved to the point where repatriation of Liberian nationals would be prudent, H.R. 3123 was introduced to extend the TPS designation for Liberia until October 1, 2008.

Legislative History.—H.R. 3123 was introduced by Representative Patrick Kennedy (RI–D) on July 23, 2007. On July 30, 2007, the bill was passed by the House under suspension of the rules by voice vote. A similar bill, S. 1903, was introduced in the Senate by Senator Jack Reed on July 31, 2007. But on September 12, 2007, the President rendered both bills unnecessary when he issued a memorandum directing the Secretary of Homeland Security to defer the enforced departure of those Liberians granted TPS until March 31, 2009. Neither H.R. 3123 nor S. 1903 was passed in the Senate.

H.R. 1312, the "Arts Require Timely Service (ARTS) Act"

Summary.—H.R. 1312 would address visa processing delays facing nonprofit arts organizations by amending Section 214(c) of the Immigration and Nationality Act to require the U.S. Citizenship and Immigration Services (USCIS) to shift to premium processing without additional fees any O or P visa application that is not processed within 30 days of filing a complete petition if the petitioner is or is filing on behalf of a qualified nonprofit organization.

Legislative History.—On March 5, 2007, Rep. Howard Berman (CA–D) introduced H.R. 1312 and the bill was referred to the House Committee on the Judiciary. On March 30, 2007, the bill was referred to the Immigration Subcommittee. On September 25, 2007, the bill was favorably forwarded to the full committee by a roll call vote of 7–5. On November 7, 2008, the full committee ordered the bill reported by voice vote. On April 1, 2008, the bill was considered in the House under suspension of the rules and the bill was passed by voice vote. The next day, the bill was received in the Senate and referred to the Senate Committee on the Judiciary. No further action was taken on this bill.

H.R. 1485, a Private Bill for the relief of Esther Karinge

Summary.—H.R. 1485 provides lawful permanent residency to beneficiary Esther Karinge.

Legislative History.—H.R. 1485 was introduced by Representative Edward Markey (MA–D) on March 12, 2007. On May 8, 2008, the Immigration Subcommittee ordered the bill favorably reported without amendment by voice vote. On May 14, 2008, the full Committee ordered the bill favorably reported without amendment by voice vote. The bill was placed on the Private Calendar on July 8, 2008, and it was called up for consideration on September 16, 2008, when it was passed by the House by voice vote. The bill was not passed in the Senate.

H.R. 1512, to amend the Immigration and Nationality Act to provide for compensation to States incarcerating undocumented aliens charged with a felony or two or more misdemeanors

Summary.—The State Criminal Alien Assistance Program (SCAAP) was originally passed to help reimburse states and localities for the costs associated with incarcerating criminal aliens. Currently states and localities are only reimbursed for a portion of

what they spend incarcerating convicted criminal aliens. This bill would change the Immigration and Nationality Act to reflect the original intent of Congress, so that states and localities can be reimbursed for the cost of incarcerating aliens who are either "charged with or convicted" of a felony or two misdemeanors.

Legislative History.—On March 13, 2007, Rep. Linda Sánchez (CA–D) introduced H.R. 1512 and the bill was referred to the House Committee on the Judiciary. On April 20, 2007, the bill was referred to the Immigration Subcommittee. On September 25, 2007, H.R. 1512 was forwarded to the full committee by voice vote. The full committee ordered the bill reported on October 24, 2007 by voice vote. On May 8, 2008, the bill was passed by voice vote in the House and received in the Senate on May 12, 2008. No further action was taken on this bill.

H.R. 2575, a Private Bill for the relief of Mikael Adrian Christopher Figueroa Alvarez

Summary.—H.R. 2575 provides lawful permanent residency to beneficiary Mikael Adrian Christopher Figueroa Alvarez.

Legislative History.—H.R. 2575 was introduced by Representative Zoe Lofgren (D–CA) on June 5, 2007. On July 10, 2008, the Immigration Subcommittee ordered the bill favorably reported without amendment by a roll call vote of 6 to 3. On July 30, 2008, the full Committee ordered the bill favorably reported without amendment by a roll call vote of 19 to 9. The bill was placed on the Private Calendar on September 8, 2008, and it was called up for consideration on September 16, 2008. At the request of Mr. King (R–IA), the House passed over the measure without prejudice. The bill remained on the Private Calendar at the end of the 110th Congress.

H.R. 2760, a Private Bill for the relief of Shigeru Yamada

Summary.—H.R. 2760 provides lawful permanent residency to beneficiary Shigeru Yamada.

Legislative History.—H.R. 2760 was introduced by Representative Bob Filner (D–CA) on June 15, 2007. On February 26, 2008, the Immigration Subcommittee ordered the bill favorably reported without amendment by voice vote. On April 2, 2008, the full Committee ordered the bill favorably reported without amendment by voice vote. The bill was placed on the Private Calendar on July 8, 2008, and it was called up for consideration on September 16, 2008, when it was passed by the House by voice vote. The bill was not passed in the Senate.

H.R. 5030, a Private Bill for the relief of Corina de Chalup Turcinovic

Summary.—H.R. 5030 provides lawful permanent residency to beneficiary Corina de Chalup Turcinovic.

Legislative History.—H.R. 5030 was introduced by Representative Daniel Lipinski (D–IL) on January 16, 2008. On February 13, 2008, the Immigration Subcommittee ordered the bill favorably reported without amendment by voice vote. On May 14, 2008, the full Committee ordered the bill favorably reported without amendment by voice vote. The bill was placed on the Private Calendar on July

8, 2008, and it was called up for consideration on September 16, 2008, when it was passed by the House by voice vote. The bill was not passed in the Senate.

H.R. 5243, a Private Bill for the relief of Kumi Iizuka-Barcena

Summary.—H.R. 5243 provides lawful permanent residency to beneficiary Kumi Iizuka-Barcena.

Legislative History.—H.R. 5243 was introduced by Representative Silvestre Reyes (D–TX) on February 6, 2008. On July 10, 2008, the Immigration Subcommittee ordered the bill favorably reported without amendment by voice vote. On July 30, 2008, the full Committee ordered the bill favorably reported without amendment by voice vote. The bill was placed on the Private Calendar on July 8, 2008, and it was called up for consideration on September 16, 2008, when it was passed by the House by voice vote. The bill was not passed in the Senate.

H. Res. 954—Honoring the life of senior Border Patrol agent Luis A. Aguilar, who lost his life in the line of duty near Yuma, Arizona, on January 19, 2008

Summary.—On January 19, 2008, senior Border Patrol Agent Luis A. Aguilar was killed in the line of duty while defending the southern border of the United States. H. Res. 954 honored his life and recognized the dedication and sacrifice made by all the men and women who have lost their lives while serving as United States Border Patrol agents.

Legislative History.—H. Res. 954 was introduced by Representative Zoe Lofgren (D–CA) on January 29, 2008. On February 12, 2008, the resolution was passed by the House under suspension of the rules by a recorded vote of 357 to 0.

H. Res. 1438, Commemorating the 50th anniversary of the Azorean Refugee Act of 1958 and celebrating the extensive contributions of Portuguese-American communities to the United States

Summary.—In 1957 and 1958, the Azores Islands suffered several volcanic eruptions and earthquakes, killing many of its inhabitants and displacing many more. The United States, true to its history as a nation of immigrants and protector of vulnerable peoples, enacted the Azorean Refugee Act of 1958, which allocated 1,500 visas to permanently resettle displaced Azoreans. H. Res. 1438 commemorates the 50th anniversary of the Azorean Refugee Act of 1958 and celebrates the extensive contributions of Portuguese-American communities to the United States.

Legislative History.—H. Res. 1438 was introduced by Representative Devin Nunes (CA–R) on September 15, 2008. A related bill, H. Res. 1401, had previously been introduced by Rep. Jim Costa (CA–D) on July 31, 2008. On September 22, 2008, H. Res. 1438 was passed by the House under suspension of the rules by voice vote.

H.R. 1071, the "September 11 Family Humanitarian Relief and Patriotism Act"

Summary.—H.R. 1071 would allow eligible surviving dependents of non-immigrant and unlawfully present aliens who died as a result of the terrorist attacks of September 11, 2001, who received

compensation from the September 11 Victims Compensation Fund, and who meet certain other requirements, to become lawful permanent residents of the United States.

Legislative History.—On February 15, 2007, Rep. Carolyn Maloney (NY–D) introduced H.R. 1071 and the bill was referred to the House Committee on the Judiciary. On March 19, 2007, the bill was referred to the Immigration Subcommittee. On July 27, 2009, the Subcommittee forwarded the bill to the full committee by voice vote. The full committee ordered the bill reported by a roll call vote of 21–10 on August 2, 2007. On October 3, 2008, the bill was placed on the Union Calendar and no further action was taken.

H.R. 2405, the "Proud to Be an American Citizen Act"

Summary.—H.R. 2405 would direct the Department of Homeland Security (DHS) to make funds available annually to the United States Citizenship and Immigration Services (USCIS) or to approved public or private nonprofit entities to support naturalization ceremonies. Such ceremonies would be held on or near Independence Day and would include appropriate outreach, ceremonial, and celebratory activities. H.R. 2405 would limit the funds available per ceremony to $5,000 and for specified purposes such as personnel and site costs.

Legislative History.—On May 21, 2007, Representative Sam Farr introduced H.R. 2405, Proud to Be an American Citizen Act. On September 25, 2007, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law considered H.R. 2405 and forwarded the bill to the Full Committee by voice vote. On October 24, 2007, the Committee on the Judiciary considered H.R. 2405 and ordered to be reported by voice vote.

H.R. 4080, to amend the Immigration and Nationality Act to establish a separate nonimmigrant classification for fashion models

Summary.—H.R. 4080 would have reclassified fashion models of distinguished merit and ability, moving them from the H–1B visa category and establishing a new visa category for fashion models within the P visa category. The creation of a new category for fashion models within the P visa category corrects an earlier inadvertent mis-classification of fashion models as H–1B workers.

Legislative History.—On November 5, 2007, Rep. Anthony Weiner (D–NY) introduced H.R. 4080 and the bill was referred to the House Committee on the Judiciary. On December 3, 2007, the bill was referred to the Immigration Subcommittee. On May 13, 2008, the Subcommittee discharged the bill. The full committee ordered the bill reported by a roll call vote of 20–3 on May 14, 2008. The bill was placed on the union Calendar on June 5, 2008 and no further action was taken.

H.R. 5060, to amend the Immigration and Nationality Act to allow athletes admitted as nonimmigrants described in section 101(a)(15)(P) of such Act to renew their period of authorized admission in 5-year increments

Summary.—H.R. 5060 would have amended the Immigration and Nationality Act to allow athletes admitted as non-immigrants de-

scribed in section 101(a)(15)(P) of such Act to continuously renew their period of authorized admission in 5-year increments.

Legislative History.—On January 1, 2008, Rep. Linda Sánchez (D–CA) introduced H.R. 5060 and the bill was referred to the House Committee on the Judiciary. On February 4, 2008, the bill was referred to the Immigration Subcommittee. On March 12, 2008, the Subcommittee forwarded the bill to the full committee by voice vote. The full committee ordered the bill reported on April 2, 2008 by voice vote. The bill was placed on the union Calendar on June 5, 2008 and no further action was taken.

H.R. 5882, to recapture employment-based immigrant visas lost to bureaucratic delays and to prevent losses of family- and employment-based immigrant visas in the future

Summary.—H.R. 5882 was designed to "recapture" family-sponsored and employment-based immigrant visas lost largely to bureaucratic delays from FY 1992 to FY 2007. It would also stop the loss of family-sponsored and employment-based immigrant visas that go unused in the future by allowing them to "roll over" to the next fiscal year. H.R. 5882 would be effective on the first day of the first fiscal year that begins after the date of the enactment of the bill.

Legislative History.—On April 23, 2008, Representative Zoe Lofgren introduced H.R. 5882. On July 31, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law considered H.R. 5882 and forwarded the amended bill to Full Committee by a roll call vote of 8 to 1.

H.R. 5924, the "Emergency Nursing Supply Relief Act"

Summary.—Section 2 of H.R. 5924 would have amend the American Competitiveness in the Twenty-first Century Act of 2000 to permit the issuance of 20,000 immigrant visas to Schedule A nurses and physical therapists annually for three years. The Department of Homeland Security (DHS) would have been required to process such petitions within 30 days of receipt. An employer petitioning for a visa for an immigrant professional nurse would be assessed a fee of $1,500 for each immigrant nurse. However, no visa fee would have been assessed if the employer demonstrates that it is a health care facility located in a county receiving Major Disaster Declaration assistance, or the employer has been designated as a Health Professional Shortage Area facility.

During the time that a lawfully admitted immigrant is working as a physician or other health care worker, the immigrant and their spouse or child would have been able to provide care in a developing country. The time the immigrant would have spent providing care in the developing country would meet the physically present and residing requirements, and the continuous residency requirements needed for naturalization. H.R. 5924 would have required the Secretary of State to publish a list of countries that qualify as a developing country under this section of the bill and would have updated the list of developing countries at least once a year.

Legislative History.—On April 29, 2008, Representative Robert Wexler (D–FL) introduced H.R. 5924, the "Emergency Nursing

Supply Relief Act." On July 31, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law considered H.R. 5924 and forwarded the bill to Full Committee by a roll call vote of 7 to 2.

H.R. 6020, the Lance Corporal Jose Gutierrez Act of 2008

Summary.—Section 1 sets forth the short title of the bill as the "Lance Corporal Jose Gutierrez Act of 2008."

Section 2 of H.R. 6020 amends the Immigration and Nationality Act (INA) to allow soldiers who have served honorably in dangerous operations not covered by a Presidential Executive Order to naturalize under the wartime naturalization provision of the INA. Section 2 also amends the INA to give soldiers one year (rather than six months under current law) after their honorable discharge to apply for citizenship under the peacetime naturalization provision.

Section 3 amends the INA to allow conditional permanent resident soldiers to wait until they are honorably discharged before having to remove the condition on their permanent residence. For U.S. citizen soldiers who are married to conditional permanent residents, section 3 also amends INA to exempt these soldiers from having to appear at an in-person interview for their spouses' removal of condition.

Section 4 codifies a United States Immigration and Customs Enforcement memorandum on procedures for placing soldiers or veterans in removal proceedings. If they are placed in removal proceedings, they must be given the opportunity to appear before an Immigration Judge before being ordered deported.

Section 5 amends the INA to permit soldiers, honorably discharged veterans, and certain family members to apply for a discretionary waiver of certain grounds of inadmissibility or deportability. They would have to demonstrate their eligibility for such relief based on a multi-factor test.

Section 6 facilitates the reunification of lawful permanent resident soldiers with their spouses and/or minor children by making immigrant visas immediately available for these family members.

Section 7 allows an unlawfully-present parent, spouse, child, or minor sibling of U.S. citizen or lawful permanent resident soldiers and certain veterans to apply for permanent residence.

Legislative History.—On May 8, 2008, Representative Zoe Lofgren introduced H.R. 6020. On July 31, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law considered H.R. 6020 and forwarded the amended bill to Full Committee by a roll call vote of 6 to 3. On September 17, 2008, the Committee on the Judiciary considered H.R. 6020 and ordered amended bill to be reported by voice vote.

H.R. 6034, to amend the Immigration and Nationality Act to provide for relief to surviving spouses and children

Summary.—H.R. 6034 would allow alien widows of U.S. citizens who were married for less than two years at the time of the citizen spouses' death to remain "immediate relatives" for immigration purposes as long as they can prove by a preponderance of the evidence that the marriage was entered into in good faith and not for

the purpose of obtaining an immigration benefit. H.R. 6034 would apply such provision to all applications and petitions pending on or after the date of enactment of this Act. It would also extend the petition filing deadline for two years after the date of enactment of this Act for an alien spouse if: (1) the U.S. citizen spouse died before the date of enactment of this Act; (2) the alien and the citizen spouse were married for less than two years at the time of the citizen spouse's death; and (3) the alien has not remarried.

Legislative History.—On May 13, 2008, Representative James P. McGovern (D–MA) introduced H.R. 6034. On July 10, 2008, the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law considered H.R. 6034 and forwarded the bill to Full Committee by voice vote. On July 16, 2008, the Committee on the Judiciary considered H.R. 6034 and ordered the amended bill to be reported by voice vote.

OVERSIGHT ACTIVITIES

Oversight Hearing on the Executive Office for Immigration Review

Summary.—On September 23, 2008, the Subcommittee met to receive testimony on the Executive Office for Immigration Review. This oversight hearing was conducted to (1) examine how EOIR has been affected by the hiring process of immigration judges and Board of Immigration Appeals (BIA) members, the 2002 regulatory changes to the BIA, and the ongoing lack of resources and manpower, and (2) explore ways to improve EOIR and the administrative removal process.

The witnesses included: Lee Lofthus, Assistant Attorney General for Administration, U.S. Department of Justice; Kevin Ohlson, Director, Executive Office for Immigration Review (EOIR), U.S. Department of Justice; Susan B. Long, Co-Director, Transactional Records Access Clearinghouse (TRAC); Stephen H. Legomsky, The John S. Lehmann University Professor, Washington University School of Law.

Oversight Hearing on Immigration Raids: Postville and Beyond

Summary.—The Subcommittee convened a hearing on July 24, 2008 on the immigration worksite enforcement actions at Postville, Iowa. ICE conducted the enforcement action at a meat processing plant operated by Agriprocessors, Inc., in Postville on May 12, 2008. Rather than placing the unlawfully-present immigrant workers into administrative removal proceedings as has been customary, criminal charges were brought against 302 of the 389 unlawfully-present immigrants arrested. In makeshift courtrooms at a fairground, hearings were held where ten defendants at a time entered pleas and were sentenced. Of these, 297 individuals were convicted and sentenced in a four day time period. Some criminal and immigration law experts have expressed grave concerns about the speed and the manner of these proceedings, which concerns were contested by the Department of Homeland Security. This hearing examined the events of the enforcement action, and explored whether the arrested workers in that case and other recent enforcement actions were accorded due process in accordance with the Constitution and criminal and immigration laws. The hearing

also examined the impact on U.S. citizens of identity theft by unlawfully-present immigrants.

The witnesses were: Representatives Bruce L. Braley (D–IA); Sheila Jackson-Lee (D–TX); Lynn C. Woolsey (D–CA); and David Davis (D–TN); Deborah Rhodes, Senior Associate Deputy Attorney General, U.S. Department of Justice; Marcy Forman, Director of Investigations, U.S. Immigration and Customs Enforcement; Erik Camayd-Freixas, Ph.D., Professor of Modern Languages, Florida International University; David Leopold, Esq., David Wolfe Leopold & Associates, on behalf of American Immigration Lawyers Association; Robert R. Rigg, Esq., Associate Professor of Law and Director of the Criminal Defense Program, Drake University School of Law; Mrs. Lora Costner, identity theft victim.

Oversight Hearing on the Need for Green Cards for Highly Skilled Workers

Summary.—This June 12, 2008 hearing explored the need for green cards for highly-educated employees in the fields of science, technology, engineering and mathematics (STEM), as well as nursing, and the impact of such immigrants on the job opportunities for American workers. The witnesses were: Edward Sweeney, Senior Vice President, Worldwide Human Resources, National Semiconductor Corporation; Lee Colby, Electrical Engineer, Lee Colby & Associates and Past Chair of the Institute of Electrical and Electronics Engineers Santa Clara Valley Section; John Pearson, Director of the Bechtel International Center, Stanford University Association of International Educators; Yongjie Yang, Ph.D., Legal Immigrant Association; Mark Krikorian, Executive Director, Center for Immigration Studies; Jana Stonestreet Ph.D., RN, Chief Nursing Executive, Baptist Health System; Cheryl A. Peterson, MSN, RN, Senior Policy Fellow, American Nurses Association; Steven Francy, Executive Director, RNs Working Together, AFL–CIO.

Oversight Hearing on Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse

Summary.—The Subcommittee met on June 10, 2008 to convene this hearing that focused on proposals to mandate a nationwide electronic employment eligibility verification system (EEVS), how U.S. workers may be impacted by a mandatory EEVS, and explored ways to protect U.S. workers from unintended consequences of EEVS errors and/or misuse. In the hearing, the Subcommittee heard from Members of Congress who introduced EEVS bills on how their bills would protect U.S. workers from errors and/or misuse. The following Members and individuals testified before the Subcommittee: Hon. Ken Calvert (R–CA); Hon. Heath Shuler (D–NC); Hon. Sam Johnson (R–TX); Hon. Gabrielle Giffords (D–AZ); Jonathan R. Scharfen, Deputy Director, United States Citizenship and Immigration Services, Department of Homeland Security; Carolyn Shettle, Senior Study Director, Westat; Tim Sparapani, Senior Legislative Counsel, American Civil Liberties Union; Chris Williams, Executive Director, Working Hands Legal Clinic; Glenda Wooten-Ingram, HR Director, Embassy Suites.

Oversight Hearing on Problems with Immigration Detainee Medical Care

Summary.—This June 4, 2008, hearing explored recent reports about inadequate medical care for immigrant detainees and deaths while in custody. The hearing examined the quality of medical and mental health care provided in detention facilities under ICE's jurisdiction, including medical and mental health care standards and procedures and the growing number of immigration detainees that have died during or as a result of ICE custody. The witnesses were: Julie Myers, Assistant Secretary, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Philip Farabaugh, Acting Director, Division of Immigration Health Services, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Richard M. Stana, Government Accountability Office; Gloria Armendariz, wife of Isaias Vasquez, former detainee; Vena T. Asfaw, former detainee; Ann Schofield Baker, Partner at McKool Smith and attorney for Amina Bookey Mudey, former detainee; Rev. E. Roy Riley, Bishop of the New Jersey Synod, Evangelical Lutheran Church in America; Homer Venters, MD, Attending Physician & Public Health Fellow, Bellevue/NYU Program for Survivors of Torture; Mary Meg McCarthy, Director, National Immigrant Justice Center; Edward Harrison, President, National Commission on Correctional Health Care; and Isaac Reyes, Washington Representative; U.S./Mexico Border Counties Coalition.

Oversight Hearing on Immigration Needs of America's Fighting Men and Women

Summary.—On May 20, 2008 the Subcommittee met in open session to examine the ways in which our current immigration system impacts the needs of our soldiers, veterans, and their families. It also examined the unique situation of America's fighting men and women, as well as the service that they render to our country. The hearing witnesses included: Margaret Stock, Attorney and Lieutenant Colonel, Military Police Corps, United States Army Reserve; Karla Arambula de Rivera, E2 Officer, United States Navy; Christine Navarro, KC–135 Aircraft Commander, United States Air Force; Lt. General Edward D. Baca (retired), President and CEO, Baca Group; and Mark Seavey, Assistant Director of National Legislative Commission, American Legion.

Oversight Hearing on Wasted Visas, Growing Backlogs

Summary.—The Subcommittee, on April 30, 2008, met to examine the failure by the Department of Homeland Security and the Department of State to issue numbers of family- and employment-based immigrant visas each year. The hearing also explored possible administrative and legislative solutions. The witnesses were: Michael Aytes, Associate Director for Domestic Operations, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security; Donald Neufeld, Acting Associate Director, Domestic Operations, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security; Stephen A. Edson, Deputy Assistant Secretary of State for Visa Service, U.S. Department of State; and Charles Oppenheim, Chief, Visa Control and Reporting Division, U.S. Department of State.

Oversight Hearing on the H–2B Program

Summary.—On April 16, 2008 the Subcommittee convened this hearing to explore several issues related to the H–2B program, including concerns that the program fails to meet the needs of U.S. employers and lacks effective labor protections. The hearing specifically analyzed the need to reauthorize the "returning worker exemption," which expired at the end of fiscal year 2007 and has decreased the number of H–2B workers available to U.S. businesses. The hearing also investigated alleged abuses of H–2B workers and the issue of adding labor protections to existing H–2B legislation.

Witnesses at this hearing were: Hon. George Miller (D–CA); Hon. Bart Stupak (D–MI); Hon. Tim Bishop (D–NY); Hon. Wayne Gilchrest (R–MD); R. D. Musser, III, President, Grand Hotel; William Zammer, President, Cape Cod Restaurants, Inc.; Ross Eisenbrey, Vice President, Economic Policy Institute; Mary Bauer, Director, Immigrant Justice Project, Southern Poverty Law Center; and Steven Camarota, Director of Research, Center for Immigration Studies.

Oversight Joint Hearing on Paying With Their Lives: The Status of Compensation for 9/11 Health Effects

Summary.—When the World Trade Center collapsed on 9/11, thousands of first responders, local residents, workers, students, and others inhaled a poisonous mixture of asbestos, lead, PCBs, and other contaminants. More than six years later, many of these people have become sick from the toxic dust and there is currently no comprehensive federal program to provide them with health care or compensation. On April 1, 2008, the Subcommittee met jointly with the Subcommittee on the Constitution, Civil Rights, and Civil Liberties. This hearing addressed past successes, as well as the current and future challenges of compensating people for illnesses and injuries that resulted from the September 11, 2001 attacks on the World Trade Center.

The witnesses at this hearing were: Kenneth R. Feinberg, Esq., Former Special Master, Victim Compensation Fund; Michael Cardozo, Corporation Counsel, City of New York; Anne-Marie Lasowski, Acting Director, Education Workforce and Income Security, Government Accountability Office; Michael A. Valentin, Former NYPD Detective; Theodore H. Frank, Resident Fellow, American Enterprise (AEI), Director of AEI Legal Center for the Public Interest; and James Melius, MD, Ph.D., Administrator, New York State Laborers' Health and Safety Trust Fund.

Hearing on Problems with ICE Interrogation, Detention, and Removal Procedures

Summary.—As Immigration and Customs Enforcement (ICE) has grown in size and activity, some have suggested that the agency has not been able to keep up with the necessary training and oversight of its agents. Accounts of ICE agents who may have acted in an inappropriate and possibly illegal manner during various enforcement actions have recently increased. On February 13, 2008, the Subcommittee held a hearing to review ICE's procedures for interrogations, detention, and removal, as well as some cases in which allegations have been made that U.S. citizens were ques-

tioned, searched, arrested, detained, or deported by ICE. The hearing also examined procedures that ICE uses to ensure that U.S. citizens are not detained and deported. Witnesses at this hearing were: Gary Mead, Assistant Director for Detention & Removal, U.S. Immigration and Customs Enforcement; James J. Brosnahan, Senior Partner, Morrison & Foerster, LLP; Marie Justeen Mancha, Student, Tattnal County High School; Michael Graves, Member UFCW Local 1149; Kara Hartzler, Attorney, Florrence Immigrant & Refugee Rights Project; Rachel E. Rosenbloom, Human Rights Fellow, Center for Human Rights and International Justice at Boston College; and Dan Stein, President, Federation for American Immigration Reform.

Oversight Hearing on Naturalization Delays: Causes, Consequences and Solutions

Summary.—When U.S. Citizenship and Immigration Services (USCIS) published its proposed fee increase rule on February 1, 2007, its average processing time for naturalization applications was 5.57 months, just under its stated processing time goal of six months. In proposing the rule, the USCIS stated its goal of a 20% reduction in processing times. By January 16, 2008 the agency went from an average processing time of under six months to one of up to (or exceeding) a year and a half. This January 17, 2008 hearing examined the causes, consequences and solutions for naturalization delays, including an examination of persistent delays caused by the FBI name check. The hearing witnesses included: Emilio T. Gonzalez Ph.D., Director, U.S. Citizenship and Immigration Services Department of Homeland Security; Arturo Vargas, Executive Director, NALEO Educational Fund; Fred Tsao, Policy Director, Illinois Coalition for Immigrant and Refugee Rights; and Rosemary Jenks, Director of Government Relations, Numbers USA.

Hearing on H.R. 750, the "Save America Comprehensive Immigration Act of 2007"

Summary.—This November 8, 2007 hearing highlighted the continuing need for comprehensive immigration reform through an examination of H.R. 750, the "Save America Comprehensive Immigration Act of 2007." The witnesses were: the Honorable Carolyn Cheeks Kilpatrick (D–MI); the Honorable Barbara Lee (D–CA); the Honorable Silvestre Reyes (D–TX); the Honorable Nancy E. Boyda (D–KS); William Spriggs, Ph.D., Chairman, Department of Economics, Howard University; Gregory Siskind, Partner, Siskind, Susser, Bland; Charles H. Kuck, President-Elect, American Immigration Lawyers Association, Adjunct Professor of Law, University of Georgia; Christopher Nugent, Senior Counsel, Community Services Team, Holland and Knight, LLP; Kim Gandy, President, National Organization for Women (NOW); T. J. Bonner, President, National Border Patrol Council of the American Federation of Government Employees, AFL–CIO; and Julie Kirchner, Director of Government Relations, Federation for American Immigration Reform.

Oversight Hearing on Detention and Removal: Immigration Detainee Medical Care

Summary.—This hearing held on October 4, 2007, explored recent reports about the quality of medical care for immigrant detainees in U.S. Immigration and Customs Enforcement (ICE) custody. The witnesses were: Gary Mead, Assistant Director for Detention & Removal, U.S. Immigration and Customs Enforcement; Francisco Castaneda, Former Detainee; Edwidge Danticat, Author and Niece of Reverend Joseph Dantica, deceased detainee; June Everett, Sister of Sandra Kenley, deceased detainee; Tom Jawetz, Immigration Detention Staff Attorney, ACLU National Prison Project; Allen S. Keller, MD, Associate Professor of Medicine, New York University School of Medicine; and Cheryl Little, Executive Director, Florida Immigrant Advocacy Center.

Oversight Hearing on USCIS Fee Increase Rule

Summary.—On September 20, 2007, the Subcommittee convened a hearing on the USCIS fee increase rule. This hearing explored U.S. Citizenship and Immigration Services' (USCIS) decision to raise its fees and the methodology the agency used to calculate its fee increases. The hearing also allowed the Subcommittee to follow up with USCIS about issues raised in the Subcommittee's February 14, 2007 hearing on the agency's then-proposed fee rule. The hearing also considered H.J. Res. 47, which would have, if passed, rendered USCIS' fee rule null and void and would have forced the agency to issue a new rule providing additional justifications for its fee increases.

Testimony was heard from: Jonathan R. Scharfen, Deputy Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security; Rendell Jones, Chief Financial Officer, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security; Michael Aytes, Associate Director for Domestic Operations, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security; Arturo Vargas, Executive Director, NALEO Educational Fund; William R. (Bill) Yates, Executive Consultant, Border Management Strategies (BMS); and Rhadmes Rivera Vice President of 1199, SEIU United Health Care Workers East.

H.R. 1645, the "Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE Act)"

Summary.—This September 6, 2007 hearing examined H.R. 1645, the "Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE Act)." The following witnesses testified before the Subcommittee: the Honorable Jeff Flake (R–AZ); the Honorable Joe Baca (D–CA); the Honorable Ray LaHood (R–IL); the Honorable Brian Bilbray (D–CA); Tony Wasilewski, Small Business Owner, Schiller Park, Illinois; Eduardo Gonzalez, U.S. Navy Petty Officer Second Class, Jacksonville, Florida; Reverend Luis Cortés, Jr., President, Esperanza USA; Joshua Hoyt, Executive Director, Illinois Coalition for Immigrant & Refugee Rights; Cassandra Q. Butts, Senior Vice President for Domestic Policy, Center for American Progress; Michael L. Barrera, President and CEO, United States Hispanic Chamber of Commerce;

Julie Kirchner, Director of Government Relations, Federation for American Immigration Reform; and The Honorable Corey Stewart, Chairman At-Large, Prince William County Board of Supervisors.

Oversight Hearing on Comprehensive Immigration Reform: Government Perspectives on Immigration Statistics

Summary.—This June 6, 2007 hearing examined relevant official government statistics relating to the reform of the country's immigration laws. Testimony was heard from: the Honorable Joseph Crowley (D–NY); the Honorable Dana Rohrabacher (R–CA); Ruth Ellen Wasem Ph.D., Specialist in Immigration Policy Congressional Research Service; Ron Bird Ph.D., Chief Economist and Director of the Office of Economic Policy and Analysis, U.S. Department of Labor; Michael Hoefer, Director of the Office of Immigration Statistics (OIS), U.S. Department of Homeland Security; and Charles Oppenheim, Chief, Visa Control and Reporting Division, U.S. Department of State.

Oversight Hearing on Comprehensive Immigration Reform: Government Perspectives on Immigration Statistics (Continued)

Summary.—This June 19, 2007 hearing was a continuation of the June 6, 2007 hearing, as requested by the minority. The witnesses included: Shannon Benton, Executive Director, TREA Senior Citizens League; Steven Camarota, Director of Research, Center for Immigration Studies; and Robert Rector, Senior Research Fellow, The Heritage Foundation.

Oversight Hearing on Comprehensive Immigration Reform: Business Community Perspectives

Summary.—This June 6, 2007 hearing explored the positions and viewpoints of the business community with respect to reform of the Nation's immigration laws; specifically, the high tech industry, the service industry and the agriculture industry. Witnesses: Laszlo Bock, Vice President, People Operations, Google Inc.; John Gay, Senior Vice President for Government Affairs & Public Policy, National Restaurant Association; William Hawkins, Senior Fellow, U.S. Business and Industry Council; Jerry Mixon, Partner Mixon Family Farms.

Oversight Hearing on Comprehensive Immigration Reform: Labor Movement Perspectives

Summary.—This hearing explored the positions and viewpoints of various segments of the labor movement with respect to reforming the Nation's immigration laws. The witnesses at this May 24, 2007 hearing were: Jonathan Hiatt, General Counsel, American Federation of Labor and Congress of Industrial Organizations (AFL–CIO); Fred Feinstein, Senior Fellow and Visiting Professor, University of Maryland, Representing SEIU and UNITE HERE; Michael J. Wilson, International Vice President and Director, Legislative and Political Action Department, United Food and Commercial Workers International Union (UFCW); Marcos Camacho, General Counsel, United Farm Workers of America; Vernon Briggs, Ph.D., Professor of Industrial and Labor Relations, Cornell Univer-

sity; and Greg Serbon, State Director, Indiana Federation for Immigration Reform and Enforcement.

Oversight Hearing on Comprehensive Immigration Reform: Becoming Americans—U.S. Immigrant Integration

Summary.—This May 23, 2007 hearing was a continuation of the hearing on 5–16–2007, as requested by the minority. Witnesses: Roger Clegg, President and General Counsel, Center for Equal Opportunity; Stanley Renshon, City University of New York Graduate Center; Tim Schultz, Director, Government Relations U.S. English; and Mark Seavey, Director of the National Legislative Commission, The American Legion.

Oversight Hearing on Comprehensive Immigration Reform: Perspectives from Faith-Based and Immigrant Communities

Summary.—This May 22, 2007, hearing explored the positions and viewpoints of faith-based and immigrant organizations with respect to reforming the country's immigration laws. Witnesses: Reverend Charles G. Adams, Senior Pastor Hartford Memorial Baptist Church; Gideon Aronoff, President and CEO Hebrew Immigrant Aid Society (HIAS); Reverend Luis Cortés, Jr., President, Esperanza USA; Reverend Derrick Harkins, Pastor Nineteenth Street Baptist Church; Dan Kosten, Director, World Relief Refugee and Immigration Programs, National Association of Evangelicals; Most Reverend Thomas G. Wenski, U.S. Conference of Catholic Bishops, Diocese of Orlando; Jim Edwards, Jr. Ph.D., Adjunct Fellow, Hudson Institute; Stephen Steinlight, Center for Immigration Studies, Former National Affairs Director at the American Jewish Committee (AJC); Marleine Bastien, Executive Director, Fanm Ayisyen Nan Miyami, Inc., Haitian Women of Miami; Deepa Iyer, Executive Director, South Asian American Leaders of Tomorrow; Janet Murguia, President and CEO National Council of La Raza; Karen K. Narasaki, President and Executive Director, Asian American Justice Center (AAJC); Niall O'Dowd, Chairman, Irish Lobby of Immigration Reform; Noel J. Saleh, President, ACCESS Board of Directors; Rosanna Pulido, Illinois Spokesperson "You Don't Speak for Me"; and Jan Ting, Professor of Law, Temple University, Beasley School of Law.

Oversight Hearing on Comprehensive Immigration Reform: The Future of Undocumented Immigrant Students

Summary.—The Subcommittee convened this May 18, 2007 hearing to examine the circumstances of unlawfully-present immigrant children who grow up in the United States, and the effect that they can have on the U.S. if they were to be given legal immigration status and were allowed to become full, participating members of our society. The following witnesses testified at the hearing: Marie Nazareth Gonzalez, Westminster College, Class of 2009; Martine Mwanj Kalaw, Hamilton College, Class of 2003, The Maxwell School of Citizenship and Public Affairs Syracuse University, Class 2004; Tam Tran, University of California, Los Angeles Class of 2006; Diana Furchtgott-Roth, Senior Fellow & Director, Center for Employment Policy Hudson Institute; Allan Cameron Ph.D., Retired High School Computer Science Teacher, Carl Hayden High

School, Phoenix, AZ; Jamie P. Merisotis, President, Institute for Higher Education Policy; and Kris W. Kobach Ph.D., Professor of Law, University of Missouri-Kansas City School of Law.

Oversight Hearing on Comprehensive Immigration Reform: Impact of Immigration on States and Localities

Summary.—Most scholars tend to agree that illegal immigration imposes some costs on states and localities. This May 17, 2008 hearing focused on those costs. The witnesses were: The Honorable Sharon Tomiko Santos, Washington State House of Representatives, National Conference of State Legislatures; The Honorable Dennis Zine, Councilman, City of Los Angeles, National League of Cities; Stephen Appold Ph.D., Kenan Institute of Private Enterprise, The University of North Carolina at Chapel Hill; The Honorable John Andrews, Former President of the Colorado State Senate; Audrey Singer Ph.D., Immigration Fellow, Metropolitan Policy Program, The Brookings Institution; Anne Morrison Piehl Ph.D., Department of Economics & Program in Criminal Justice Rutgers, The State University of New Jersey; Deborah A. Santiago, Ph.D., Vice President for Policy and Research, Excelencia in Education; Robert Rector, Senior Research Fellow, The Heritage Foundation.

Oversight Hearing on Comprehensive Immigration Reform: Becoming Americans—U.S. Immigrant Integration

Summary.—On May 16, 2007 the Subcommittee convened a hearing to explore whether and to what extent immigrants are integrating into the United States and discuss policies to promote greater immigrant integration. Testimony was heard from: John Fonte, Ph.D., Senior Fellow at the Hudson Institute; Gary Gerstle, Ph.D., Professor of History, Vanderbilt University; Donald Kerwin, Executive Director, Catholic Legal Immigration Network, Inc.; and Rubén G. Rumbaut, Ph.D., Professor of Sociology, University of California, Irvine.

Oversight Hearing on the U.S. Economy, U.S. Workers, and Immigration Reform

Summary.—This May 9, 2007 hearing was a continuation of the hearing held on May 3, 2007 as requested by the minority. The witnesses were: T. Willard Fair, President, Miami Urban League; Roy Beck, Director, Numbers USA; and Steve Camarota, Director of Research, Center for Immigration Studies.

Oversight Hearing on the Role of Family-Based Immigration in the U.S. Immigration System

Summary.—The Subcommittee convened this hearing on May 8, 2007 to examine the role of family-based immigration in the U.S. immigration system. Testimony was heard from: Stuart Anderson, Executive Director, National Foundation for American Policy; Harriet Duleep, Ph.D., Research Professor of Public Policy, Thomas Jefferson Program in Public Policy, The College of William and Mary; The Honorable Phil Gingrey, U.S. House of Representatives (R–GA); and Bill Ong Hing, Professor of Law and Asian American Studies, University of California, Davis.

Oversight Hearing on the U.S. Economy, U.S. Workers, and Immigration Reform

Summary.—This May 3, 2007, hearing was held to examine the effects of immigrants on the Nation's economy, with particular attention to the native-born workforce. The witnesses were: the Honorable Steve King, (R–IA); Leon R. Sequeira, Assistant Secretary for Policy, U.S. Department of Labor; Patricia Buckley, Ph.D., Senior Economic Advisor to the Secretary, U.S. Department of Commerce; Peter R. Orszag, Ph.D., Director, Congressional Budget Office; Gerald Jaynes, Professor of Economics and African-American Studies, Yale University; Rachel Friedberg, Ph.D., Senior Lecturer in Economics, Brown University; Wade Henderson, Esq., President and CEO, Leadership Conference on Civil Rights; and Vernon Briggs, Professor of Industrial and Labor Relations, Cornell University.

Oversight Hearing on An Examination of Point Systems as a Method for Selecting Immigrants

Summary.—The Subcommittee met on May 1, 2007, to receive testimony examining the role of "point systems" for admitting immigrants from foreign law experts who described how point systems are used in Canada, Australia and the United Kingdom, practitioners experienced with point systems in other countries, and Senator Jeff Sessions who supports a point system. The witnesses were: The Honorable Jeff Sessions, United States Senate (R–AL); Clare Feikert, Foreign Law Specialist, Law Library of Congress; Stephen F. Clarke, Senior Foreign Law Specialist, Law Library of Congress; Lisa White, Foreign Law Specialist, Law Library of Congress; Demetrios Papademetriou, Ph.D., President and Board Member, Migration Policy Institute; Howard D. Greenberg, Partner, Greenberg Turner, A Human Resources Law Firm; Lance Kaplan, Partner, Fragomen, Del Rey, Bernsen & Loewy, LLP; Robert Rector, Senior Research Fellow, The Heritage Foundation.

Oversight Hearing on Proposals for Improving the Electronic Employment Verification and Worksite Enforcement System

Summary.—In its previous hearing, the Subcommittee examined issues in the current paper and electronic employment eligibility verification systems. This hearing on April 6, 2007 examined various proposals for modifying the employment eligibility verification and worksite enforcement system. Testimony was heard from: the Honorable Ken Calvert (R–CA); the Honorable Elton Gallegly (R–CA); the Honorable David Dreier (R–CA); the Honorable Silvestre Reyes (D–TX); Luis V. Gutierrez (D–IL); the Honorable Jeff Flake (R–AZ); Randel Johnson, Vice President, Labor, Immigration & Employee Benefits, U.S. Chamber of Commerce; Robert Gibbs, Partner, Gibbs Houston Pauw, On behalf of the Service Employees International Union; Jim Harper, Director of Information Policy Studies, The Cato Institute; Jessica Vaughan, Senior Policy Analyst, Center for Immigration Studies.

Oversight Hearing on Problems in the Current Employment Verification and Worksite Enforcement System

Summary.—On April 24, 2007, the Subcommittee convened a hearing to examine issues in the current paper and electronic employment eligibility verification systems. The witnesses included: Jonathan R. Scharfen, Deputy Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security; John Shandley, Senior V.P., Human Resources, Swift & Company; Stephen W. Yale-Loehr, Miller Mayer, LLP, Adjunct Professor, Cornell Law School; and Marc Rosenblum, Ph.D., Department of Political Science, University of New Orleans.

Oversight Hearing on Shortfalls of 1996 Immigration Reform Legislation

Summary.—On April 20, 2007, the Subcommittee held a hearing to examine the effects that 1996 immigration reform legislation had on historical patterns of circular migration, rule of law, and due process. The following witnesses testified before the Subcommittee: Douglas Massey, Ph.D., Professor of Sociology and Public Affairs, Princeton University; Hiroshi Motomura, Kenan Distinguished Professor of Law, University of North Carolina School of Law; Paul Virtue, Former INS General Counsel and Executive Associate Commissioner, Partner, Hogan & Hartson; and Mark Krikorian, Executive Director, Center for Immigration Studies.

Oversight Hearing on Shortfalls of the 1986 Immigration Reform Legislation

Summary.—The Subcommittee held a hearing on April 19, 2007, to examine the Immigration Reform and Control Act of 1986 (IRCA) and its effects, both intended and unintended. Testimony was received from: Muzaffar Chishti, Director, Migration Policy Institute, New York University School of Law; Rosemary Jenks, Director of Government Relations, Numbers USA; Stephen Legomsky, John S. Lehmann University Professor, Washington University in St. Louis; and Stephen Pitti, Ph.D., Professor of History & American Studies, Director of the Program in Ethnicity, Race and Migration, Yale University.

Oversight Hearing on Past, Present, and Future: A Historic and Personal Reflection on American Immigration

Summary.—The Subcommittee convened this hearing on March 30, 2007 to examine how America has dealt with immigration in the past, the impact that immigration is having in the present, and the role that immigration will play in our country's future, with help from experts in history, economics, and demography, as well as government officials in charge of immigration policy and border security. The hearing witnesses included: David V. Aguilar, Chief, Office of Border Patrol, Department of Homeland Security; Igor V. Timofeyev, Director of Immigration Policy and Special Advisor for Refugee and Asylum Affairs, Policy Directorate, U.S. Department of Homeland Security; Dowell Myers, Professor of Urban Planning and Demography and Director of the Population Dynamics Research Group, University of Southern California; Dan Siciliano, Professor of Urban Planning and Demography and Director of the

Population Dynamics Research Group, University of Southern California; Daniel J. Tichenor, Associate Professor, Department of Political Science Rutgers, The State University of New Jersey; Michael W. Cutler, Former Senior Special Agent of the INS, Fellow at the Center for Immigration Studies; and Jack Martin, Special Projects Director, Federation for American Immigration Reform.

Oversight Hearing on "The Proposed Immigration Fee Increase"

Summary.—On February 14, 2007, the Subcommittee convened a hearing to explore the proposal by U.S. Citizenship and Immigration Services (USCIS) to increase its fees, with particular attention to whether the USCIS fee increase proposal adequately and fairly calculated an appropriate share of the agency's true costs of adjudicating naturalization and immigration applications and petitions. Dr. Emilio T. Gonzalez, Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security was the only witness at this hearing.

LETTERS

Visa Waiver Program for Guam and the Commonwealth of the Northern Mariana Islands (CNMI)

On October 1, 2008, Chairman John Conyers, Jr. and Immigration Subcommittee Chairwoman Zoe Lofgren, with Committee on Natural Resources Chairman Nick Rahall, Insular Affairs Subcommittee Chairwoman Donna Christensen, Rep. Madeleine Bordallo, and Rep. Luis Fortuño, wrote to Secretary of Homeland Security Michael Chertoff urging him to adopt the visa waiver expansion proposals submitted by the Governors of Guam and the CNMI.

Protecting Women From Female Genital Mutilation

On January 28, 2008, Chairman John Conyers, Jr. and Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Attorney General Michael Mukasey questioning the Board of Immigration Appeals' (BIA) decision in Matter of A-T and urging him to certify the case for review. The BIA's decision denied asylum and withholding of removal to a woman who had experienced female genital mutilation as a child and feared further abuse of forced marriage.

On September 23, 2008, Chairman John Conyers, Jr. and Immigration Subcommittee Chairwoman wrote to Attorney General Michael Mukasey commending him for his decision to vacate and remand Matter of A-T.

Optional Practical Training Extension

On February 27, 2008, Immigration Subcommittee Chairwoman Zoe Lofgren, with Representatives Adam Schiff, Dennis Moore, Sheila Jackson Lee, and Jerrold Nadler, wrote to Secretary of Homeland Security Michael Chertoff urging him to extend the Optional Practical Training (OPT) period permitted for foreign students from 12 to 29 months.

On July 15, 2008, Immigration Subcommittee Chairwoman Zoe Lofgren and Rep. Chris Cannon wrote to Secretary of Homeland Security Michael Chertoff applauding efforts to extend the period

of OPT for the best and the brightest students to remain in the U.S., urging Secretary Chertoff to include accounting and auditing in the list of degrees that would qualify for the OPT extension, and expressing reservation about attaching policy to the OPT extension which compels employers to enroll in the Basic Pilot program if their employees' OPT is extended.

Inadequate Medical Care for Immigration Detainees

On May 15, 2008, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of Homeland Security Michael Chertoff regarding a Washington Post series concerning the quality of medical care provided at detention centers holding immigration detainees. The letter requested complete and unredacted copies of all documents submitted to the Washington Post relating to the provision of medical and mental health care to immigration detainees.

On August 18, 2008, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of Homeland Security Michael Chertoff regarding the in-custody death of Hiu Lui Ng, an immigrant who was very close to naturalization through his U.S. citizen spouse. The letter requested an investigation for Mr. Ng's death based upon disturbing allegations by the New York Times of serious medical neglect in immigration detention. The letter also re-requested the documents requested in the May 15, 2008 letter regarding the quality of medical care for immigration detainees.

Security-related Bars to the Admission of Deserving Refugees, Asylees, Special Immigrants, and Other Non-citizens

On April 1, 2008, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren wrote Secretary of Homeland Security Michael Chertoff concering the failure of the Department of Homeland Security to make use of its statutory authority to exempt deserving individuals from security-related bars to admission.

H–2A Non-immigrant Regulations

On March 6, 2008, Chairman John Conyers, Immigration Subcommittee Chairwoman Zoe Lofgren, with Committee on Education and Labor Chairman George Miller, Foreign Affairs Chairman Howard Berman, and Subcommittee on Workforce Protections Chairwoman Lynn Woolsey, wrote to Secretary of Labor Elaine Chao urging her to withdraw the proposed H–2A regulations that would, among other things, eliminate protections for U.S. farm workers and lower wage rates for both U.S. and foreign guest workers.

Adjustment of Status Regulations for "T" and "U" Non-immigrants

On July 9, 2008, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of Homeland Security Michael Chertoff urging him to issue regulations, which had been delayed for eight years, regarding adjustment of status for "T" and "U" non-immigrants.

Exploitation of H–2B Non-immigrants

On June 3, 2008, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren, with Committee on Education and Labor Chairman George Miller, wrote to the Acting Assistant Attorney General for Civil Rights and the Assistant Secretary for Immigration and Customs Enforcement encouraging them to investigate disturbing allegations of worker exploitation in a shipyard owned by Signal International where H–2B non-immigrants were employed.

Refugee Consultation Follow-up

On December 13, 2007, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of State Condoleezza Rice to thank her for the Fall refugee consultation and her commitment to a more timely and meaningful consultation process under section 207(a) of the Immigration and Nationality Act. The letter also reiterated views expressed during the consultation about various refugee concerns, including shortfalls in meeting admissions goals and pipeline management, Iraqi refugees, "material support" bars preventing deserving refugees from admission, the refugee situation in Darfur and Chad, the situation of Haitian refugees, the protection of vulnerable women and children refugees, and shortfalls in refugee funding.

Self-petitions Under the Violence Against Women Act (VAWA)

On November 28, 2007, Subcommittee Chairwoman Zoe Lofgren wrote to U.S. Citizenship and Immigration Services Director Emilio Gonzalez asking him to confirm whether a memorandum would be issued narrowly limiting approved self-petitioners under the Violence Against Women Act (VAWA) contrary to the plain language of the Immigration and Nationality Act as amended by VAWA. If the Director was in fact considering issuing such a memorandum, the letter urges him to reconsider.

Immigration Detention Standards

On September 7, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to U.S. Immigration and Customs Enforcement (ICE) Assistant Secretary Julie Myers to request a copy of proposed detention standards, request that ICE brief Subcommittee staff on the detention standards, and to express concern regarding reports that ICE had not worked with non-governmental organizations to establish the standards.

Visa Bulletin Irregularities

On July 2, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of State Condoleezza Rice and Homeland Security Secretary Michael Chertoff expressing concern about the potential unprecedented action of, and the effects of, revising the July 2007 visa bulletin mid-month to reflect retrogression in various employment-based visa categories. The letter requests a response to the concerns raised in the letter and a meeting to discuss the matter before the revision is made.

On July 9, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of Homeland Security Michael Chertoff

to follow up on the July 2, 2007 letter that received no response as requested. The letter requests various written information regarding the July 3, 2007 revision of the July 2007 visa bulletin.

Interrogation, Detention, and Removal of U.S. Citizens

On June 26, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of Homeland Security Michael Chertoff to express concern over reports of the deportation of a U.S. citizen, to request information regarding this case, and to request manuals, materials, and written policy used to make decisions regarding the removal of the mentally impaired.

U Visa Regulations

On April 5, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to U.S. Citizenship and Immigration Services Director Emilio Gonzalez inquiring into the status of U visa regulations required under the Victims of Trafficking and Violence Protection Act of 2000, P.L. 106–386.

Operation Return to Sender

On March 1, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to U.S. Immigration and Customs Enforcement Assistant Secretary Julie Meyers seeking clarification and understanding of ICE's policy and methods of removal of unlawfully-present immigrants pursuant to "Operation Return to Sender."

Budgeting for U.S. Citizenship and Immigration Services

On February 13, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to Secretary of Homeland Security Michael Chertoff seeking clarification of a statement made to Congress in which Secretary Chertoff claimed that seeking an appropriation for U.S. Citizenship and Immigration Services (USCIS) "would be a problem . . . . [because] Congress has always mandated this fee [to cover the full costs of USCIS]." The letter explained that Congress has simply authorized fees to cover the full costs of USCIS, not mandated it. The letter also asked Secretary Chertoff to clarify his statement to Congress suggesting that USCIS fees could be used for enforcement purposes, which the authors asserted contravened section 286(m) of the Immigration and Nationality Act.

Western Hemisphere Travel Initiative

On February 9, 2007, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren, along with Committee on Homeland Security Chairman Bennie Thompson and Subcommittee Border, Maritime, and Global Counterterrorism Chairwoman Loretta Sanchez, wrote to Secretary of State Condoleezza Rice seeking information on the authority and methods used to determine passport and passport card fees and the circumstances and standards used to waive the fees.

Security Checks Resulting in U.S. Citizenship and Immigration Services Application Backlogs

On February 16, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren wrote to U.S. Citizenship and Immigration Services

(USCIS) Director Emilio Gonzales seeking answers to several questions regarding the name check process that caused backlogs in immigration application processing at USCIS.

Protection of Montagnard Refugees In and Outside Vietnam

On March 26, 2007, Chairman John Conyers and Immigration Subcommittee Chairwoman Zoe Lofgren, along with Foreign Affairs Committee Chairman Tom Lantos, Foreign Affairs Committee Ranking Member Ileana Ros-Lehtinen, Subcommittee on Africa and Global Health Ranking Member Christopher Smith, and Subcommittee on International Organizations, Human Rights, and Oversight Ranking Member Dana Rohrbacher, wrote to Assistant Secretary of Population, Refugees, and Migration Ellen Sauerbrey expressing concern over reports that the Department of State might soon refuse to process intending Montagnard refugees in Cambodia without referrals from the U.N. High Commissioner for Refugees.

Return of Vietnamese to the Socialist Republic of Vietnam

On October 23, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren, along with Subcommittee on Border, Maritime, Global Counterterrorism Chairwoman Loretta Sanchez, and Subcommittee on Africa and Global Health Ranking Member Christopher Smith, wrote to President George W. Bush expressing concern over the potential forced return to the Socialist Republic of Vietnam of a family of Vietnamese refugees who survived "re-education" camps and had a court order stating that a return to Vietnam could not occur for fear of persecution. One of the family members was a witness in an Immigration Subcommittee hearing on May 18, 2007. The letter sought clarification on whether U.S. policy had changed regarding the return of Vietnamese refugees to Vietnam.

On January 23, 2008, Immigration Subcommittee Chairwoman, along with Representatives Ileana Ros-Lehtinen, Michael Honda, Lincoln Diaz-Balart, Loretta Sanchez, and Mario Diaz-Balart, wrote to Secretary of Homeland Security Michael Chertoff expressing extreme concern over a Memorandum of Understanding (MOU) reached with the Government of the Socialist Republic of Vietnam, that would result in the forcible return of thousands of Vietnamese nationals who had been ordered deported to the Socialist Republic of Vietnam, a country with an extensive and continuing record of human rights violations. The letter requested a briefing on the MOU regarding the process by which the agreement was reached prior to the implementation of the agreement.

On March 6, 2008, Immigration Subcommittee Chairwoman, along with Representatives Loretta Sanchez, Michael Honda, Neil Abercrombie, and Al Green, wrote to Secretary of Homeland Security Michael Chertoff following up on the response received to the January 23, 2008 letter and to request answers to questions raised at a staff briefing on this issue on February 11, 2008, including whether human rights reports were ignored in the development of the MOU, differences between similar MOUs with other nations, whether specific provisions in the MOU address human rights concerns in Vietnam, whether the MOU would allow for consideration of humanitarian concerns prior to deportation, and whether the De-

partment would consent to reopening of removal proceedings as completion of the MOU could be considered a "changed condition."

GAO REQUESTS

Criminal Aliens

On July 21, 2008, Immigration Subcommittee Chairwoman Zoe Lofgren and Ranking Member Steve King requested a follow up report to an April 7, 2005 report regarding statistics relating to criminal aliens in the United States.

Review of U.S. Citizenship and Immigration Services Cost Accounting Method

On September 12, 2007, Immigration Subcommittee Chairwoman Zoe Lofgren and Appropriations Subcommittee on Homeland Security Chairman David Price requested a review of the U.S. Citizenship and Immigration Services' (USCIS) cost accounting methods, including those used for developing its most current fee schedule, the assumptions underlying the allocation of costs covered by these fees, and the financial controls USCIS has put in place to ensure the appropriate collection and use of the fees.

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