The House met at 10 a.m.

The Reverend Msgr. Peter J. Vaghi, Pastor, St. Patrick Catholic Church, Washington, D.C., offered the following prayer:

Almighty God, we call upon You this cold December morning. You are Light of Lights and Light From Light. You are the Light who pierces the perennial darkness of our world, the darkness of our mind and soul, the darkness of a world at war. Because of You, O living and true God, we live, walk, and have our being. You are Emmanuel, God-with-us.

We pray to You this day that passage from the Advent prophet Isaiah: “Let justice descend, O heavens, like the dew from above, like gentle rain let the skies drop it down. Let earth open and salvation bud forth; let justice also spring up.”

We pray also for peace. Peace in our world begins with peace in our hearts. And peace in our hearts comes from You, Almighty Father. Draw near to us and grant us Your peace.

Encourage us, O Lord, in this holy season in all our humble efforts carried out in Your life-giving name, O Prince of Peace and Light, Lord of Justice. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day’s proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from North Carolina (Mrs. MYRICK) come forward and lead the House in the Pledge of Allegiance.

Mrs. MYRICK led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

INTRODUCTION OF REVEREND MONSIGNOR PETER VAGHI

(Mr. FERGUSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FERGUSON. Mr. Speaker, I rise today to honor Monsignor Peter Vaghi for his dedicated service to St. Patrick’s Church here in Washington, D.C. Monsignor Vaghi was born here in Washington, D.C., and attended Gonzaga College High School and the College of the Holy Cross, where he was awarded a Fulbright Scholarship to attend the University of Salzburg in Austria.

Returning home to America, he went on to get his juris doctor at the University of Virginia Law School and worked in Washington, D.C., before he answered a calling to the priesthood and attended the Gregorian University in Rome, Italy.

Monsignor Vaghi was ordained a Catholic priest on June 29, 1985, and designated a “Prelate of Honor” by Pope John Paul II on November 13, 1995.
Mr. Speaker, it is my privilege to welcome Monsignor Vaghi to this House. He is not only a family friend, but he also gave my wife Maureen and me the honor of officiating at our wedding in 1996. I thank him for being here today. His presence and his blessing on this House and on our work here means so very much to me and to every Member of this body.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 3338, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 324 and ask for its immediate consideration.

The Clerk read the resolution as follows:

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report accompanying the bill (H.R. 3338) making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes, pending which the Chair waives all points of order against the conference report and against its consideration.

The rule waives all points of order against the conference report and against its consideration. In addition, the rule provides that the conference report shall be considered as read.

The SPEAKER pro tempore (Mr. Camp). The gentlewoman from North Carolina (Mrs. Myrick) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. Frost), pending which I yield myself such time as I may consider.

Mr. Speaker, yesterday, the Committee on Rules met and granted a normal conference report rule for H.R. 3338, the Fiscal Year 2002 Department of Defense Appropriations Act.

The rule waives all points of order against the conference report and against its consideration. In addition, the rule provides that the conference report shall be considered as read.

Mr. Speaker, this should not be a controversial rule. It is the type of rule we grant for every conference report we consider in the House. The gentleman from Texas (Mr. Frost), who is managing this rule for the minority, understands the importance of a strong national defense, and I am sure I do not need to convince him or anyone else that this bill is important, now more than ever before.

At a time when we are facing terrorism at home and engaged in combat abroad, we need to give our government the tools to defend us overseas and at home. This bill does just that. It provides our military with $317 billion in much-needed support, including a 4.6 percent pay raise; and the supplemental portion of the bill will bolster our fight against terrorism by providing much-needed funding for border patrols, port security, bioterrorism prevention, and the FBI.

Lastly, Mr. Speaker, this bill contains our strong support for the people of New York by providing another $8.2 billion in disaster assistance, including $2 billion in community development block grants.

Mr. Speaker, we are about to go home for the holidays and after the events of this fall, I cannot think of a better thing to do before we leave town than to provide for our armed forces, for our fight against terrorism, and for the victims of September 11.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we speak, the brave men and women of the U.S. military are halfway around the world waging the war on terrorism. Their courage and professionalism are a fitting tribute to the strength and unity of the United States of America.

Meanwhile, here at home, domestic security has become our top priority, and thanks to the funding priorities in this conference report, America will now be better prepared to prevent, defend against, and recover from any future terrorist attacks.

I am very pleased that the conference report continues to fund the homeland defense than was provided in the House-passed bill. Specifically, it provides more funding for nuclear, border, port, aviation, and bioterrorism priorities. On bioterrorism alone, Democrats were able to secure $2.5 billion, $1 billion more than the President requested. While additional funding will be necessary to fully address other domestic security needs, this conference report is a good start.

Mr. Speaker, here in Congress, there has always been strong bipartisan support for America’s armed forces. The history of this defense appropriations bill reflects that fact.

Last month, the House Committee on Appropriations reported its original version of H.R. 3338, and the full House passed it by a vote of 406 to 20. I am confident that another large bipartisan majority will pass this conference report today. That is because Democrats and Republicans are strongly committed to America’s national defense and to a first-rate military that carries it out. As the President said yesterday, as we continue to address House Democrats, security of the United States is not a partisan issue.

Mr. Speaker, this is a good conference report, and I support it. I would like to thank the gentleman from Florida (Chairman Young); the gentleman from Wisconsin (Mr. Obey), the ranking Democrat; the gentleman from California (Chairman Lewis); and the gentleman from Pennsylvania (Mr. Murtla), the ranking Democrat on the subcommittee responsible for this mission-critical readiness account, and it strengthens research for tomorrow’s weapons and equipment while providing the weapons and equipment the U.S. military needs today.

Mr. Speaker, I am especially pleased by the substantial quality-of-life improvements funded by this conference report. It includes funding for a significant pay raise of between 5 and 10 percent for every member of the military. It also significantly increases funding for health benefits for service members and their families.

I am also pleased that this conference report continues to fund the wide range of weapons programs that ensure our military’s superiority throughout the world. For instance, it includes more than $2 billion for the second production run of the F-22 Raptor aircraft, the next-generation air dominance fighter for the Air Force.

Additionally, Mr. Speaker, the conference report provides $1.5 billion for continued development of the Joint Strike Fighter, the high-technology multirole fighter of the future for the Air Force, the Navy, and the Marines. It also includes $1.04 billion for procurement of 11 MV-22 Osprey aircraft.

Mr. Speaker, all of these aircraft are important components in our national arsenal, and moving forward on the research and production sends a clear signal that the United States has no intention of relinquishing our air superiority.

The first duty of the Congress, Mr. Speaker, is to provide for the national defense and the men and women who protect it. This conference report does a great deal to improve military readiness and to improve the quality of life for our men and women in uniform as well as their families. It is a good first step at providing the needed funding to ensure that attacks like those that occurred on September 11 will never happen again.

Mr. Speaker, I wish we could have done more, but Republican leaders insisted that many homeland security priorities wait until next year. I hope they will allow us to address the remaining priorities as soon as possible.

Mr. Speaker, I urge the adoption of this bill and of this conference report.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. Obey), the ranking member of the Committee on Appropriations.
After the tragic events of September 11, on a bipartisan basis the gentleman from Florida (Mr. YOUNG) and I tried to put together a list of the actions that both sides of the aisle thought were necessary in order to improve the homeland security of the United States.

That process was rudely interrupted, to say the least, by OMB, who informed us in rather blunt terms that they had all the wisdom, that they did not need to provide any additional funding, and that we could put a "Wait 'Til Next Year" sign on our homeland security needs.

Mr. Speaker, I am pleased to say that despite that resistance, the conferences brought back to this House a bill which contains crucial items that will increase the security of this country at home. I want to congratulate Senators BYRD and STEVENS and the gentleman from Florida (Chairman YOUNG) and the gentleman from California (Chairman LEWIS) for helping to see to it that rationality prevailed over stubbornness. As a result, we have $664 million in this bill that was not contained in the House bill to protect the country against bioterrorist attacks; we have $50 million more in this bill to provide for cockpit security; we have law enforcement additions to the bill of over $407 million, including $208 million for the FBI so that they will be able to modernize their computer system by this coming summer, rather than having to wait until the year 2004.

Right now the FBI has a large number of computers that cannot even send pictures of potential terrorists to other FBI terminals because they do not have the adequate computer capacity. This bill fixes that.

The most crucial item of all is keeping weapons of mass destruction away from terrorists. We wound up with $382 million in additional funding in this bill above the amount that was originally in the House bill. We have $120 million of additional funding to secure nuclear material in the former Soviet Union so it does not fall into terrorists' hands.

The bill provides $383 million for increased security for our Nation's ports and for our border, especially the Canadian border. For food safety, it increases the percentage of imported food subject to inspection from the present 1 percent to 10 percent, as we have been asking all along.

It contains a number of other items that I will insert in the RECORD at this point.

Mr. Speaker, I insert the table in the RECORD at this point.

CONFERENCE ADDITIONS TO THE HOUSE BILL FOR DOMESTIC SECURITY

<table>
<thead>
<tr>
<th>House Conference Conference over House</th>
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<tbody>
<tr>
<td>Protecting Against Bioterrorism</td>
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<tr>
<td>Upgrading State &amp; Local Health Departments &amp; Hospitals</td>
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<tr>
<td>Expanding CDC Support of State and Local Health Departments</td>
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<tr>
<td>Accelerating Research on Biowarheads: Detection and Treatment</td>
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<tr>
<td>Bio Safety Laboratories at Mill and Fort Detrick, MD</td>
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<tr>
<td>Vaccine and Drug stockpiles</td>
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<td>Other Bioterrorism Requirements</td>
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<tr>
<td>Total</td>
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<tr>
<td>Securing the U.S</td>
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<tr>
<td>Procurement of Sanitation Equipment for Postal Service</td>
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<tr>
<td>Airport and Airline Safety</td>
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<tr>
<td>Federal Assistance for Modernized Security Upgrades at Airports</td>
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<tr>
<td>Increased Sky Marshals and Sky Marshal Training</td>
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<tr>
<td>Cockpit Door Security &amp; Explosive Detection Equipment</td>
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<tr>
<td>Innovations in Airport Security</td>
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<tr>
<td>Total</td>
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<tr>
<td>Law Enforcement</td>
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<tr>
<td>FBI Case Management Computer System (Trilogy)</td>
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<tr>
<td>FBI Data Backup and Warehousing</td>
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<tr>
<td>FBI Cybersecurity, Transportation and Other</td>
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<tr>
<td>Other Justice Department Law Enforcement</td>
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<tr>
<td>Law Enforcement Assistance (Olympics)</td>
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<td>Law Enforcement Assistance (National Capital Area)</td>
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<td>Federal Law Enforcement Training Center</td>
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<td>Secret Service, INS etc.</td>
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<tr>
<td>Total</td>
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<tr>
<td>Keeping Weapons of Mass Destruction Away from Terrorists</td>
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<tr>
<td>Improved Security at DoD Sites Storing Tons of Chemical Weapons</td>
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<tr>
<td>Improved Security for Nuclear Weapons Activities</td>
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<td>Improved Security for U.S. commercial/research nuclear reactors (MRC)</td>
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<td>Security of Russian Nuclear and Biological Scientists</td>
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<td>Nuclear, Intelligence</td>
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<tr>
<td>Improved Security at Nuclear Cleanup Sites</td>
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<tr>
<td>Energy Intelligence</td>
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<tr>
<td>CDC Oversight and Training for Labs Handling Dangerous Pathogens</td>
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<tr>
<td>Improved Security at Fort Detrick, MD</td>
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<tr>
<td>Improved Security at CDC, NIA, FDA and USDA Research Facilities</td>
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<tr>
<td>Total</td>
</tr>
<tr>
<td>Immigration, Port and Border Security</td>
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<tr>
<td>Additional Counters Agents for Canadian Border and ports</td>
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<tr>
<td>Machine Readable Visa Machines at All U.S. Consulates</td>
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<tr>
<td>Immigration Inspectors, Border Patrol &amp; Related Equipment</td>
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<tr>
<td>Adequate INS Detention &amp; Admin. Facilities at U.S. Border Crossings</td>
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<tr>
<td>Full Annual Cost of Expanding Coast Guard by 640 positions</td>
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<tr>
<td>Federal Grants for Port Security Assessments and Enhancements</td>
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<tr>
<td>Federal Grants for Enhancing Security of Rail and Bus Travel</td>
</tr>
<tr>
<td>Food and Water Safety</td>
</tr>
<tr>
<td>Expand FDA Inspections to Cover 10% of All Food Imports</td>
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</table>
Mr. OBEY. Mr. Speaker, I simply want to say that I think what this bill demonstrates is that when committees are allowed to work in a substantive way, casting aside ideology or political views, the result is good for the country, and it is good for this institution, and I congratulate all of those involved.

Mrs. MYRICK. Mr. Speaker, I would inquire of the gentleman from Texas (Mr. FROST) if he has any other speakers.

Mr. FROST. Mr. Speaker, we have no more speakers.

Mr. Speaker, I urge adoption of the rule, and I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered. The resolution was agreed to. A motion to reconsider was laid on the table.

Mr. Speaker, this rule makes in order consideration of H.J. Res. 79, which is a continuing resolution that makes further appropriations for fiscal year 2002.

The rule provides for 1 hour of debate in the House equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Appropriations. The rule waives all points of order against consideration and provides for one motion to recommit.

Mr. Speaker, as we approach the end of this year’s session, I urge my colleagues to join me in supporting this rule so that we may proceed to consider the underlying continuing resolution.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule makes in order consideration of H.J. Res. 79, H.J. Res. 79 is a continuing resolution which will be in effect from December 21, 2001, to January 10, 2002.

This is a noncontroversial matter, and I urge adoption of this resolution.

Mr. Speaker, I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield back the balance of my time, and I move the previous question.

The previous question was ordered. The resolution was agreed to.

A motion to reconsider was laid on the table.

PREVIOUSLY ASKED QUESTIONS

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 322 and ask for its immediate consideration.

Mr. HASTINGS of Washington. Mr. Speaker, this rule provides for the consideration of H.J. Res. 79, which is a continuing resolution that makes further appropriations for fiscal year 2002.

The rule provides for 1 hour of debate in the House equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Appropriations. The rule waives all points of order against consideration and provides for one motion to recommit.

Mr. Speaker, as we approach the end of this year’s session, I urge my colleagues to join me in supporting this rule so that we may proceed to consider the underlying continuing resolution.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule makes in order consideration of H.J. Res. 79, H.J. Res. 79 is a continuing resolution which will be in effect from December 21, 2001, to January 10, 2002.

This is a noncontroversial matter, and I urge adoption of this resolution.

Mr. Speaker, I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield back the balance of my time, and I move the previous question.

The previous question was ordered. The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H. RES. 322, APPOINTING DAY FOR THE CONVENING OF THE SECOND SESSION OF THE 107TH CONGRESS

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 322 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 322

Resolved. That upon the adoption of this resolution it shall be in order in the House to consider the bill (H.R. 2056) entitled ‘‘An Act to appropriate funds for Federal agencies to carry out programs related to the implementation of the National Strategy to Secure America’s Borders and Ports of Entry,’’ and to consider the joint resolution (H.J. Res. 79) to make further continuing appropriations for fiscal year 2002.

Mr. Speaker, this rule makes in order consideration of H.J. Res. 79, which is a continuing resolution that makes further appropriations for fiscal year 2002.

The rule provides for 1 hour of debate in the House equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Appropriations. The rule waives all points of order against consideration and provides for one motion to recommit.

Mr. Speaker, this rule makes in order consideration of H.J. Res. 79, H.J. Res. 79 is a continuing resolution which will be in effect from December 21, 2001, to January 10, 2002.

This is a noncontroversial matter, and I urge adoption of this resolution.

Mr. Speaker, I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield back the balance of my time, and I move the previous question.

The previous question was ordered. The resolution was agreed to.

A motion to reconsider was laid on the table.
the work of the House as expeditiously as possible. I encourage my colleagues to support both this rule and the resolution that it makes in order.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule makes in order a joint resolution which sets the date for convening of the second session of the 107th Congress as January 23, 2002. This is a totally noncontroversial rule and joint resolution, and I urge adoption of both.

Mr. Speaker, I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered. The resolution was agreed to. A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LEWIS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report accompanying H.R. 3338, and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONFERENCE REPORT ON H.R. 3338, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002

Mr. LEWIS of California. Mr. Speaker, pursuant to House Resolution 324, I call up the conference report accompanying the bill (H.R. 3338) making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 324, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Wednesday, December 19, 2001.)

The SPEAKER pro tempore. The gentleman from California (Mr. LEWIS) and the gentleman from Pennsylvania (Mr. MURTHA) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. LEWIS).

Mr. LEWIS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would say to my colleagues and the gentleman from Pennsylvania (Mr. MURTHA), my friend, that the House has had a long night this past night. We have very, very extensive discussions that should take place regarding this bill, but we have heard this discussion before. So I am going to pass on those formal remarks, and I hope that my colleagues will read about them very carefully in the RECORD. But in the meantime, there are a couple of items of business that I must attend to.

First, due to a clerical error, language was mistakenly omitted from the Statement of Managers that relates to the FMTV truck program, a very important program to some of the Members of the House.

That language, agreed to by the conferees but inadvertently not included in the statement of managers, is as follows: “The conferees understand that the Army did not request legislative authority to extend the current multi-year contract. The conferees direct the Army to act in the best interest of the Army with respect to the FMTV.”

Secondly, I would ask that on behalf of myself and Chairman YOUNG, that I be allowed to insert in the RECORD at the end of my opening remarks a series of tables summarizing the conference agreements, on both the Defense and Supplemental appropriations bills.

Finally, let me mention that our former colleague from the Committee on Appropriations, Larry Coughlin of Pennsylvania, who was a proud Marine by the way, Larry Coughlin was laid to rest at Arlington Cemetery this morning.
<table>
<thead>
<tr>
<th>TITLE I</th>
<th>MILITARY PERSONNEL</th>
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</thead>
<tbody>
<tr>
<td>Military Personnel, Army</td>
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<td>Military Personnel, Navy</td>
<td>17,729,297</td>
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<tr>
<td>Military Personnel, Marine Corps</td>
<td>6,633,100</td>
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<td>Reserve Personnel, Marine Corps</td>
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<td>Reserve Personnel, Air Force</td>
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<td>National Guard Personnel, Army</td>
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<td>National Guard Personnel, Air Force</td>
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Total, title I, Military Personnel: 75,847,740

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<td>Operation and Maintenance, Army Reserve: Air</td>
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<td>United States Court of Appeals for the Armed Forces</td>
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<td>Support for International Sporting Competition, Defense</td>
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Total, title II, Operation and maintenance: 99,889,774

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<td>Aircraft Procurement, Air Force National Guard</td>
<td>7,583,345</td>
</tr>
<tr>
<td>Aircraft Procurement, Army Reserve National Guard</td>
<td>2,863,778</td>
</tr>
<tr>
<td>Aircraft Procurement, Navy Reserve National Guard</td>
<td>647,608</td>
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<tr>
<td>Aircraft Procurement, Marine Corps Reserve National Guard</td>
<td>7,763,747</td>
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<tr>
<td>Aircraft Procurement, Air Force Reserve National Guard</td>
<td>2,348,277</td>
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<tr>
<td>National Guard and Reserve Equipment</td>
<td>100,000</td>
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</table>

Total, title III, Procurement: 59,232,846

<table>
<thead>
<tr>
<th>TITLE IV</th>
<th>RESEARCH, DEVELOPMENT, TEST AND EVALUATION</th>
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</thead>
<tbody>
<tr>
<td>Research, Development, Test and Evaluation, Army</td>
<td>6,342,552</td>
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<tr>
<td>Research, Development, Test and Evaluation, Navy</td>
<td>9,494,374</td>
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<tr>
<td>Research, Development, Test and Evaluation, Air Force</td>
<td>13,184,244</td>
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<tr>
<td>Research, Development, Test and Evaluation, Defense-Wide</td>
<td>11,587,275</td>
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<tr>
<td>Operational Test and Evaluation, Defense</td>
<td>227,060</td>
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Total, title IV, Research, Development, Test and Evaluation: 41,359,605
### H.R. 3338 - Defense Appropriations Act, 2002 — continued

**Title V: Revolving and Management Funds**

<table>
<thead>
<tr>
<th>FY 2001 Enacted</th>
<th>FY 2002 Request</th>
<th>House</th>
<th>Senate</th>
<th>Conference</th>
<th>Conference vs. enacted</th>
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<tbody>
<tr>
<td>916,276</td>
<td>1,561,986</td>
<td>1,524,986</td>
<td>1,298,986</td>
<td>1,312,986</td>
<td>+336,710</td>
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#### National Defense Sealift Fund:
- Ready Reserve Force:
  - Acquisition: 130,156

| Subtotal         | 400,856         | 560,406 | 412,708 | 407,408 | 412,408 | +31,310 |

#### National Defense Airlift Fund:
- C-17:
  - 2,170,923
- C-17 advance procurement:
  - 257,600
- C-17 CS:
  - 412,200

| Subtotal         | 2,840,923       |         |        |         |         |         |

| Total, Title V, Revolving and Management Funds | 4,157,857       | 2,456,894 | 1,937,694 | 2,234,284 | 1,745,394 | -2,412,463 |

### Title VI: Other Department of Defense Programs

#### Defense Health Program:
- Operation and maintenance:
  - 11,414,393
- Procurement:
  - 292,008
- Research and development:
  - 413,305

| Total, Defense Health Program | 12,117,779       | 17,565,750 | 17,574,750 | 17,556,185 | 17,559,475 | +8,245,082 |

#### Chemical Agents & Munitions Destruction, Army:
- Operation and maintenance:
  - 600,000
- Procurement:
  - 105,700
- Research, development, test and evaluation:
  - 274,400

| Total, Chemical Agents       | 980,100          | 1,153,557 | 1,093,057 | 1,104,557 | 1,105,557 | +125,457 |

#### Drug Interdiction and Counter-Drug Activities, Defense:
- Office of the Inspector General:
  - 147,545

| Total, Title VI, Other Department of Defense Programs | 14,114,424       | 20,024,892 | 20,349,862 | 20,498,963 | 20,491,353 | +6,378,292 |

### Title VII: Related Agencies

#### Central Intelligence Agency Retirement and Disability System Fund:
- 216,000

#### Intelligence Community Management Account:
- 148,631

#### Transfer to Department of Justice:
- (34,100)

#### Payment to Kaho'olawe Island Conveyance, Remediation, and Environmental Restoration Fund:
- 60,000

#### National Security Education Trust Fund:
- 6,690

| Total, Title VII, Related agencies | 431,581          | 397,776 | 389,029 | 439,776 | 447,929 | +16,348 |

### Title VIII: General Provisions

#### Additional transfer authority (Sec. 6005):
- (2,000,000)

#### Indian Financing Act incentives (Sec. 6022):
- 8,000

#### FFRDCs (Sec. 6032):
- 24,000

#### Disclosed & leased OCO real property (Sec. 8038):
- 3,000

#### Overseas MBIF Invest Recovery (Sec. 8041):
- 566,890

#### Recissions (Sec. 8054):
- 80,000

#### Navy Working Capital Fund Cash Balances:
- (8,000)

#### Fuel Pricing/Rate Stabilization Adjustment:
- (105,000)

#### Excess Foreign Currency Cash Balance (Sec. 8095):
- (56,000)

#### Travel Cards (Sec. 8103):
- 8,000

#### Transfer to Department of Transportation:
- (10,000)

#### United Service Organizations (Sec. 8111):
- 7,500

#### Davis Bacon Act Threshold Increase:
- 10,000

#### Deposit Maintenance Utilization Waiver:
- 140,000

#### Government Purchase Card (Sec. 8146):
- (330,000)

#### Performance Based Academic Model:
- 5,000

#### BMDO Support reduction:
- (14,000)

#### Preservation of Democracy:
- 25,000

#### Quarantine benefits:
- 1,000

#### National D-Day Museum (Sec. 8117):
- 2,100

#### Chicago Military Academy:
- 5,000
<table>
<thead>
<tr>
<th>FY 2001 Enacted</th>
<th>FY 2002 Request</th>
<th>House</th>
<th>Senate</th>
<th>Conference</th>
<th>Conference vs enr.</th>
</tr>
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<tr>
<td>Ship scrapping initiative</td>
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<td>American Red Cross (Sec. 892)</td>
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<td></td>
<td>5,000</td>
<td>3,500</td>
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<tr>
<td>U.S./China Security Review Commission</td>
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<tr>
<td>GfW viral illness</td>
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<tr>
<td>Guardian military academy</td>
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<td>2,000</td>
<td></td>
<td>-2,000</td>
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<tr>
<td>Newark (Sec. 612a)</td>
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<td>10,000</td>
<td></td>
<td>8,500</td>
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<tr>
<td>Brownfield site</td>
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<td></td>
<td></td>
<td>2,000</td>
<td></td>
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<tr>
<td>Fisher House (Sec. 6118)</td>
<td>2,000</td>
<td></td>
<td>2,000</td>
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<td>1,700</td>
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<tr>
<td>Zero emission steam technology demo (Sec. 8121)</td>
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<td></td>
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<td>Tethered Aerial Radar System (Sec. 8144)</td>
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<td></td>
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<td>Army Acquisition Restructing (Sec. 8149)</td>
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<td>-5,200</td>
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<td>US Army Alabama Museum Memorial (Sec. 8138)</td>
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<td>Special Needs Learning Center (Sec. 8141)</td>
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<td>+5,000</td>
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<td>Ballistic Missile Defense / Counterterrorism</td>
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<td>Eisenhower Commission (Sec. 8120)</td>
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<td>Reserve Component Incentive and bonus programs (Sec. 8049)</td>
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<td>Fort Des Moines Memorial Grant (Sec. 8118)</td>
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<td>Padgett Thomas Barracks (Sec. 8158)</td>
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<td>Pentagon Reservation Emergency Response</td>
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<td>C/S avionics modernization</td>
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<td>20,000</td>
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<td>Agile combat support</td>
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<td>WRAMO equipment</td>
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<td>5,000</td>
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<td>Armed Forces Retirement Home (Sec. 8183)</td>
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<tr>
<td>Total, title IX (net)</td>
<td></td>
<td></td>
<td></td>
<td>-4,227,773</td>
<td>-3,850,335</td>
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<tr>
<td>TITILE IX</td>
<td></td>
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<tr>
<td>COUNTER-TERRORISM AND DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION</td>
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<td>Counter-Terrorism &amp; Operational Response Transfer Fund</td>
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<td>Former Soviet Union Threat Reduction</td>
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<td>(10,000)</td>
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<td>Ballistic Missile Defense Organization - Procurement</td>
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<td>Ballistic Missile Defense Organization - FY 2001 Rescission</td>
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<td>Defense Against Chemical &amp; Biological Weapons, Defense-Wide</td>
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<td>1,065,940</td>
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<td>Defense Threat Reduction Agency</td>
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<td>800,471</td>
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<td>Total, title IX, Counter-terrorism and Defense against Weapons of Mass Destruction (net)</td>
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<td>11,719,889</td>
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<td>Total for the bill (net)</td>
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<td>OTHER APPROPRIATIONS</td>
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<td>Miscellaneous Appropriations (P.L. 106-554)</td>
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<td>Repair of U.S.S. COLE (emergency funding)</td>
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<td></td>
<td></td>
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<td>Marine Corps Ground Task Force Training Command</td>
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<td></td>
<td></td>
<td>-2,000</td>
</tr>
<tr>
<td>Overseas Contingency Operations Transfer Fund (emergency funding)</td>
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<td></td>
<td></td>
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<tr>
<td>Defense Imagery and Mapping Agency</td>
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<td></td>
<td></td>
<td></td>
<td>-2,000</td>
</tr>
<tr>
<td>Rapid diagnostic and fingerprinting techniques</td>
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<td></td>
<td></td>
<td></td>
<td>-1,000</td>
</tr>
<tr>
<td>Fort Irwin National Training Center expansion</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>BLM, Management of Lands &amp; Resources</td>
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<tr>
<td>Supplemental (P.L. 107-20) (net)</td>
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<td></td>
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<tr>
<td>Emergency (P.L. 107-38)</td>
<td>5,450,400</td>
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<tr>
<td>Across the board cut (0.2%)</td>
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<td></td>
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<tr>
<td>Total, other appropriations</td>
<td>10,709,100</td>
<td></td>
<td></td>
<td></td>
<td>-10,709,100</td>
</tr>
<tr>
<td>Net grand total (including other appropriations)</td>
<td>368,515,154</td>
<td>315,547,116</td>
<td></td>
<td>317,624,069</td>
<td>+16,108,593</td>
</tr>
</tbody>
</table>
H.R. 3338 - Defense Appropriations Act, 2002 — continued

(Amounts in thousands)

<table>
<thead>
<tr>
<th>CONGRESSIONAL BUDGET RECAP</th>
<th>FY 2001 Enacted</th>
<th>FY 2002 Request</th>
<th>House</th>
<th>Senate</th>
<th>Conference</th>
<th>vs. enacted</th>
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<tr>
<td>Scorekeeping adjustments:</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Adjustment for unappropriated balance transfer (Stockpile)</td>
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<td>-150,000</td>
<td>-150,000</td>
<td>-150,000</td>
<td>-150,000</td>
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<td>O&amp;M, Army transfer to National Park Service:</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Defense function</td>
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<td>-10,000</td>
<td>-10,000</td>
<td>-10,000</td>
<td>+5,000</td>
<td>-5,000</td>
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<tr>
<td>Nondefense function</td>
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<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
<td>-10,000</td>
<td>-10,000</td>
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<td>O&amp;M, AF transfer to Dept. of Transportation:</td>
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<td></td>
<td></td>
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<td></td>
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<tr>
<td>Defense function</td>
<td>-10,000</td>
<td>-10,000</td>
<td>-10,000</td>
<td>-10,000</td>
<td>+10,000</td>
<td>-10,000</td>
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<tr>
<td>Nondefense function</td>
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<td>10,000</td>
<td>10,000</td>
<td>10,000</td>
<td>-10,000</td>
<td>-10,000</td>
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<tr>
<td>Disabled military retirements (mandatory)</td>
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<td>55,000</td>
<td>55,000</td>
<td>55,000</td>
<td>55,000</td>
<td>55,000</td>
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<tr>
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<td>-55,000</td>
<td>-55,000</td>
<td>-55,000</td>
<td>-55,000</td>
<td>-55,000</td>
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<tr>
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<td>-150,000</td>
<td>-150,000</td>
<td>-150,000</td>
<td>-150,000</td>
</tr>
</tbody>
</table>

RECAPITULATION

| Title I - Military Personnel | 75,847,740 | 62,307,281 | 81,617,281 | 81,905,391 | 82,056,851 | +6,208,911 |
| Title II - Operation and Maintenance | 36,888,774 | 105,786,645 | 105,282,379 | 106,449,869 | 105,047,644 | +1,402,226 |
| (By transfer) | (150,000) | (150,000) | (150,000) | (150,000) | (150,000) | (150,000) |
| Title III - Procurement | 59,323,846 | 60,440,297 | 60,190,124 | 60,881,434 | 60,564,948 | +1,602,402 |
| Title IV - Research, Development, Test and Evaluation | 41,359,605 | 47,429,433 | 40,090,226 | 46,006,476 | 48,921,841 | +7,562,046 |
| Title V - Revolving and Management Funds | 4,157,857 | 2,456,394 | 1,937,694 | 2,234,394 | 1,745,384 | -2,412,453 |
| Title VI - Other Department of Defense Programs | 14,114,424 | 20,024,928 | 20,349,862 | 20,486,963 | 20,461,393 | +3,170,490 |
| Title VII - Related agencies | 431,581 | 397,778 | 389,829 | 439,776 | 447,929 | +1,348,966 |
| Title VIII - General provisions (net) | -4,227,773 | -296,838 | -3,903,330 | -802,842 | -2,632,813 | +1,664,466 |
| Title IX - Counter-terrorism & Defense against Weapons of Mass Destruction (net) | | | | | | |
| Total, Department of Defense (in this bill) | 281,860,054 | 311,547,116 | 317,624,089 | 317,623,483 | 317,523,747 | +29,817,693 |
| Other appropriations | 10,709,100 | 10,709,100 | 10,709,100 | 10,709,100 | 10,709,100 | 10,709,100 |
| Total DoD funding available (net) | 298,559,154 | 311,547,116 | 317,624,089 | 317,623,483 | 317,523,747 | +91,019,593 |
| Other scorekeeping adjustments | -150,000 | -150,000 | -150,000 | -150,000 | -150,000 | -150,000 |
| Total mandatory and discretionary | 288,515,154 | 310,397,116 | 317,474,089 | 317,473,483 | 317,473,747 | +18,868,593 |

RECAP BY FUNCTION

Mandatory | 216,000 | 267,000 | 267,000 | 267,000 | 267,000 | +51,000 |
Discretionary:

Defense discretionary | 298,262,154 | 316,130,116 | 317,204,089 | 317,204,483 | 317,205,047 | +18,922,883 |
Nondefense discretionary | 17,000 | 3,000 | 3,000 | 3,000 | 3,000 | -15,000 |
Total discretionary | 298,299,154 | 316,130,116 | 317,204,089 | 317,204,483 | 317,205,047 | +18,907,593 |
Grand total, mandatory and discretionary | 298,515,154 | 310,397,116 | 317,474,089 | 317,473,483 | 317,473,747 | +18,868,593 |

1/ included in Budget under Procurement title.
### H.R. 3338 DIVISION B - FISCAL YEAR 2002 SUPPLEMENTAL APPROPRIATIONS

(Amounts in thousands)

<table>
<thead>
<tr>
<th>Chapter 1</th>
<th>DEPARTMENT OF AGRICULTURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the Secretary (emergency)</td>
<td>45,188 4,382 80,919 80,919 +76,337</td>
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<tr>
<td>Agriculture buildings and facilities and rental payments (emergency)</td>
<td>2,575</td>
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<tr>
<td>Agricultural Research Service:</td>
<td></td>
</tr>
<tr>
<td>Salaries and expenses (emergency)</td>
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<tr>
<td>Buildings and facilities (emergency)</td>
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<td>Cooperative State Research, Education, and Extension Service:</td>
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<tr>
<td>Research and education (emergency)</td>
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<td>Animal and Plant Health Inspection Service:</td>
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<tr>
<td>Salaries and expenses (emergency)</td>
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<td>Buildings and facilities (emergency)</td>
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<tr>
<td>Food and Safety Inspection Service (emergency)</td>
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<td>Food and Nutrition Service: Special supplemental nutrition program for women, infants, and children (WIC) (emergency)</td>
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<td>DEPARTMENT OF HEALTH AND HUMAN SERVICES</td>
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<td>Food and Drug Administration: Salaries and expenses (emergency)</td>
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<td>INDEPENDENT AGENCY</td>
<td></td>
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<td>Commodity Futures Trading Commission (emergency)</td>
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<td>Administrative review and appeals (emergency)</td>
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<td>Legal Activities</td>
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<td>Salaries and expenses, General legal activities (emergency)</td>
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<td>Salaries and expenses, United States Attorneys (emergency)</td>
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<td>United States Marshals Service:</td>
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<td>Construction (emergency)</td>
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<td>International Trade Administration</td>
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<td>Export Administration</td>
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<td>Economic Development Administration</td>
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<td>National Telecommunications and Information Administration</td>
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<td>Public telecommunications facilities, planning and construction (emergency)</td>
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<td>United States Patent and Trademark Office</td>
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<td>National Institute of Standards and Technology</td>
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<td>Construction of research facilities (emergency)</td>
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<td>National Oceanic and Atmospheric Administration</td>
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<td>Operations, research, and facilities (emergency)</td>
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<td>Departmental Management</td>
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<td>Salaries and expenses (emergency)</td>
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<td>THE JUDICIARY</td>
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<td>Supreme Court of the United States</td>
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<td>Care of the Building and Grounds (emergency)</td>
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<td>Supplemental Request</td>
<td>House</td>
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<td><strong>Court of Appeals, District Courts, and Other Judicial Services</strong></td>
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<td>Salaries and expenses (emergency)</td>
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<td>Court security (emergency)</td>
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<td>Administrative Office of the United States Courts: Salaries and expenses (emergency)</td>
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<td><strong>DEPARTMENT OF STATE AND RELATED AGENCY</strong></td>
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<td><strong>RELATED AGENCY</strong></td>
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<td>International broadcasting operations (emergency)</td>
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<td>Broadcasting capital improvements (emergency)</td>
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<td><strong>RELATED AGENCIES</strong></td>
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<td>Maritime Administration</td>
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<tr>
<td>Operation and training (emergency)</td>
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</tr>
<tr>
<td>Maritime guaranteed loan (title X) program account (emergency)</td>
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<td>Equal Employment Opportunity Commission</td>
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<td>Salaries and expenses (emergency)</td>
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<tr>
<td>Securities and Exchange Commission</td>
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<td>Salaries and expenses (emergency)</td>
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<td>Small Business Administration</td>
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<td>Business loans program account, guaranteed loans (emergency)</td>
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<td>Disaster loans program account (emergency)</td>
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<td><strong>Total, chapter 2</strong></td>
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<td><strong>CHAPTER 3</strong></td>
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<tr>
<td><strong>DEPARTMENT OF DEFENSE - MILITARY</strong></td>
<td></td>
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<tr>
<td>Operation and Maintenance</td>
<td></td>
</tr>
<tr>
<td>Defense Emergency Response Fund (emergency)</td>
<td>7,000,000</td>
</tr>
<tr>
<td>Transfer to Department of State, Nonproliferation, Anti-Terrorism, Demining and Related Programs</td>
<td>(30,000)</td>
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<tr>
<td>Procurement</td>
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<tr>
<td>Other Procurement, Air Force (emergency)</td>
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<tr>
<td><strong>Total, chapter 3</strong></td>
<td>7,303,000</td>
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<td><strong>CHAPTER 4</strong></td>
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<tr>
<td><strong>DISTRICT OF COLUMBIA</strong></td>
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<td>Federal Funds</td>
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<tr>
<td>Federal Payment to the District of Columbia for:</td>
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<tr>
<td>Emergency Response and Planning (emergency)</td>
<td>29,000</td>
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<tr>
<td>Protective clothing and breathing apparatus (emergency)</td>
<td>12,144</td>
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<tr>
<td>Specialized hazardous materials equipment (emergency)</td>
<td>1,032</td>
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<tr>
<td>Chemical and biological weapons preparedness (emergency)</td>
<td>10,355</td>
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<tr>
<td>Pharmaceuticals for responders (emergency)</td>
<td>2,100</td>
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<tr>
<td>Response and communications capability (emergency)</td>
<td>14,950</td>
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<tr>
<td>Search, rescue and other emergency equipment and support (emergency)</td>
<td>8,850</td>
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<tr>
<td>Equipment, supplies and vehicles for the Office of the Chief Medical Examiner (emergency)</td>
<td>1,780</td>
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<tr>
<td>Hospital containment facilities for the Department of Health (emergency)</td>
<td>6,000</td>
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<tr>
<td>The Office of the Chief Technology Officer (emergency)</td>
<td>43,964</td>
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<tr>
<td>Emergency traffic management (emergency)</td>
<td>20,700</td>
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<tr>
<td>Training and planning (emergency)</td>
<td>11,446</td>
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<tr>
<td>Increased facility security (emergency)</td>
<td>25,536</td>
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<tr>
<td>Federal Payment to the Washington Metropolitan Area Transit Authority (emergency)</td>
<td>36,100</td>
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<tr>
<td>Federal Payment to the Metropolitan Washington Council of Governments (emergency)</td>
<td>5,000</td>
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<tr>
<td><strong>Total, chapter 4</strong></td>
<td>25,000</td>
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<tr>
<td><strong>CHAPTER 5</strong></td>
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<tr>
<td><strong>DEPARTMENT OF DEFENSE - CIVIL</strong></td>
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<tr>
<td>Department of the Army</td>
<td></td>
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<tr>
<td>Corps of Engineers - Civil</td>
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<tr>
<td>Operation and Maintenance, General (emergency)</td>
<td>139,000</td>
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### H.R. 3338 DIVISION B - FISCAL YEAR 2002 SUPPLEMENTAL APPROPRIATIONS — continued

(Amounts in thousands)

<table>
<thead>
<tr>
<th>DEPARTMENT OF THE INTERIOR</th>
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<tbody>
<tr>
<td>Bureau of Reclamation</td>
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<td>Water and related resources (emergency)</td>
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<table>
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<th>DEPARTMENT OF ENERGY</th>
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<tr>
<td>Atomic Energy Defense Activities</td>
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<tr>
<td>National Nuclear Security Administration</td>
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<tr>
<td>Weapons activities (emergency)</td>
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<tr>
<td>Defense nuclear nonproliferation (emergency)</td>
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<table>
<thead>
<tr>
<th>Environmental and Other Defense Activities</th>
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</thead>
<tbody>
<tr>
<td>Defense environmental restoration and waste management (emergency)</td>
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<tr>
<td>Other defense activities (emergency)</td>
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</table>

<table>
<thead>
<tr>
<th>INDEPENDENT AGENCY</th>
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</thead>
<tbody>
<tr>
<td>Nuclear Regulatory Commission (emergency)</td>
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**Total, chapter 5** | 296,959 | 286,959 | 573,959 | 573,959 | +287,000 |

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<th>CHAPTER 6</th>
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<td>Bilateral Economic Assistance</td>
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<tr>
<td>Funds Appropriated to the President</td>
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<tr>
<td>United States Agency for International Development</td>
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<tr>
<td>Operating expenses (transfer) (emergency)</td>
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<tr>
<td>International disaster assistance (emergency)</td>
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<table>
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<th>CHAPTER 7</th>
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<tr>
<td>DEPARTMENT OF THE INTERIOR</td>
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<tr>
<td>National Park Service</td>
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<tr>
<td>Operation of the National Park System (emergency)</td>
</tr>
<tr>
<td>United States Park Police (emergency)</td>
</tr>
<tr>
<td>Construction (emergency)</td>
</tr>
</tbody>
</table>

| Departmental Offices |
| Departmental Management: Salaries and expenses (emergency) | 2,205 | 2,205 | 2,205 | 2,205 |

| OTHER RELATED AGENCIES |
| Smithsonian Institution |
| Salaries and expenses (emergency) | 21,707 | 21,707 | 21,707 | 21,707 |
| National Gallery of Art |
| Salaries and expenses (emergency) | 2,148 | 2,148 | 2,148 | 2,148 |
| John F. Kennedy Center for the Performing Arts |
| Operations and Maintenance (emergency) | 4,310 | 4,310 | 4,310 |
| National Capital Planning Commission |
| Salaries and expenses (emergency) | 758 | 758 | 758 | 758 |

**Total, chapter 7** | 84,145 | 84,145 | 84,145 | 84,145 |

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<th>CHAPTER 8</th>
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<tr>
<td>DEPARTMENT OF LABOR</td>
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<tr>
<td>Employment and Training Administration</td>
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<tr>
<td>Training and employment services (emergency)</td>
</tr>
<tr>
<td>State unemployment insurance and employment service operations (emergency)</td>
</tr>
</tbody>
</table>

| Pension and Welfare Benefits Administration |
| Salaries and expenses (emergency) | 1,800 | 1,800 | 1,800 |
| Occupational Safety and Health Administration |
| Salaries and expenses (emergency) | 1,000 | 1,000 | 1,000 |

| Departmental Management |
| Salaries and expenses (emergency) | 5,880 | 5,880 | 5,880 |

<p>| DEPARTMENT OF HEALTH AND HUMAN SERVICES |
| Centers for Disease Control and Prevention |
| Disease control, research, and training (emergency) | 12,000 | 12,000 | +12,000 |
| Office of the Secretary |
| Public Health and Social Services Emergency Fund (emergency) | 1,596,000 | 2,116,000 | 2,844,314 | +653,714 | -70,886 |</p>
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<thead>
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<th></th>
<th>Supplemental Request</th>
<th>House</th>
<th>Senate</th>
<th>Conference vs. House</th>
<th>Conference vs. Senate</th>
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<td>School Improvement Programs</td>
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<tr>
<td><strong>RELATED AGENCIES</strong></td>
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<td>National Labor Relations Board</td>
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<td>180</td>
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<td>180</td>
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<td>Social Security Administration</td>
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<td>2,964,760</td>
<td>2,894,074</td>
<td>+873,214</td>
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<td><strong>LEGISLATIVE BRANCH</strong></td>
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<td>Joint Items</td>
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<td>Senate</td>
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<td>Sergeant at Arms and Doorkeeper of the Senate (emergency)</td>
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<td>34,500</td>
<td>34,500</td>
<td>34,500</td>
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<td>40,712</td>
<td>41,712</td>
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<td>180,866</td>
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<td>350</td>
<td>+350</td>
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<td>Capitol Buildings (emergency)</td>
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<td>Salaries and expenses (emergency)</td>
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<td>+29,615</td>
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<td>7,600</td>
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<td>1,000</td>
<td>+1,000</td>
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<td>256,081</td>
<td>256,081</td>
<td>256,081</td>
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<td><strong>CHAPTER 10</strong></td>
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<td><strong>MILITARY CONSTRUCTION</strong></td>
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<td><strong>CHAPTER 11</strong></td>
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<td><strong>DEPARTMENT OF TRANSPORTATION</strong></td>
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<tr>
<td>Office of the Secretary</td>
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### H.R. 3338 DIVISION B - FISCAL YEAR 2002 SUPPLEMENTAL APPROPRIATIONS — continued

(Amounts in thousands)

<table>
<thead>
<tr>
<th>Request</th>
<th>House</th>
<th>Senate</th>
<th>Conference</th>
<th>Conference vs. House</th>
<th>Conference vs. Senate</th>
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<td>Safety and operations (emergency)</td>
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<td><strong>CHAPTER 12</strong></td>
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<td><strong>DEPARTMENT OF THE TREASURY</strong></td>
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<td>Acquisition, construction, improvements and related expenses (emergency).</td>
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<td>Financial Management Service</td>
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<td>2,000,000</td>
<td>2,000,000</td>
<td>+2,000,000</td>
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**Total, chapter 12** | 572,098 | 572,098 | 1,283,412 | 1,283,412 | +711,388 | — |
### H.R. 3338 DIVISION B - FISCAL YEAR 2002 SUPPLEMENTAL APPROPRIATIONS — continued

(Amounts in thousands)

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<th>Management and Administration</th>
<th>Supplemental Request</th>
<th>House</th>
<th>Senate</th>
<th>Conference</th>
<th>Conference vs. House</th>
<th>Conference vs. Senate</th>
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</thead>
<tbody>
<tr>
<td>Office of Inspector General (emergency)</td>
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<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
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</table>

#### INDEPENDENT AGENCIES

**Environmental Protection Agency**

| National Institute of Environmental Health Sciences (emergency) | 10,000 | 10,000 | 10,000 | 10,000 |
| Environmental Programs and Management (emergency) | 40,040 | 10,000 | 41,514 | 90,308 | +80,268 | +48,784 |
| Hazardous Substance Superfund (emergency) | 20,170 | 140,360 | 36,184 | 39,000 | -101,360 | +806 |
| State and Tribal Assistance Grants (emergency) | 5,790 | 5,900 | 41,292 | 41,292 | +35,482 |

**Federal Emergency Management Agency**

| Disaster relief (emergency) | 4,000,000 | 4,345,000 | 5,624,344 | 4,366,671 | +11,871 | -1,467,473 |
| Salaries and expenses (emergency) | 20,000 | 30,000 | 20,000 | 20,000 | -5,000 | +5,000 |
| Emergency Management Planning and Assistance (emergency) | 350,000 | 350,000 | 290,000 | 200,000 | +150,000 | -70,000 |

**National Aeronautics and Space Administration**

| Human space flight (emergency) | 64,500 | 81,000 | 64,500 | 78,000 | -5,000 | +11,500 |
| Science, Aeronautics, and Technology (emergency) | 28,600 | 36,500 | 28,600 | 32,500 | -4,000 | +3,000 |
| Office of Inspector General (emergency) | 3,000 | 3,000 | 3,000 | 3,000 |

**National Science Foundation**

| Research and Related Activities (emergency) | 300 | 300 | 300 | 300 |

**Total, chapter 13**

| 5,672,400 | 4,705,480 | 8,367,244 | 6,889,771 | +2,194,311 | -1,467,473 |

### CHAPTER 14

**ADDITIONAL EMERGENCY RELIEF AND RECOVERY PROVISIONS**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

| Centers for Disease Control and Prevention | 12,000 | 12,000 |

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

| Community Planning and Development | 1,825,000 | 1,825,000 |

**DEPARTMENT OF LABOR**

| Employment and Training Administration | 32,500 | 32,500 |
| State Unemployment Security Office | 175,000 | 175,000 |

| Total, chapter 14 | 2,044,500 | 2,044,500 |

**Grand total**

| 20,000,000 | 20,000,000 | 20,000,000 | 20,000,000 |

### CONGRESSIONAL BUDGET RECAP

**Scorekeeping adjustments:**

| Defense Cooperation Account (emergency) | 1,000 | 1,000 | -1,000 |

| Total discretionary | 20,001,000 | 20,001,000 | 20,000,000 | 20,000,000 | -1,000 |

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1/ FDA appropriation of $104.35 million was originally requested by the President as part of the HHS Public Health and Social Services emergency fund account.
2/ Amounts for counterterrorism assistance to State and local governments were requested by the President as part of FEMA.
3/ National Park Service relocation costs were originally requested by the President as part of the USA Federal Buildings fund account.
Mr. Speaker, I reserve the balance of my time.

Mr. MURTHA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have no requests for time. We did the best we could with the little bit of money and a good deal for taxpayers.

Mr. Speaker, I yield back the balance of my time.

Mr. LEWIS of California. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. DICKS) for a very brief colloquy.

(Mr. DICKS asked and was given permission to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, I would like to enter into a colloquy with the distinguished gentleman from California (Mr. LEWIS).

Mr. Speaker, I rise in support of this Defense Appropriations bill. Chairman Lewis and Ranking Member MURTHA have done excellent work in balancing very difficult and demanding priorities. Most of all, I am very pleased that the conferees agreed to accept a Senate provision which allows the Air Force to lease new aircraft to replace the oldest of our KC-135 tankers. The issue of replacing the Air Force’s tanker fleet is, in fact, vexing despite the cloud of confusion being created by its opponents. In their frenzy to condemn what they see as a special deal, they have totally lost sight of the facts. The truth is this provision is a good deal—a good deal for our armed forces and a good deal for taxpayers.

First, it is important to understand that every credible defense and aviation observer agrees that it is time to replace the aging KC-135-E tanker aircraft fleet with new tankers based on the 767 aircraft. Both of the large tanker refueling aircraft in use were built by the Boeing Company—current aircraft are based on the 707 and DC-10 airliners—and Air Force analyses have shown that the 767 due to its size, range, and carrying capacity is uniquely suited to this role. The proof of this is already evident in the commercial marketplace, where the Indian Government has already signed a deal for 767 tankers for its Air Force, Japan recently did the same, and several other European governments are likely to be interested in this aircraft. The Air Force has selected the 767 tanker for their own Air Force fleet, and is available to either government who has selected the 767 tanker for their own Air Force fleet.

Mr. DICKS. Mr. Speaker, I ask unanimous consent that the next six lines of the colloquy be inserted in the record.

Mr. LEWIS of California. Absolutely. The SPEAKER pro tempore. The Chair advises the gentleman that colloquies may not be inserted in the record.

Mr. LEWIS of California. Mr. Speaker, would the gentleman read this very brief colloquy to me, and I will try to respond.

Mr. DICKS. Mr. Speaker, I understand that this bill grants approval for the Air Force to enter into a lease for a new tanker aircraft to be delivered as general purpose aircraft in commercial configuration. Is that correct?

Mr. LEWIS of California. Mr. Speaker, reclaiming my time, the gentleman is correct.

Mr. DICKS. Mr. Speaker, it is also my understanding that Italy and Japan have selected the 767 tanker for their tanker needs, and the Japan intends to procure at least one. Further, I believe that the same tanker configuration is being offered commercially to other countries to meet their in-flight refueling requirements. Is that the gentleman’s understanding?

Mr. LEWIS of California. Yes, it is.

Mr. DICKS. Then the gentleman would say that a commercial market exists for general purpose, commercially configured aerial refueling tanker aircraft?

Mr. LEWIS of California. Yes, very well said.

Mr. DICKS. Would the gentleman agree a general purpose aircraft that will meet the general requirements of many customers; that can operate as a passenger aircraft, a freighter, a passenger/freighter “combination” aircraft, or as an aerial refueling tanker, and is available to either government or commercial operators, that meets the definition of a general purpose, commercial aircraft?”

Mr. LEWIS of California. Absolutely. Mr. DICKS. The gentleman would agree with that assessment?

Mr. LEWIS of California. Of course. Of course.

Mr. YOUNG of Florida asked and was given permission to revise and extend his remarks.

Mr. YOUNG. Mr. Speaker, this is a very good bill, and I think we will pass it expeditiously here this morning, but I want to remind the Members that it does include the $20 billion emergency supplemental, which is divided into three basic sections; that is national defense, or military, homeland defense, and the recovery effort, which was after the terrible September 11 attack.

I want to thank the gentleman from Pennsylvania (Mr. MURTHA) for being a good partner on the minority side, and the gentleman from Wisconsin (Mr. MAKIN) who has been a tremendous partner as we went through this process.

And, of course, the gentleman from California (Mr. LEWIS) is an outstanding chairman of the Subcommittee on Defense of the Committee on Appropriations.

I am happy to report, Mr. Speaker, that this is the 15th, let me repeat, the 15th appropriation bill that we have done this year. We have not lumped any of them together. Each bill has had its own identity. This is something we have been striving to do for years, and this year we finally accomplished it.

Mr. Speaker, today the House is considering a very important piece of legislation, our last appropriations bill—H.R. 3338, the Defense Appropriations bill for fiscal year 2002. Included in this bill is not only critical funding for the Defense Department and the Intelligence Community, but also an allocation of the $20 billion in emergency supplemental appropriations enacted as part of the Emergency Supplemental Appropriations Act for Recovery and Response to Terrorist Attacks on the United States.

I commend Chairman LEWIS, working closely with his partner, the ranking member of the subcommittee, Jack MURTHA—as well as all of the members of the Defense Appropriations Subcommittee, on the cooperation that has produced a truly bipartisan Defense portion of this bill that shares broad-based support. This was not only because of the way the bill was put together, but because of what it does. It is a bill which provides strong support for our troops—both in the immediate
circumstances they find themselves, as well as the longer term security challenges confronting our Nation.

You may know that the Defense Sub-committee was actually beginning its subcommittee mark-up of this bill the very morning of September 11th—when our country suffered the horrific attacks on New York and Washington. As we all know, those attacks have changed so many, many things—and I can report that this Defense Appropriations bill was re-worked by the committee following the attacks as well as the onset of our military operations overseas, to reflect the new demands of the war, as well as the other challenges we confront around the world. The bill addresses new threats of this new century—ranging from areas such as Ballistic Missile Defense, to force protection measures for our troops in the field, and new equipment and technologies such as aerial refueling aircraft and unmanned aerial vehicles. It also fully funds the President’s request as to the area of military pay and quality of life programs—such as the largest military pay raise in 15 years, and more than a 50 percent increase in funding for the medical programs for our troops and their families. And it includes a new title to deal with counter-terrorism—ranging from more funding for intelligence, to providing additional resources in the area of so-called ‘cyber war’ (computer network protection) and improved equipment and research to counter the threats of chemical and biological weapons.

EMERGENCY SUPPLEMENTAL

With regard to Emergency supplemental portion of the bill—Division B—I believe we have struck an appropriate balance between funding to address our homeland security, recovery efforts and humanitarian assistance, and defense requirements. We expect that this is only the first bill that will provide funding to support our war against terrorism and the needs of this country and the families affected. It brings the total for defense spending in the counter-terror supplemental to $71.2 billion. Also provides authority for agencies to reimburse the National Guard.

Mr. SCHAFFER. Mr. Speaker, I commend you today in support of our national security. During most of the last decade, the United States military has been consistently asked to make do with inadequate budgets. By adding more than $19 billion over the funding made available last year, this bill marks a turn for the better in defense funding.

Our nation has recently suffered a devastating blow from a new and faceless enemy. Terror was brought to our door on September 11th—masterminded by an enemy as devisive as he is evasive.

As we witness the day-by-day actions of our military response to Operation Enduring Freedom, the importance of our readiness to dominate the conflict is a constant reminder. If we expect to control the battlefield, we must be prepared to fight quickly and with decisive force. We must allocate enough resources to support our troops at the highest level of readiness.

By appropriating $317.5 billion, H.R. 3338 will give our fighting forces the funding levels needed to succeed in protecting our national security interests.

I urge my colleagues to vote for this conference report and give our expenctual military personnel the support and equipment they need to achieve current goals and those of the future.

Mr. SCHAFFER. Mr. Speaker, I commend the leaders of the House, our colleagues in the Senate and the president and his administration for following through today on a commitment made to Colorado to construct a new facility in Fort Collins, Colorado to replace the Fort Collins CDC facility to know that they will finally be getting a new facility commensurate with the world-class researchers who daily accomplish these important missions in the spirit of science.

The DVDBI employs a number of epidemiologists, entomologists, molecular biologists, laboratory technicians, and behavioral scientists along with the other members of their prestigious staff. The DVDBI performs critical functions for the country including conducting epidemiological studies to monitor disease spread, identification of risk factors associated with transmission and measuring public health impact, studying developing and developing and more effective integrated, community-based prevention and control strategies, including vaccine development programs.

The facility deals with such deadly pathogens as Ebola disease, Dengue, Hemorrhagic Fever, Arboviral Encephalitis, Plague and Aedes albopictus that can be transmitted through hosts such as insects, mammals, and rodents. Clearly, Mr. Speaker, the work done by the DVDBI entails life-saving research affirming not only Colorado and the United States, but also the entire world. The new facility initiated by this bill will lend another helping hand as the DVDBI continues to fight these diseases.

Mr. Speaker, the working conditions at the existing facility are not conducive to allowing the doctors and researchers of the DVDBI to do their jobs as well as they otherwise would be able. As many in this House know, the Inspector General will soon be issuing a report citing approximately $100 million as the possible cost for completing this new facility. Due to the dramatic state of disrepair of the facility and the more urgent shortcomings in security presented in the context of theDVDBI construction becomes even more critical. When the laboratory was first constructed in the 1960s, it was only designed to accommodate 50 employees. Through the years, new personnel have been added and new the facility contains more than 150 scientists, researchers, and other workers. Clearly, the number of people working in this building have tested its capacity and created an extremely awkward working environment. The security needs of the facility are well documented in the IG’s report and are self-explanatory.

Because of the sensitivity of the report’s recommendations, I will not restate them herein but will insist the report’s findings receive expedient attention.

In addition to the confining workspace, the facility’s airflow system has been a chronic problem. In most government offices, such a ventilation problem would only be a minor inconvenience (my office in the U.S. House of Representatives suffers from a similar problem). However, proper airflow and ventilation become much larger issues when placed within the context of laboratory conducting research on some of the world’s most volatile viruses.

Mr. Speaker, while I worked hard to make sure the new building would be constructed,
Mr. ALLARD. Mr. Speaker, I urge you to read the conference report to this Congress the urgency of this project. I will make striking provisions that funded certain aviation and highway spending from the Aviation and Highway Trust Funds. This spending should not be permitted to proceed down this path. I urge all Members, particularly those on the Appropriations Committee, to stand together against this continuing assault on the jurisdiction of the Appropriations committees.

Mr. BLUMENAUER. Mr. Speaker, the Defense Appropriations bill for 2002 (H.R. 3338) includes important language to solve a critical problem with funding deficiencies in a technical assistance program under the Multifamily Assisted Housing and Assistance Restructuring Act (MAHRA). The Office of Multifamily Housing and Assistance Restructuring (OMHAR) was charged with the administration of this program, which offers grants to non-profit organizations to rehabilitate 10,000 units of public housing. OMHAR mistakenly exceeded an annual $10 million restriction in two of the last four fiscal years. HUD has subsequently frozen all funds for the program. Over 100 non-profit and tenant organizations with written, signed contracts have incurred expenses on the assumption that the contracts would be honored. Even though these organizations have completed work according to the terms of their contracts, they are now forced to lay off staff because invoices for reimbursement have not been paid. The solution included in the defense appropriations bill does not require the appropriation of new money. Rather, it includes a technical correction to appropriate money that already exists within the HUD budget.

While I strongly support this technical correction as a necessary and critical step to ensure that 100's of non-profit organizations around the country are properly compensated, there remains one area of concern. The language embodies requirements for independent audits and reviews of the office responsible as well as other elements of the program. While a full and ongoing investigation of the reasons for OMHAR's financial errors is absolutely necessary, these steps can and should be taken without further delaying the reimbursement of non-profit organizations associated with the program. Any additional requirements for financial reviews and audits should balance the need for continued accountability with the need to meet our current and future obligations to these important non-profit organizations.

I urge my colleagues to work with their local non-profit housing organizations to ensure that any additional requirements posed by this legislation do not serve to stymie their efforts to provide quality housing in our nation's communities.

Mr. FRELINGHUYSEN. Mr. Speaker, I rise today in support of H.R. 3338, the Fiscal Year 2002 Defense Appropriations Conference Report and ask unanimous consent to revise and extend by remarks.

As a member of the Defense Subcommittee, let me first thank our Chairman JERRY LEWIS...
Our subcommittee was first scheduled to begin work on this bill on the morning of September 11 at the very hour that terrorists attacked our nation and forever changed the course of our nation’s history.

America is now at war and our young men and women in the military have been called on to defend our nation. The course of our nation’s history will not be written by the terrorists but by the bravery and success of our troops now serving on the frontlines of this war against terrorism. And our history will be written, in part, by the actions we take here today.

Today is no more important task before this Congress than to provide our military with the tools and resources they need to defend our citizens and fight for our freedom. Our military needs to know that this Congress not only supports their mission in theory but in substance that we are prepared to take all the necessary steps and provide all the necessary means for their safety and their success in battle. With this Conference Report, we go a long way in doing just that.

With the Pentagon, we help meet the immediate needs of our troops and their families, to keep our military at the ready, and to invest in all the many, diverse capabilities we need to protect our citizens from all potential threats.

Overall, we provide $317.5 billion for the Department of Defense, and with those dollars, we do the following:

First and foremost, we give our troops better pay. We add much needed dollars for troop readiness, training, supplies, and mobility that allow our service members in Chief to send our Armed Forces into battle anywhere and at a moment’s notice.

We add support for our National Guard and reserves, so many of whom have now been called to duty.

We provide for modernizing major weapon systems that allow us to better combat our enemies in the air, on the ground and at sea.

We continue to support critical long-term investments in research and development so we have the most lethal and effective weapons now and in the future.

We add significant resources to strengthen classified intelligence programs, and accelerate and enhance U.S. military intelligence, surveillance, reconnaissance, and other critical capabilities. And we also add critical funds for our homeland defense to better protect our citizens from all potential threats.

And with the release of $20 billion in emergency appropriations, we are also helping to meet the extraordinary needs of those communities and states most directly impacted by the attacks of September 11 and to strengthen our homeland defense.

As my colleagues know, New Jersey was on the frontlines of the attacks of September 11 and suffered greatly as so many lives were lost and our state and local law enforcement where there to answer the call to help our neighbors in New York. And it’s important that we all work to help rebuild lower Manhattan and most important, work together to help our fellow citizens who suffered to rebuild their lives.

I want to thank the House for agreeing to requests to help New Jersey directly by including $30 million to replace our state police communications system which sat atop the World Trade Center and was destroyed in the attack. And as a result of the destruction of the PATH station, thousands of New Jersey commuters are struggling every day to get to Manhattan, the heart of our economy and this bill provides relief for our commuters by providing $100 million for increased mass transit and $100 million for increased ferry service. We also provide $100 million critical safety improvements for the tunnels that take millions of people to and from Manhattan and New Jersey every day.

Finally, let us also be clear that the commitments we make in this bill to our military do not meet every need. As more will be required of our troops, more will be required of this Congress.

Mr. Speaker, as those of us who have served in the military know only too well, wars are fought by the young. We know, too, that freedom never has, nor will it be this time, free. At no time in our nation’s history has the service of our young men and women been more important to the defense of our country and the security of our future.

Mr. Speaker, I urge my colleagues to pass the fiscal year 2002 Defense Appropriations Conference Report tonight, with your unanimous support.

From Daily Record, Dec. 20, 2001

Frelinghuysen Disappointed With Funding For N J Military

U.S. Rep. Rodney Frelinghuysen said Wednesday that although the funding provided by the U.S. Senate for New Jersey’s military installations, but the state’s two Democratic senators say they are steadfast in their support of these bases.

Frelinghuysen, R-Harding, released a statement with details of the Department of Defense budget that soon will land on President Bush’s desk.

At Picatinny Arsenal in Rockaway Township, $410 million is slated for research and development for the arsenal’s Crusader self-propelled howitzer program. All totaled, more than $600 million is earmarked for Picatinny projects in the budget.

Frelinghuysen’s statement compared House and Senate funding requests, along with the amounts that actually made it into the budget.

The House asked for $98 million for the Crusader’s “Common Engine” program, compared to $13 million requested by the Senate. The final amount budgeted was $98 million.

The release listed various projects at Picatinny and other bases, showing the Senate budgeted no money for them while the House set aside between $1.5 million and $40 million.

The state’s two Democratic senators strongly disagreed with Frelinghuysen’s surgestion that the Senate has failed to adequately support the military, according to their spokespersons.

“Basically, we’re surprised about it,” said David Wald, a spokesman for Sen. Jon Corzine. “We know that the bulk of the ($300 million) for Homeland Defense that impacts on New Jersey started on the Senate side.”

Likewise, Sen. Robert G. Torricelli’s spokeswoman, Debra DeShong, took exception to the Frelinghuysen statement.

New Jersey military bases have no bigger advocate than Sen. Torricelli,” she said, adding that the senator was “disappointed” that Congressman Frelinghuysen has chosen to politicize our state’s defense projects and our efforts to protect our priorities.

Frelinghuysen, R-11th Dist., said that the congressman was “not trying to politicize anything.”

Washington—House and Senate negotiators have agreed on a Pentagon spending bill that includes hundreds of millions of dollars for law enforcement and transportation agencies in New Jersey in the aftermath of the Sept. 11 terrorist attacks.

Included is close to $300 million to improve commuter access to New York City from New Jersey and more than $50 million for the State Police and the Newark and Jersey City police departments to help tighten security.

These important security and transportation initiatives are critical to the safety and well-being of New Jersey residents,” said Rep. Rodney Frelinghuysen (R-11th Dist.), the state’s senior member of the House Appropriations Committee.

“Through no choice of its own, New Jersey has become one of the front lines in the war on terrorism, and it is absolutely crucial that the state receives the resources it needs to provide the strongest security possible,” added Sen. Robert Torricelli (D-N.J.), who fought for the New Jersey money in the Senate.

While they joined in applauding the transportation and security funding, Frelinghuysen and Torricelli were divided over another part of the bill that sets funding levels for New Jersey’s military installations, including Picatinny Arsenal, Fort Monmouth, McGuire Air Force Base and Fort Dix.

The bases would receive more than $650 million under the bill.

Without mentioning Torricelli or Sen. Jon Corzine (D-N.J.), Frelinghuysen charged that the Senate failed to support more than $25 million in additional funding for programs at the bases, including more than $30 million at Picatinny.

Frelinghuysen had complained privately that the money for the transportation and security projects, championed in the Senate by Torricelli and Corzine, could jeopardize funding levels for other military programs in the state.

Speaking through a spokesperson, Torricelli said he was “disappointed” that Frelinghuysen would blame the Senate for “shortcomings that resulted from the work of the committee on which he serves.

The transportation and security funding is part of $20 billion in anti-terror and reconstuction funding included in the House version of the Department of Defense appropriations bill for the Department of Defense for the fiscal year that began Oct. 1.

The agreement still requires final approval by the Senate and the White House. spokespersons in the backers of the bill said there is little doubt it will be approved quickly, possibly today.
The transportation funding includes:

- $100 million to expand ferry service for PATH commuters between New Jersey and Manhattan.
- $100 million in capital investment funding to accelerate improvements under way by the Port Authority of New York and New Jersey to improve PATH and NJ Transit systems.
- $100 million for Amtrak to enhance safety and security of its rail tunnels under the East River in New York.
- $93.5 million to improve security at all U.S. seaports, including the Port of New York and New Jersey, and along the Delaware River in New Jersey.

“[The] enhancement of the metropolitan area’s transportation infrastructure is central to the region’s ability to recover economically from both the attacks on the World Trade Center and the economic situation we are currently facing,” Torricelli said.

The transportation funding—usually not included in an appropriations package for the Defense Department—was put in to help New Jersey and New York recover from the destruction of the World Trade Center, which sat atop a vital PATH station.

The loss of the World Trade Center station forced some 67,000 daily commuters to seek alternative routes to Manhattan. The station is expected to be out of service at least until mid-2003.

The aging Amtrak Hudson River rail tunnels are slated for a $1 billion rehabilitation in addition to the $100 million in the Pentagon bill, which will go for immediate improvements to protect them against terrorist attack.

For police, the bill would provide:

- $30 million to replace the New Jersey State Police Radio System tower, lost in the attacks on the World Trade Center.
- $10.7 million for modernization of the Jersey City Police Department’s communications system.
- $10 million for law enforcement purposes and security equipment updates in Newark.

“This funding will help ensure that our men and women of the State Police continue to have the tools and resources necessary to protect our state and its citizens,” Freeh said.

Mr. BOEHLERT. Mr. Speaker, I want to congratulate the appropriators on reporting our fine defense bill overall. However, I need to put in the record my objections to the inclusion of the language, despite the strenuous efforts made to improve it by both Mr. THUNE and the House leadership. As a Member of Congress, I am afraid that this language could still unneces- sarily saddle taxpayers with costly and unprecedented environmental responsibilities. And as Chairman of the House Science Committee, I’m concerned that it may distort the priorities of the National Science Foundation for years to come.

This provision sets up dangerous and unprecedented situations in which the federal government will be financially responsible for activities it did not undertake at a piece of property it does not own. That flies in the face of common sense and fiduciary responsibility.

Under this language, the federal government would be financially responsible for any environmental liability connected with the portions of the Homestake mine that are conveyed to South Dakota—even if they originated while the mine was privately operated. And while the mine will be owned by South Dakota, the state will have no financial responsibility for it; that will rest solely with the federal taxpayer. It’s lucky that South Dakota doesn’t have any bridges to sell us.

In S. 1389 as originally introduced the federal government did not even have any real ability to have problems at the mine cleaned up before it was transferred. Thanks to the efforts of Mr. THUNE, that situation has been improved.

I would urge the Environmental Protection Agency (EPA), which will hire a contractor to review the mine, not to accept any contractor with which it is not completely satisfied. The unfortunate fact that the contractor must be selected jointly by Homestake, South Dakota and EPA should not be allowed to pressure EPA into hiring a contractor that will not fully protect the federal taxpayer. And the requirement that EPA consult with Homestake and the State over the nature of the contract with the independent entity must not be interpreted as a joint contract with Homestake or the State any veto over the content of that contract.

But EPA should consult with the National Science Foundation (NSF) throughout the environmental review process, as NSF is the federal agency that will have continuing responsibility if a laboratory is established at the mine.

Importantly, the bill now allows the EPA Administrator to reject the final report of the contractor if it identifies conditions that would make the federal assumption of liability “contrary to the public interest.” I believe this allows the federal government to reject the transfer of the mine if it would cost too much to remedy existing environmental problems. This is vital since Homestake is under consideration for a pre-transfer remediation could well turn out to be nothing, given the language in this bill.

The bill says nothing about which federal agency would be responsible for overseeing or financing any pre-transfer remediation. This is a major, conspicuous, and I assume, purposeful gap in the legislation.

I certainly would hope that these costs—which should not have been federalized in the first place—are not borne by the National Science Foundation, a small agency with important tasks that do not include environmental remediation.

But this bill raises many other concerns related to the National Science Foundation. All the activities under this bill are contingent on NSF approval of an underground laboratory at the Homestake mine.

While such a laboratory certainly has scientific merit, it may not be a high priority compared to other NSF programs and projects, especially given that construction of other neutrino detectors is either under consideration or underway.

This bill must not be used to pressure NSF to change or circumvent its traditional, careful selection procedures. Normally, a project of this magnitude would require several years of review. NSF would have to determine its relative priority among other Major Research Equipment proposals. And NSF would have to ensure that proper management is in place. Those procedures must be followed in this case. Indeed, this is even more important in the case of Homestake, where any mismanagement could result in both environmental harm and substantial liability for the federal government.

I would also urge the National Science Foundation (NSF) not to make a decision on whether to award a grant to the underground laboratory until the report to EPA has been prepared. This is essential even though NSF will have to have an Environmental Impact Statement prepared about the conversion of the mine into a laboratory.

NSF should not be committing federal resources to a project until it knows how much the project will cost the federal taxpayer and which agencies will be responsible for shouldering that burden.

The federal assumption of liability will already pose unfortunate costs for NSF. The laboratory is to pay into an Environment and Project Trust Fund, and some if not all of that money will come from NSF.

NSF must be an active participant in determining how much needs to be contributed to the trust fund, especially since it may end up being the only contributor to that fund. And NSF must have a role in determining the final disposition of the fund. The bill is silent on what is to become of the fund if a laboratory is not established. And the clarity is that the federal government gets saddled with the costs of closing the mine. But which agency is responsible for that undertaking? And what will happen to any leftover funds? NSF should have an active role in deciding that.

The Homestake language bill poses enormous, unnecessary and unprecedented risks for the federal taxpayer. It is, in a phrase, a sweetheart deal for the Canadian company that owns Homestake and for the State of South Dakota. It could threaten the stability of the National Science Foundation, a premier science agency whose processes have been viewed as a model of objectivity and careful review.

I should point out that the federal government is already paying Homestake $10 million in this fiscal year to keep the mine open because it might become a laboratory. If that continues through the period of NSF decision-making the federal government could easily sink as much as $50 million into a mine that it may never use.

I will work to ensure that NSF itself is not saddled with those unnecessary costs, which could be spent on worthy grants to researchers.

The Science Committee will be following this matter extremely closely to ensure that the environmental review is rigorous and protects the public interest. We will watch closely to ensure that the laboratory is being reviewed in the same manner as every other NSF project and does not distort the agency’s processes or priorities or weigh down with unnecessary costs. Any work proceeding with this bill are clear; we will work to see that they are never realized.

Mr. Speaker, I am attaching an exchange of letters with the National Science Foundation that will further highlight the risks inherent in proceeding in this unorthodox manner.

H. R. 3913

December 20, 2001

Dr. RITA COLWELL,
Director, National Science Foundation, Arling-
ton, VA.

Dear Dr. COLWELL: As you know, the Senate recently passed S. 1389, the “Homestake Conveyance Act of 2001.” This bill has serious implications for the National Science Foundation (NSF).
With that in mind, we want to be sure that NSF is considering the likely consequences should S. 1399 be enacted. Therefore, I am writing to request that you submit to the House Science Committee the following items by no later than December 15:

(1) A plan for how NSF would absorb the expected costs of an underground laboratory at Homestake, beginning in Fiscal Year 2003, with special attention to the impact on other projects in the Major Research Equipment account.

(2) A plan for how NSF would interact with the Environmental Protection Agency and the State of South Dakota to ensure that the mine is in proper condition for the establishment of a laboratory and to determine amounts NSF grantees would have to pay into the Environment and Project Trust Fund established under the bill.

The enactment of S. 1399 could complicate NSF’s situation for years to come both directly and through the precedents the bill may set. We want to work together with you, starting immediately, to limit any problems this measure may cause.

Sincerely,

SHERWOOD BOEHLERT,
Chairman.

NSF does not reserve or share responsibility involved with project activities. To the extent Cooperative Agreement covering the lab management plan then becomes the basis for implementing the award. This proposed will be the cornerstone of our military’s transformation to network centric warfare.

However, due to overall budget constraints, the MCZA program was not funded. While this is a disappointment to the Air Force and to the warfighters who would benefit from this revolutionary capability, I strongly encourage the Air Force, along with their industry partners, to continue to find ways to bring this program forward. I look forward to working with this Committee next year to accelerate the MCZA program providing our forces dominance over the information battlefield.

Mr. LEWIS of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LEWIS of California. Mr. Speaker, sections 901 and 903 of the division B of the Emergency Supplemental Act, 2002, give the Sergeant at Arms of the Senate and the Chief Administrative Officer of the House of Representatives identical authority to acquire buildings and facilities in order to respond to emergencies. The phrase “notwithstanding any other provision of law” was included in these sections to clarify that provisions of law which would otherwise prohibit these individuals from acquiring buildings and facilities, such as section 3736 of the Revised Statutes (41 U.S.C. 14), would not interfere with this authority. It was not the intent of the conferees or the Congress for this phrase to be construed more broadly to waive the application of other provisions of law which may apply to the kind of activities, such as the Anti-Deficiency Act.

Indeed, subsection (d) of each of these sections permits any portion of the costs incurred by the Sergeant at Arms or Chief Administrative Officer in acquiring buildings and facilities under this authority during a fiscal year to be covered by funds which are appropriated to the Architect of the Capitol during the fiscal year and transferred to the Sergeant at Arms or Chief Administrative Officer. It would be unnecessary for Congress to permit this kind of transfer if the Sergeant at Arms or Chief Administrative Officer were permitted to carry out the underlying acquisitions without using appropriated funds, since that would eliminate the need for these costs to be covered with other appropriated funds in the first place.

The SPEAKER pro tempore. The question is on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

Mr. REY of Kansas. Mr. Speaker, I rise today to commend the House Defense Appropriations Subcommittee for the extraordinary job they have done in bringing this Conference Report to the Floor. Never before in most of our lifetimes has the security of our Nation been more paramount than it is at this moment. All the Members in this body, indeed, every American, owe a great debt of gratitude to Chairman Lewis and to Chairman Lewis and the Ranking Member, Congressman MURTHA of Pennsylvania along with their hard working staff. They have ensured that the men and women in uniform receive the pay increases that they deserve and the modern equipment that they need to defend our homeland and other freedom-loving people in harm’s way.

I was pleased to see in the Committee Report an initiative to accelerate and enhance the United States’ intelligence, surveillance and reconnaissance capabilities through a program called the Multi-Sensor Command and Control Aircraft or MCZA, a concept strongly advocated by the Chief of Staff of the Air Force. Such an aircraft will advance the capabilities of AWACS and Joint STARS air and ground surveillance radars and will serve as the airborne integrator for a large variety of intelligence information systems. This aircraft will be the cornerstone of our military’s transformation to network centric warfare.

However, due to overall budget constraints, the MCZA program was not funded. While this is a disappointment to the Air Force and to the warfighters who would benefit from this revolutionary capability, I strongly encourage the Air Force, along with their industry partners, to continue to find ways to bring this pro-
CONGRESSIONAL RECORD — HOUSE  
December 20, 2001

Mr. YOUNG of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this continuing resolution merely extends the date of the previous continuing resolution until the 10th of January. We do this not because we need the extra time in the Congress, but the President does need some additional time to review these last bills that we have sent to him.

I hope that we can pass this expeditiously and everybody get home for a very merry Christmas or a happy Hanukkah or whatever celebration that we all enjoy.

Mr. OBEY. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.J. Res. 79, and that I may include tabular and extraneous material.

The SPEAKER pro tempore (Mr. OBEY) each will control 30 minutes.

Mr. OBEY. Mr. Speaker, I yield back such time as I may consume.

Mr. Speaker, I offer a resolution to obviate the necessity of the conference.

Mr. Speaker, this resolution merely extends the date of the previous continuing resolution until the 10th of January. We do this not because we need the extra time in the Congress, but the President does need some additional time to review these last bills that we have sent to him.

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December 20, 2001

CONGRESSIONAL RECORD — HOUSE

H10935

2001, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 1 of this concurrent resolution, whichever occurs first; and that when the Senate adjourns at the close of business on Thursday, December 20, 2001, or Friday, December 21, 2001, a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion the public interest shall warrant it.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

APPOINTING DAY FOR THE CONVENING OF THE SECOND SESSION OF THE 107TH CONGRESS

Mr. ARMEY. Mr. Speaker, pursuant to House Resolution 322, I call up the joint resolution (H.J. Res. 80) appointing the day for the convening of the second session of the 107th Congress, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The text of the joint resolution is as follows:

H.J. Res. 80
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DAY FOR CONVENING OF SECOND REGULAR SESSION OF ONE HUNDRED SEVENTH CONGRESS.

The second regular session of the One Hundred Seventh Congress shall begin at noon on Wednesday, January 23, 2002.

SEC. 2. AUTHORITY FOR CALLING SPECIAL SESSION BEFORE CONVENING OF SECOND REGULAR SESSION.

If the Speaker of the House of Representatives and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House of Representatives and the Minority Leader of the Senate, determine that it is in the public interest for Congress to assemble before the convening of the second regular session of the One Hundred Seventh Congress as provided in section 1—

(1) the Speaker and Majority Leader shall notify the Members of the House and Senate, respectively, of such determination and of the place and time for Congress to so assemble; and

(2) Congress shall assemble in accordance with such notification.

The SPEAKER pro tempore. Pursuant to House Resolution 322, the gentleman from Texas (Mr. ARMEY) and the gentleman from Missouri (Mr. GEPHARDT) each will control 30 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARMEY). Mr. Speaker, not seeing the minority leader, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

The joint resolution is considered as having been read for amendment.

Pursuant to House Resolution 322, the previous question is ordered.

The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

VACATING ORDERING OF YEAS AND NAYS ON H.R. 3423, H.R. 2561, AND H.R. 1432

Mr. ARMEY. Mr. Speaker, I ask unanimous consent to vacate the ordering of the yeas and nays on H.R. 3423, H.R. 2561, and H.R. 1432 to the end that the Chair put the question on each of those measures de novo.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will now put the question on motions to suspend the rules on which further proceedings were postponed earlier today (legislative day of Wednesday, December 19, 2001).

Votes will be taken in the following order:

S. 1714, de novo;
H.R. 1432, de novo;
S. 1202, de novo;
H. Con. Res. 279, de novo;
H.R. 3507, de novo;
H.J. Res. 75, by the yeas and nays;
concurring in Senate amendments to
H.R. 2336, de novo;
H.R. 3423, de novo;
H.R. 2561, de novo;
H.R. 3554, de novo;
H.R. 3497, de novo;
H. Con. Res. 292, de novo;
S. 1762, de novo;
S. 1793, de novo.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

PROVIDING FOR PLACEMENT OF PLAQUE HONORING DR. JAMES HARVEY EARLY IN THE WILLIAMSBURG, KENTUCKY, POST OFFICE BUILDING

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the Senate bill, S. 1714.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mrs. JO ANN DAVIS) that the House suspend the rules and pass the Senate bill, S. 1714.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

OFFICE OF GOVERNMENT ETHICS AUTHORIZATION ACT OF 2001

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the Senate bill, S. 1202.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mrs. MORELLA) that the House suspend the rules and pass the Senate bill, S. 1202.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

RECOGNIZING SERVICE OF CREW MEMBERS OF USS ENTERPRISE BATTLE GROUP FOR WAR EFFORT IN AFGHANISTAN

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 279, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. SCHROCK) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 279, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The title of the concurrent resolution was amended so as to read: “Concurrent Resolution recognizing and commemorating the excellent service of members of the Armed Forces who are prosecuting the war to end terrorism and protecting the security of the Nation.”
A motion to reconsider was laid on the table.

REGARDING MONITORING OF WEAPONS DEVELOPMENT IN IRAQ

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the joint resolution, H.J. Res. 75, as amended.

The Clerk read the title of the joint resolution.

The question is on the motion offered by the gentleman from Illinois (Mr. HYDE) that the House suspend the rules and pass the joint resolution, H.J. Res. 75, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 392, nays 12, answered “present” 7, not voting 23, as follows:

- [Roll No. 511]


eyes—392

- Ackerman
  - Brown (OH)
  - Deal
- Aderholt
  - Brown (SC)
  - DeGette
- Akkin
  - Bryant
  - DeLauro
- Allen
  - Burton
  - Delahunt
- Andrews
  - Burton
  - Delaney
- Armey
  - Carter
  - Dengan
- Baca
  - Capps
  - Doyle
- Baldwin
  - Carter (IN)
  - Duncan
- Bartlett
  - Carson (IN)
  - Dunn
- Barton
  - Carson (OK)
  - Dunn
- Becerra
  - Castle
  - Edwards
- Benn
  - Cleaver
  - English
- Bernier
  - Coble
  - Ehoo
- Berry
  - Collins
  - Enderidge
- Bilirakis
  - Combest
  - Ericks
- Bishop
  - Condit
  - Everett
- Boehnert
  - Cramer
  - Flake
- Boshoor
  - Crane
  - Fletcher
- Bonilla
  - Crenshaw
  - Foley
- Bonito
  - Crowley
  - Forbes
- Boozman
  - Culberson
  - Ford
- Boseriu
  - Cummings
  - Fossella
- Boswell
  - Cunningham
  - Frank
- Boucher
  - Davis (CA)
  - Frelinghuysen
- Boyd
  - Davis (FL)
  - Frost
- Brady (PA)
  - Davis (IL)
  - Gallaske
- Brady (TX)
  - Davis, Tom
  - Gekas
- Gephardt
  - Gibbons
  - Gilchrist
  - Gilmore
- Goss
  - Goode
  - Goodlatte
  - Gordon
  - Graham
  - Granger
  - Graves
  - Greene (TX)
  - Green (WI)
  - Gravely
  - Griffith
  - Guinta
  - Hall (TX)
  - Hanlon
  - Harman
  - Hartzler
  - Hasselbeck
  - Hasenfus
  - Hayes (WA)
  - Hayworth
  - Healey
  - Hefley
  - Hinchey
  - Hinojosa
  - Hoefling
  - Holland
  - Holt
  - Honda
  - Honolulu
  - Houghton
  - Hoyer
  - Högl
  - Inslee
  - Issa
  - Istook
  - Jackson (IL)
  - Jackson-Lee (TX)
  - Jenkins
  - Johnson (CT)
  - Johnson (IL)
  - Johnson, Sam
- Jones (NC)
  - Jones (OH)
  - Kanjorski
  - Kaptur
  - Kelley
  - Kennedy (NY)
  - Kears
  - Kilpatrick
  - Kind (WI)
- King (NY)
  - Kingston
  - Kirk
  - Kline
  - Kolbe
  - Koliner
  - Kucinski
  - LaFalce
  - LaHood
  - Langevin
  - Lantos
  - Largen
  - Larson (CA)
  - Larson (CT)
  - Latore
  - Leahy
  - Levin
  - Lewis (CA)
  - Lewis (GA)
  - Lewis (KY)
- Lindy
  - Lipinski
  - LoBiondo
  - Lowey
  - Lucas (KY)
  - Lucas (OK)
  - Lynch
  - Maloney (CT)
  - Maloney (NY)
  - Markey
  - Mascara
  - Matheson
  - Matsun
  - McCarthy (MO)
  - McCarthy (NY)
  - McCollo
  - McCreary
  - McHugh
  - McNulty
  - McKeon
  - McMorris
  - McGovern
  - Millender-McDonald
  - Miller, Dan
  - Miller, Gary
  - Miller, Jeff
  - Mica
  - Michaud
  - Mooney
  - Moran (KS)
  - Moran (VA)
  - Napolitano
  - Neal
  - Nethercutt
  - Niki
  - Northup
  - Norwood
  - Nunes
  - Oberstar
  - Obey
  - Olver
  - Ortiz
  - Osbon
  - Otter
  - Owens
  - Pagle
  - Pallone
  - Pascrell
  - Pastor
  - Pelosi
  - Petri
  - Pickering
  - Pitts
  - Platts
  - Pombo
  - Pomeroy
  - Portman
  - Price (NC)
  - Price (OH)
  - Putnam
  - Quinlan
- Radano
  - Ranallia
  - Ramsey
  - Rangel
  - Regula
  - Rhodes
  - Reyes
  - Rogers
  - Rouhachefk
  - Ross
  - Rothman
- Rosemo
  - Rogers
  - Rogers (NY)
  - Rogers (WI)
  - Ross
  - Ruedy
  - Roche
  - Roybal-Allard
  - Royce
  - Ryan (WI)
  - Ryan (KS)
  - Sabo
  - Sanchez
  - Sanders
  - Sawyer
  - Schaffer
  - Schakowsky
  - Schiff
  - Schrock
  - Scott
  - Sensenbrenner
  - Serrano
  - Sessions
  -shadow
  -Showalter
  - Simmons
  - Simpson
  - Skelton
  - Smith (MI)
  - Smith (NJ)
  - Smith (TX)
  - Smith (WA)
  - Snyder
  - Solis
  - Souder
  - Spratt
  - Stearns
  - Stenholm
  - Strickland
  - Stupak
  - Tancredo
  - Tanner
  - Tauzin
  - Taylor (MD)
  - Taylor (NC)
  - Terry
  - Thomas
  - Thompson (CA)
  - Thompson (MO)
  - Thornberry
  - Thingey
  - Thomson
  - Threde
  - Tiberi
  - Tierney
  - Tonno
  - Towner
  - Turner
- Udall (CO)
  - Udall (NM)
  - Upton
  - Velazquez
  - Visconti
- Vitter
  - Walden
  - Walsh
  - Wamp
  - Watkins (OK)
  - Watson (CA)
  - Watts (NC)
  - Weiner
  - Weldon (FL)
  - Weldon (PA)
  - Weller
  - Whittier
  - Wicker
  - Wilson (SC)
  - Wolf
  - Wynn
  - Young
  - Young (FL)
- Young (AK)
  - Meyers (NY)

- ANSWERED “PRESENT”—7
  - Abercrombie
  - Baldwin
  - Berman
  - Bishop
  - Brown
  - Capuano
  - DeFazio
  - Dingell

- NOT VOTING—23
  - Baker
  - Baricevic
  - Becerra
  - Becerra
  - Benero
  - Berrios
  - Bono
  - Bonito
  - Boswell
  - Boucher
  - Boyd
  - Brady (PA)
  - Brady (TX)
  - Brown (FL)
  - Capuano
  - DeFazio
  - Dingell

- ELIGIBILITY OF CERTAIN PERSONS FOR BURIAL IN ARLINGTON NATIONAL CEMETERY

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the joint resolution, H.R. 3233, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

The vote was announced as above recorded.

The title of the joint resolution was amended so as to read: “Joint resolution regarding inspection and monitoring to prevent the development of weapons of mass destruction in Iraq.”

A motion to reconsider was laid on the table.

MAKING PERMANENT THE AUTHORITY TO REDACT FINANCIAL DISCLOSURE STATEMENTS OF JUDICIAL EMPLOYEES AND JUDICIAL OFFICIALS

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBERGER) that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 2336.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBERGER) that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 3236.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and Senate amendments were concurred in.

A motion to reconsider was laid on the table.
SUPPORTING THE GOALS OF THE YEAR OF THE ROSE

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 292. The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mrs. Jo Ann Davis) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 292.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution agreed to.

A motion to reconsider was laid on the table.
H. RES. 327
Resolved, That a committee of two Members be appointed by the House to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to House Resolution 327, the Chair appoints the following Members of the House to the committee to notify the President: The gentleman from Texas (Mr. ARMEY) and the gentleman from Missouri (Mr. GEHRhardt).

AUTHORIZING THE SPEAKER, MAJORITY LEADER, AND MINORITY LEADER TO ACCEPT RESIGNATIONS AND MAKE APPOINTMENTS NOTWITHSTANDING SINE DIE ADJOURNMENT
Mr. ARMEY. Mr. Speaker, I ask unanimous consent that until the day of the 107th Congress, and notwithstanding any adjournment of the House, the Speaker, the majority leader, and the minority leader may accept resignations and make appointments authorized by law or by the House. The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?
There was no objection.

APPOINTMENT OF HON. TOM DAVIS OR HON. WAYNE T. GILCHREST TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS UNTIL HOUSE CONVENES FOR SECOND SESSION OF 107TH CONGRESS
The Speaker the following communication from the Speaker:


I hereby appoint the Honorable Tom Davis or, if not available to perform this duty, the Honorable Wayne T. Gilchrest to act as Speaker pro tempore to sign enrolled bills and joint resolutions until the day the House convenes for the second session of the 107th Congress.

J. DENNIS HASTERT
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the appointment is approved.
There was no objection.
MARBÞLL UNIVERSITY GMAC BOWL CHAMPIONS

(Mr. RAHALL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RAHALL. Mr. Speaker, last night’s GMAC Bowl in Mobile, Alabama, carried a warning from the Surgeon General: Not recommended for those with heart conditions. In the end, with all due respect to the gentleman from North Carolina (Mr. JONES), the best team won.

In only its fifth year, the Marshall University Thundering Herd stampeded over East Carolina. Although the Herd was down 38-8 at half-time, the enthusiasm of Marshall’s fans did not waver. But Marshall rallied in the third quarter and charged on in the fourth. When time expired, the game was tied at 51. The noble opponents battled through two overtimes before Byron Leftwich connected on a pass to Josh Davis, ending the contest and securing the laurels of victory for our Thund-ering Herd. As the headline in the Huntington Herald Dispatch reads this morning, “Miracle in Mobile.”

I congratulate Marshall’s tenacious players and coaches, and applaud its faithful fans. Few football programs have suffered as severe a loss, struggled so valiantly, and risen to such heights, all in the course of 30 years.

During half time, Coach Bobby Pruett, who hails from my hometown of Beckley, West Virginia, talked with his team of belief and faith. It is a lesson we should all remember, not only in times of need, but in our everyday lives.

TRIBUTE TO MELVIN SMITH

(Mr. BARTLETT of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTLETT of Maryland. Mr. Speaker, it is my pleasure to pay tribute to one of my constituents, Melvin Smith of Ellicott City, Maryland, who is retiring after more than 33 years of distinguished service with the United Parcel Service, the UPS. Mel was born on September 30, 1946, in Los Angeles, California. He attended Fremont High School and Los Angeles City College, and served in the Vietnam War.

He began his 33-year UPS career in 1968 as a package car driver in southern California. In 1976, Mel began his management career when he was promoted to full-time supervisor in the feeder transportation department. In 1981, Mel was promoted to manager, and in 1993 he was promoted to district manager. Before Mr. Smith’s retirement, he served as the chief operating officer of the UPS Atlanta district serving Maryland, Delaware, and parts of West Virginia.

Mel has always been active in numerous charities. In Maryland, Mr. Smith has served in a leadership capacity for the United Way, the Baltimore Urban League, and the Baltimore Chapter of the NAACP.

Mr. Speaker, I congratulate Mel Smith, his wife Debra Ann, and his entire family, Mel, enjoy your retirement.

(Ms. PELOSI asked and was given permission to speak out of order for 5 minutes and to revise and extend her remarks.)

TRIBUTE TO THE HONORABLE DAVID E. BONIOR, MEMBER OF CONGRESS

Ms. PELOSI. Mr. Speaker, today, and I do not want to use the word “last,” but just in terms of chronology, today is the last day that our great minority whip, Mr. BONIOR, will whip the House, the gentleman from Michigan (Mr. BONIOR) will serve in that capacity while the House is in session.

We will benefit for years to come from his service, 10 years, an historic 10 years as Democratic whip of the House, 4 years as chief deputy whip, where he has made sure that every opportunity we had, we did it. Why? Because of his strong convictions about a notion of economic and social justice in this country, that those individuals who get up and go to work every day and are fair, hard, that they have the rewards to be able to support their families. If they fall on economic hard times, there ought to be an income supplement program so they do not have to lose their car or house or take their children out of school.

Mr. Speaker, many people we are seeing in this recession have worked 15, 20, 30 years, and now they find themselves unemployed. He has been a champion of the Union, of his constituents, of working Americans, of the archbishop, of so many people who were simply trying to get along, trying to live a life in Central America. He spent an incredible amount of his energy, trying to bring the peace process to Central America. We were eventually successful in Nicaragua, in El Salvador, and Guatemala trying to stop the violence. The
gentlewoman has been deeply involved in those issues with us. Mr. Speaker, we should all aspire to be such a champion of economic and social justice. DAVID is an very, very proud to have served in this Congress with you. I am very proud to be your friend, and I know that you are going to do great things for the people of Michigan and for the people of this Nation.

Mr. Speaker, will the gentleman yield?

Ms. PELOSI. I yield to the gentleman from Texas.

Mr. EDWARDS. Mr. Speaker, this is not the gentleman from Michigan (Mr. BONIOR) alive and well, I am happy to say. But I must take this opportunity as we end this session of Congress and his career as the Democratic whip, recognizing he will continue to serve his district and our country in Congress next year, I want to say that knowing the gentleman from Michigan (Mr. BONIOR) personally and professionally has been one of the tremendous rewards of all of my years in public service, whether that be in Texas or here in the Nation’s Capital.

Many Americans may not know the name DAVID BONIOR, but millions of decent working families across America are living a better life today, making higher wages. Even those living at the bottom of the economic rung on minimum wage, have a higher minimum wage today than they would have had had it not been for one person’s passionate commitment to working families and their opportunity to have a decent life for their children, and that is the gentleman from Michigan (Mr. BONIOR).

DAVID BONIOR. I am convinced, will be the next Governor of Michigan. While I do not know all of the voters of that great State, I have to believe that they recognize integrity and decency when they see it.

What I have seen for 5 years working under the gentleman from Michigan (Mr. BONIOR) as the chief deputy whip is the epitome of decency and integrity. For anyone who might be cynical about our democratic process in America, I wish they could have seen up close and firsthand what I have seen in the person I call my friend, DAVID BONIOR.

His accomplishments are too numerous to list in this brief time today, but they are well earned. They are significant. But I would conclude my remarks with two thoughts. It is not the tremendous accomplishments of making the difference for working families of America, and there is a list of specific achievements that I will ultimately respect the gentleman from Michigan (Mr. BONIOR) for, and although they are tremendously important, it is the kind of person that he is, the kind of human being he is, so honest, so decent a gentleman as we would want others to treat us.

I would just conclude with this thought. Winston Churchill, during some of the darkest hours of World War II, spoke to the British people and the world when he said, “We make a living by what we get, but we make a life by what we give.” By that high standard, DAVID BONIOR has lived and will continue to live an extraordinarily successful life. His passion, his decency and his integrity will be a model for future public servants for generations to come, and I am honored to be his friend and his colleague.

Ms. PELOSI. Mr. Speaker, in honoring the service of DAVID BONIOR, his vision, his knowledge, his effectiveness, his energy, his integrity, his experience, indeed the people of Michigan are very blessed to have him as their future Governor.

I also want to acknowledge his very experienced staff who have served this Congress so well, the staff of DAVID BONIOR. I know that others will speak today about DAVID and his staff, but I wanted to be sure to acknowledge their considerable contributions to this body as well.

(Ms. DELAUNO asked and was given permission to speak out of order for 5 minutes and to revise and extend her remarks.)

TRIBUTE TO HONORABLE DAVID E. BONIOR, MEMBER OF CONGRESS

Ms. DELAUNO. Mr. Speaker, I come this afternoon to say hello to the gentleman from Michigan (Mr. BONIOR). Ten years ago I first came to this institution, and at this very place I was given the honor of seconding the nomination of DAVID BONIOR for whip. I have served with him for 10 years. I have known him for 14 years. I learned from him as a mentor. I learned the skills of serving as a whip with him. I learned the battle for economic and social justice in Central America with him.

He comes from the earth, he comes from a family of working-class Americans, the way so many of us come to this institution. And he came here and he accomplished good public policy for the great people of this Nation. And in all that time, and in all that time, he never faltered. He never was afraid to stand up. He has never been afraid to champion the cause of the people of this country. And because of that tenacity and that brutal effectiveness, he has changed the lives of people in this country.

No one has fought harder for worker standards, for minimum wage, for those things that help people to live their lives because he understands their lives. He is a peaceful veteran, and, like myself, a Catholic who cares about life in its broader sense. His sense of integrity, his sense of honesty and his soul will be missed in this institution.

He will go on to do wonderful things, and we are all here for you, DAVID. We will stand with you and do what you want and try to help you be the next Governor of Michigan. To you and to Judy and to your family, we wish you the best.

There have been folks who have tried to demonize DAVID BONIOR, but his genuineness comes through, and they cannot do it. His gentle strength will prevail. It prevailed in what he did here, in the service of the people. It prevailed here, and it will prevail as he serves as Governor of the State of Michigan. God bless DAVID BONIOR, and I thank the gentleman for all that he has given to all of us.

Ms. WOOLSEY. DAVID, what am I going to do without you? Good grief. I have been here 8 years. After we lost the House in 1994, dithering, all of us, frustrated, all of us, I got a call from one of my sons. All of my kids tell me what I should be doing here because they are smart and they care. My son said, “Mother, I hope you’re listening to DAVID BONIOR.” I said, “Well, yeah, what are you saying?” And he said, “He’s the only one that’s saying anything.”

So I started listening more closely, because I knew the background and what you brought to us all along, but I listened to your message, and it became very important to me to get on your team, to be part of it. Thank you for putting me on the whip organization so I can do what I do best, which is rally and push and nudge and count. It has been a pleasure working for you. Thank you very much. I have learned more from you than you will ever know.

My nice constituents worry about me here because they think it is kind of a mean place and a lot of them will say, “How can you stand to work with all those people?” And I say, “Uh-uh, I get to work with DAVID BONIOR.” They go, oh, yeah, there are good people there too; among others, of course.

Thank you again. I miss you already. Our loss is Michigan’s gain for sure.

Ms. DELAUNO. I yield to the gentleman from California (Mr. FARR).

Mr. FARR of California. Mr. Speaker, I rise with deep regret that DAVID BONIOR is leaving this institution. I arrived here about 9 years ago. It was in a special election. But I think of all the people I have met, DAVID BONIOR was the best person I have learned over the years of working here is, this is a tough institution; and to survive and to be into leadership, you have got to have tough skin, but you have also got to have a kind and soft heart.

The wonderful thing about DAVID BONIOR is how much he gives of himself to everybody else’s problem. He will come to your district. And when he sees a wrong, he is out there trying to right it, whether it is in the fields of farm workers in California, whether it is in the stockyards, wherever it may be in the United States, where men and women are suffering or are not having
TRIBUTE TO THE HONORABLE DAVID E. BONIOR, MEMBER OF CONGRESS

Ms. KAPTUR. Mr. Speaker, I rise to say what a joy it has been in my life for 19 years to be able to work with the great gentleman from the State of Michigan, DAVID BONIOR. There must be something in the water of Lake Michigan and Lake Erie to produce the Phil Harts of this country and the Dave Boniors. I want to thank the Wolverine State for sending this incredibly decent human being here to the Congress of the United States.

There are many things I like about DAVID BONIOR. The first thing I like is his wife. I think Judy is just so incredible and that partnership they do have. But I like the way that he treats her. I like the way he treats the Members. I watch the way he treats people, always with great love and with affection and with such great passion for the work that he does.

We have had so many fights here that deal with economic justice domestically and internationally. DAVID BONIOR has always been at the head of that line. He has always been leading us. I can remember him being the great advocate for the rules that would govern trade in the Americas, as he stood here and he talked about what would happen to working people on this continent in the factories and on the farms. I was sitting out there with tears in my eyes; and I thought, how could he have the strength and the intestinal fortitude, knowing what is going to happen, to stand there and to be such a strong advocate and to maintain his passion and his composure. That was a point in my career where I could not have done that.

I hope that from him I have learned how to do that better, and I thank him for what he is, because what he is has kept other Members here and running for office because of his beliefs and his unwillingness to change who he is and who he represents and how he loves people, that it is still possible to be here and to carry those values so close to your heart. In fact, they are his heart.

I just want to say from the Buckeye State, always a competitor to those to the north, that we deeply, deeply appreciate you. The people of our country and the world. We appreciate your service as a spokesperson for those who have no voice or who have less voice. You have never wavered, you have always been a gentleman, you have always been a leader, you have always been a scholar.

It has been my deep privilege to serve with you, Congressman DAVID BONIOR of Michigan. May you be Michigan’s next governor. I only wish I could vote for you. God bless you.

Mr. WU. Mr. Speaker, will the gentlewoman from Oregon yield?

Ms. KAPTUR. I yield to the gentleman from Oregon.

Mr. WU. I thank the gentlewoman for yielding.

Mr. Speaker, the wonderful thing about being a junior Member is that all the large issues are thoroughly addressed by others. I just want to focus briefly for one moment on how DAVID BONIOR has treated fellow Members and me.

I have seen him defend others with whom he deeply disagrees. I have seen his gentle guidance on sensitive votes. And I also wanted to share just briefly how well he treated me as a very new Member and me.

But we spent some time together. I learned many, many things, but I want to mention the only thing that is happening to him is, he is going to be governor of the great State of Michigan and certainly while it is our loss, it is Michigan’s gain.

In this institution, given all of the political and economic and financial pressures that are on all the Members, it is very difficult to hold out a moral compass, to be very sure that the values that you are fighting for are what you believe. It is doubly difficult to do that year after year. The first year you could do it and the second year, but after many years, it becomes harder and harder to do.

I think on virtually every issue affecting the lives of working people, whether it is helping people join unions and fight for their dignity there, whether it is developing a sane trade policy which protects the needs of American workers or raising the minimum wage or affordable housing or all the things that millions and millions of people care about, he right up here, at this podium, DAVID BONIOR has been leading the fight. We are very proud of him, not just because
TRIBUTE TO THE HONORABLE DAVID E. BONIOR, MEMBER OF CONGRESS

Mr. HOLT. Mr. Speaker, this is not the time to recount the full Congressional career of DAVE BONIOR, because he continues to build on that record, but I would like to speak for a moment about the way that he does the job of whip, the job he is leaving within the House now.

We all know that there is a strong competitive streak in DAVE BONIOR. We have seen it on the baseball field, we have seen it in close votes, but we also have seen it on the baseball field, we have seen it on the highway, in order to renew yourself and not be diverted by special interests, that they would agree with me that civility has been talked about so much in this House in recent years.

Civility has been talked about so much in this House in recent years. When I say DAVE BONIOR exudes civility, I mean that it is really contagious. And when I look at his staff, some of his staff here with him today, I know that they would agree with me that they do their jobs better and probably would agree that they are better people because of their association with DAVE BONIOR and the way he does his job, which helps them do their job, and helps all of us here in Congress do our job.

It is a remarkable ability that DAVE BONIOR has to improve the performance of everyone round them so that competition does not mean meanness, and it does not lead to a lack of civility.

The way he does the job as whip, DAVE BONIOR, is a model for every public servant. We will talk about all you have done in your Congressional career later after we are congratulating you for your election as Governor. But today, I want to thank you for what you have done for each of us individually here in the House of Representatives.
Mr. FRANK. Mr. Speaker, I am so glad that I was listening.

When I first decided to run for this office, he received me very well and he took the time to try to understand some of the issues and some of the unique circumstances that we deal with. For a long time, and it is a mark of the high regard and the approach that DAVID has taken over the years, for a long time I thought I was the only one that had a special relationship with him, but, as it turns out, he has got hundreds of these special relationships, and that is really a mark and a testimony to the terrific job that you have done.

Mr. PAYNE. Mr. Speaker, despite all the trials and tribulations here, when people ask me who are some of the Members that you really admire, certainly he comes to mind.

Mr. FRANK. Mr. Speaker, reclaiming my time, I just want to make two points.

First of all, recently we did have a real eulogy for a Member who passed away, our late colleague Joe Moakley, and the outpouring of affection and respect for Joe Moakley was very impressive. I am in a position to tell you, as someone who was a neighbor to Joe Moakley’s district, there was no one in this business that he admired more than DAVID BONIOR.

One of the reasons why Joe Moakley made his goal was when DAVID BONIOR ran for whip was to get Massachusetts Members to vote for him. So let me just pass on that if Joe Moakley was still with us, you would be hearing from him his enormous respect and admiration for DAVID BONIOR.

I want to thank him for one other thing. I am a great believer in free speech. I generally vote against it when we start telling adults what they can and cannot do. They read and pictures they can show of each other. But if I was going to amend the Constitution, I would make it illegal to use the words “pragmatism” and “idealism” as if they were in opposition to each other.

The notion that the world should be divided between people who have a strong set of values and people who are effective is really a disaster morally. In fact, the more you are committed to a set of ideals, the more you are morally obligated to be effective in implementing those ideas. Otherwise, they are just something you put on in the morning to make yourself feel good. They do not do anybody else any good.

I know of nobody else in politics who better exemplifies that synthesis. I know of nobody else who is equally a passionate idealist in politics because he has a vision of the world that he wants to have implemented, which would be a fairer and kinder and better world for people who are in need in various ways, and who, at the same time, understands that that gives him the obligation to be as effective as possible; fair but tough; understanding the rules and abiding by the rules; but putting everything every ounce of energy into it. And for his exemplifying that merger of pragmatism and idealism, for understanding that a tough-minded approach to political reality in fact is a necessary compliment to a commitment to a set of values you want to implement, I want to join in honoring DAVID BONIOR and thank him for what he has shown us.

(Mr. GREEN of Texas asked and was given permission to speak out of order for 5 minutes.)

TRIBUTE TO THE HONORABLE DAVID E. BONIOR, MEMBER OF CONGRESS

Mr. PAYNE. Mr. Speaker, I guess I did not think any Members looked at their screens in the office, at least after we adjourn, but I was looking at the screen and I saw the gentleman from Massachusetts (Mr. Neal) come and say that he was looking at his screen and saw that there was a program, so to speak, being held. I, you know, I was there and thought, because I did not know about this, but I am so glad that I was listening.

I too want to simply add to what has already been said about a person that I have just respected for as long as I have been here in the House. I think that first connection, as I am from the 10th Congressional District too, of New Jersey, but I knew there had to be something good about the gentleman from Michigan (Mr. Bonior). We had the same number. And then looking at his high school achievements, I tried to play a little ball and I see where DAVE...
was a quarterback on the championship team at the Catholic school he attended and earned a scholarship to college and just worked his way through the military.

But the issue that DAVE has really dealt with, I recall when I was in county government many years ago, we talked about a “bottle bill,” and it was because DAVE sort of pushed that environmental concern ahead many years ago when he was in government in Michigan’s State legislature. We talked about environmental protection for PCBs, in that DAVE was always worrying about people who might be afflicted by these diseases that many times went unnoticed because the big guys sort of kept things quiet, even though they knew they were injurious to the health of people, and it was DAVE who talked about these birth defects that were being created.

The statement of “let us separate the warrior from the war,” taking the Vietnam veterans and separating them from an unpopular war, and as people turned their backs, I think it was a disgrace the way Vietnam veterans were treated; but DAVE talked about that and sort of raised the issue, along with a question of the Nicaragua Contras in El Salvador, those brutal death squads, when we traveled down there together. It was DAVE always on the side of things that were for justice, for those who were down and out, the HOPES scholarships and increasing Pell grants, increasing minimum wage. These are the areas, the SAVE Act, which really went to help guidance counselors.

So I am just proud to say that I know DAVE. I had the opportunity to vote in 1991, and there was not even a question when he ran for his current position. I happen to pick winners in that, even in the new one too, DAVE; so one of my strengths in Congress is that I know how to pick the winners. It does not say much about me, but it does say that maybe I have good judgment.

I do wish the gentleman from Michigan (Mr. BONIOR) well. I appreciate the courage that he takes when there are difficult votes to give, unpopular votes. We have talked about many of these issues. I think some of the things that we have talked about in the past, now others are seeing that there are issues that we should have been talking about all along which might have made a difference in where we are today.

It has been my pleasure to know you.

Mr. Speaker, as we draw this, what has turned into a Special Order, to a conclusion, I am pleased to yield to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Speaker, I thank the gentlewoman for yielding. I could not resist the opportunity to come over and say how much my good friends, DAVE BONIOR, has meant to me in my service in the U.S. House of Representatives. I came to Congress in January of 1993, and DAVE was certainly one of the people who took me under his wing and taught me the process. He is a student of parliamentary procedure, and we had a little group that called the parliamentarian group that we used to use, sometimes to our substantive advantage and sometimes to the chaos of the House, but the things we needed to get things accomplish that the leadership would not voluntarily accomplish.

It has been a great pleasure for me to serve with DAVID BONIOR. He has certainly been at the top of the list of people I have served in the House, strong in the House with strong beliefs in, and willingness to fight for, working people and the things that he believes in. This House is going to miss him immensely and wish him godspeed and the very best in the future.

Mr. PAYNE. Mr. Speaker, I yield time to the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding and for our excellent words about our colleague. In conclusion, I would like to thank all of our colleagues for coming. This was intended to be 5 minutes. Our phone is ringing off the hook in the office saying, why didn’t you tell us that this was going to happen, that we will need many more days, Mr. Speaker, to accommodate the words that people want to say about the greatness of DAVID BONIOR. I thank him for the vision with which he has led us, with his knowledge, with his experience, with his integrity. Every one of us who observes in this body has a great privilege to do so. One of our greatest privileges, though, is to have called DAVID BONIOR colleague.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). The Chair will recognize Members for Special Order speeches without prejudice to the resumption of legislative business.

PARLIAMENTARY INQUIRY

Mr. FRANK. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman may state it.

Mr. FRANK. What legislative business?

The SPEAKER pro tempore. If there is legislative business that comes from the Senate.

Mr. FRANK. Well, I wonder, is any contemplated? I think the minority would have an interest in that prospect. Does anyone know if any legislative business is contemplated?

The SPEAKER pro tempore. The Chair has been informed that there may be legislative business.

Mr. FRANK. Well, I have checked with our staff here who usually have good channels of communication. We did not know about any, and I would express some hope that there would be some communication so that we would have some idea of what legislative business might be transacted with everybody no longer in Washington.

The SPEAKER pro tempore. The Chair would suggest consultation with the leadership.

Mr. BONIOR. Mr. Speaker, if many of us had our way, DAVE BONIOR would never leave this House. No one can or would begrudge a man of DAVE’s multiple talents another high office, as Governor of Michigan, or deny the people of Michigan the extraordinary leadership he will bring. Yet, the place DAVE has created for himself to do the people of Michigan the extraordinary leadership he will bring. Yet, the place DAVE has created for himself to do the people of Michigan the extraordinary leadership that we are going to have to grin, or blush, and bear it. DAVE BONIOR has managed to lead the Democrats on issues where he agreed and when he did not by using his good head without ever losing his own heart and soul on issues of principle to him and his own constituents. Where DAVE got his bewilder combination of great calm and fierce determination I cannot say. Perhaps that kind of versatility is honored in the success DAVE has had in two very different games, basketball, and football.

The hallmark of the game DAVE played in the House was fairness, strategic skill, and devotion to principle. I am personally grateful for DAVE’s strong support and action when the Democratic House voted to allow a vote in the Committee of the Whole for the people of the District of Columbia, the first time District residents who are second per capita in Federal income taxes have ever had a vote on the House floor since the Nation was founded. Members of every variety can quote countless examples of thoughtful, critical support for their districts or issues DAVE has gathered. However, the affection and respect for DAVE is not centered in mere individual gratitude but fundamentally in the way he brought the best of this institution to bear.

Dave BONIOR’s tenure as a member of Congress from Michigan, and as whip, a gentleman who has prepared him well to be Michigan’s next Governor. Between these two roles, DAVE has shown a mastery of both executive and legislative skills. Add this unique bonus to DAVE’s extraordinary personal qualities, and the people of Michigan can continue to get from DAVE what they certainly deserve but much more than they bargained for.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker’s announced policy of January 3, 2001, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

CONTRIBUTIONS OF THE U.S. NAVY TO OUR VICTORY IN AFGHANISTAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. Kirk) is recognized for 5 minutes.
Mr. KIRK. Mr. Speaker, I requested this time to highlight the contribution of the United States Navy to our victory in Afghanistan.

After the September 11 attacks, the investigation quickly turned to Osama bin Laden and the al Qaeda training camps in Afghanistan. At first glance, a war in Afghanistan offered few options for the United States. Afghanistan has no coast line and is situated hundreds of miles from any shoreline. None of the neighboring Asian nations would permit U.S. strikes against Afghanistan from their own soil.

With few options, President Bush turned to the one asset in our military that can strike anywhere, anywhere at any time, without needing permission from any one, the United States Navy, which moved into action. In fact, September 11 fits the classic model of any crisis in our recent past. One of the first questions President asks in time of national peril is this: Where are the carriers?

In this case, the USS Enterprise was in the Indian Ocean, heading home after a long deployment in the Gulf. Her commander and the aircraft carrier hit the World Trade Center and Pentagon on CNN; and without direction from Washington, the skipper ordered his battle group to come about and head for harm’s way. Within minutes of this crisis, the United States Navy, our Navy, was moving into position to strike back at our enemies in the heart of Central Asia.

The war against terrorism is unlike any war we have fought before. Of the approximately 60,000 U.S. military members currently deployed as part of Operation Enduring Freedom, more than half are sailors or Marines. The Navy and Marine Corps has served as the anchor of Operation Enduring Freedom.

From the very beginning, the Navy has been involved in power projection. More than 50 U.S. Navy ships have been involved in power projection. The Navy and Marine Corps have been a key part of the coalition to strike targets for special operations in Afghanistan. The nearest base from which the Air Force has been able to strike aircraft in the region is Kuwait, leaving the bulk of close air support to the Navy. On any given day, naval aircraft have been flying 60 to 80 strike sorties as part of the campaign against al Qaeda. Naval strike aircraft have flown more than 4,000 strike sorties and dropped nearly 5,000 weapons against Afghanistan.

While the Air Force has performed most of the long-range strategic bombing, the Navy and Marine Corps have provided all of the close air support and all of the capabilities required by forces on the ground.

For many of us unfamiliar with the geography of Central Asia, the scale and scope of the task before the Navy is hard to understand. If you were to superimpose a map of Afghanistan on the eastern United States, our carriers would be based off the coast of Pensacola, Florida, and the aircraft would be striking targets near Milwaukee. That capability, providing global reach to our country, gives the United States options and influence far in excess of any other nation.

The capability to strike hard and deep requires a complicated ballet of personnel and equipment that is daunting, at best, from the many ships supplying and protecting the battle groups to teams maintaining the aircraft to the aircrews of airborne control, tankers, electronic warfare support, fighter caps, and close air support. We have won another war from the air.

I want to note the contribution of the sister services, especially the Air Force’s heavy bombers, that dropped most of the strategic ordnance in this campaign. They made a vital contribution to this effort. But the key support was provided by tactical aircraft, close air support for our troops, provided overwhelmingly by the Navy.

The tactical aircraft from the U.S. Air Force’s air component. We had to adapt because, from Kuwait, 13 hours’ flight from Afghanistan, gave permission for U.S. strikes from their soil. They had little flexibility arriving over their targets. This diplomatic limitation meant that naval aviation had to carry the vast load of the work in Afghanistan.

I want to make special note of the Navy’s electronic warfare aircraft and what they did. We arranged to get a lead by close by saying that we want to take this opportunity to thank the men and women of the following battle groups: the Enterprise, the Roosevelt, the Vinson, Kitty Hawk, Bataan, the Bonhomme, Richard, and the men and women of the 15th and 26th MEUs. To the men and women of Enduring Freedom, we wish you a happy holiday and the thanks of a grateful Nation; and in the words of the Navy, we would say “Bravo Zulu.”

Ms. WATSON of California, Mr. Speaker. I come to pay tribute to a couple that exemplifies strong family values and ideals, Ulysses and Christine Kinsey, who celebrate their 60th wedding anniversary on December 28, 2001, in Florida.

Ulysses Bradshaw Kinsey, or U.B., as he was lovingly called, and Christine Teresa Stiles, met while attending college at the Florida A&M University, and married in Tampa, Florida. The wedding ceremony was performed on December 28, 1941, at the home of Christine’s parents.

U.B.’s values of compassion, fairness, and integrity were instilled while working in his father’s grocery store. He closely observed his parents’ treatment of people regardless of race, color, creed, or status. U.B. also admired his mother for her kindness and thoughtfulness towards others.

By watching her mother, who was an enterprising and industrious role model during the Depression, Christine learned the art of making ends meet and training others to do so. Christine epitomized both her parents in her development of compassion and values about hard work. These lessons helped form her to become an excellent homemaker, a caring mother, a resourceful wife, and are reflected in the way she and her husband raised their six children: Eula, Bradshaw, Bernard, Cassandra, Cheryl, and Linda.

U.B. and Christine’s relationship over the years has given stability, guidance, structure, and a positive role model, and the results were shown in their children.

This husband and wife team, residing now in West Palm Beach, Florida, has far-reaching influence across the country and out to California, in California’s 32nd District. My constituent, Bernard William Kinsey, is the former
senior vice president of Xerox Corporation and President of KBK Enterprises, a consulting firm located in Los Angeles, California. Bernard was a member of Our L.A. and instrumental in rebuilding Los Angeles after the 1992 uprising.

The other Kinsey children, teachers, executives, and operating an elderly care home, have all contributed to the progress in this great Nation.

U.B. Kinsey retired July 31, 1989, after years of service as the principal of Palm View Elementary. While there, he watched more than 30,000 students enroll and graduate. The school was renamed U.B. Kinsey Palm View Elementary School, an unprecedented action in recognizing a living African American former principal.

Christine Kinsey has provided care, love, and support to her husband, her family, and her community for over 60 years. Among other organizations, Christine has been involved with the YWCA, Miracle Baptist Church, and the Palm Beach County School District.

Mr. Speaker. U.B. and Christine Kinsey serve as a shining example of America’s family values and ideals. This congressional tribute to the 60th wedding anniversary of the Kinseys exemplifies what is good in our country, and makes us, because of their contributions, the greatest country in the world. Congratulations and commendations.

Mr. Speaker, I yield to the gentleman from Ohio (Mr. BROWN).

TRIBUTE TO HONORABLE DAVID S. BONIOR, MEMBER OF CONGRESS

Mr. BROWN of Ohio. Mr. Speaker, I want to say a word about my friend, the gentleman from Michigan (Mr. BONIOR).

In 1965, a Mississippi civil rights leader said, Do not tell me what you believe; show me what you do, and I will tell you what you believe.

When I hear these words I think of the gentleman from Michigan (Mr. BONIOR), I think of his 10 years as Democratic whip, and I think of his leadership on issues of Central America, on issues of trade, on issues of social justice.

He did not just pay lip service, as many in this institution do, to those issues. The kind of hard work, the kind of day-to-day effort, the kind of persistence of stick-to-itiveness that the gentleman from Michigan (Mr. BONIOR) brought to this job, always in the name of social justice, always in the name of doing the right thing, standing on the floor doing special orders, doing meetings in his office, making calls to groups to encourage them to lobby this Congress, all that he did in the name of social justice, all that he did in the name of fair trade, meant so much to all of us.

Do not tell me what you believe; show me what you do, and I will tell you what you believe. That describes the gentleman from Michigan (Mr. BONIOR).

THE RIGHT OF COUNTRIES TO SELF-DEFENSE AGAINST TERRORISM, AND RECOGNIZING BRAVE AMERICANS ON THE FRONT LINES, AT HOME AND ABROAD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. SOUDER) is recognized for 5 minutes.

Mr. SOUDER. Mr. Speaker, as we depart for the Christmas and the rest of the holiday season, we all pray for peace and justice in the world. But I think that peace, as do others, that some people are having difficulty sorting the differences between terrorists and those who are trying to respond to terrorism.

The people who attacked the World Trade Towers and who blew Americans up are not the same as when people like us try to respond. We need to understand that same difference in Israel. For example, when a terrorist who attacks innocent people who are going about their daily routine with the sole purpose of causing terror, that is different than trying to respond with as much precision as possible, although there may be innocents killed, which is unfortunate, but it is still different. We cannot hold Israel to a different standard than we hold ourselves.

We now see the same problem in India. Once again, terrorists have stormed their Parliament and they have attempted to kill and assassinate the leadership of that country. These are difficult times. They are difficult for us when we try to figure out how to respond, too. We all need to be carefully and prayerfully thinking of any response that might lead to more death in the world.

At the same time, it would be wrong for the United States to say that it is okay for us to respond to terrorists, and not for other countries. We all, including us, should be wise and careful in our responses, but respond we must. We also like to pay tribute to those brave Americans who are on the front lines protecting us all the time; not only our soldiers in Afghanistan and throughout the world, particularly those who are in immediate harm’s way, but also to all the brave firemen and policemen who daily risk their lives to help us. We have all become more aware of their sacrifices.

I also want to thank all those on the front lines telling us from future terrorist attacks: those in the Coast Guard, the INS, the Border Patrol, the DEA, the FBI, the U.S. Marshals, and the U.S. Customs Service. Every day they are trying to protect us from future terrorist attacks and from chemical and biological attacks, whether it be anthrax, heroin, small-pox, or cocaine.

Protecting our borders is not easy. It takes people of judgment, and daily they have to exercise that judgment.

I was recently along a number of the borders in Washington State. Diane Dean is one of our American heroes, along here with Mark Johnson and Gerald Slaminski. In late 1999 at the Port Angeles Customs Station in Washington State, she thought one of the people were behaving suspiciously. She detained him. As they looked further, they thought he had stuff for a meth lab in the car.

It turned out they were handling nitroglycerine. He had enough weapons to blow up LAX Airport, where they had the information that that was where he was headed to rendezvous with another person.

Because one Customs officer detained and went through a thorough examination, and two other Customs officers basically violated orders and chased the person down the street, because we have this absurd position right now that if the person can get away from the immediate border, they cannot be chased, but they took it in their hands to do just that.

We saved LAX Airport, and we also have a suspect who has been one of the key people, or we have a convict, basically, at this point, who has been one of the key people in identifying the al-Qaeda network in the United States and around the world. That information hopefully will save and has already saved and will save more lives in America and around the world.

We need to thank these public servants who are so key in keeping each of us safe, not only during this holiday season, but all year long.

Before closing, I would also like to add a few words of tribute to the gentleman from Michigan (Mr. BONIOR). I came in as a fierce partisan in 1995. I have tremendous respect for people who are also fierce partisans.

I also know he is a good man, a dedicated Midwesterner who stands up for the working man. And whether or not Members disagree with each other at times, it is important to have civility in this body. I believe he has been a fierce partisan, and that helps lead us to the type of debate that we have to have in America if we are going to arrive at public policy.

Too often, it seems to be coming in this day and age that we are trending towards blow-dried cookie cutters, where we all sound the same, we all move the same. It is important that we have people of conviction and people that follow the patterns that many before us have set.

I, too, will miss him in a different way. I will not miss part of his abilities and I will not miss part of his enthusiasm for his cause, but it is always a tragedy when we lose dedicated leaders who spent their lives having such an impact.

I have appreciated his time here as one of the rowdy class of 1994.
IN APPRECIATION OF MEMBERS OF CONGRESS AND IN TRIBUTE TO SUPPORTIVE AND CAPABLE STAFF

The SPEAKER pro tempore. Under a previous order of the House, the gentle- man from Michigan (Mr. BONIOR) is recognized for 5 minutes.

Mr. BONIOR. Mr. Speaker, first of all, let me apologize to my friend, Elie Aboud, who has been waiting for me for an hour and a half to have lunch. I did not expect this to happen, and I am overwhelmed by the wonderful tributes and courtesy colleagues.

I want to thank the gentleman from Indiana (Mr. SOUDEIr) and the gentle- man from Nebraska (Mr. BERREUTER) for their comments, and for spending the time that they have here on the floor throughout this hour-and-a-half, 2 hours.

Mr. Speaker, I came to the floor this afternoon, or actually I came this morning, but it is afternoon now, to pay tribute to my staff.

Before I do that, I want to express my appreciation to all the Members who came to this well and spoke so lovingly and so wonderfully concerning my service here.

It means a great deal to me, number one, have such wonderful friendships of people that I admire and respect, and to have them publicly express their feelings and their thoughts. It was quite an emotional and heartfelt experience and well received, I might say, and I thank them for it.

The gentlewoman from California (Ms. PELOSI), of course, is going to be our next whip and a great leader of our country, and she already is, but more greatness awaits her; and my friend, the gentleman from California (Mr. GEORGE MILLER), who, with me, has had so many battles over so many years on education, labor issues, Central America; we go back a long time, and he is one of the best.

Of course, there is the gentlewoman from California (Ms. WOOLSEY), who I have come to admire and respect, and is about as genuine and as real as and dedicated to people as we can find in this place; and the gentleman from Ohio (Mr. BROWN), who was here and has now left, who will commence the leadership on the trade issue. He is already a great leader in it, but he will be even more so in the days and weeks and months to come.

Thanks to the gentleman from Texas (Mr. EDWARDS) and the chief deputy whip, the gentleman from California (Mr. FARR); the gentlewoman from Connecticut (Ms. DELAURLO), who spoke with such eloquence and love; the gentle- woman from Ohio (Ms. KAPTUR); the gentleman from Vermont (Mr. SANDERS), who always proves that I am bi- partisan; the gentleman from Oregon (Mr. WU); the gentleman from Maine (Mr. ALLEN); the gentlewoman from Nevada (Ms. SHERMAN); the gentle- woman from Guam (Mr. UNDERWOOD), who is going to be the next Governor of Guam; the gentleman from Texas (Mr. GREEN); the gentleman from Massachusetts (Mr. FRANK); the gentleman from New Jersey (Mr. PAYNE); the gentleman from North Carolina (Mr. WATT); and the gentleman from Indiana (Mr. SOUDEIr), I thank him for his comments.

Thanks also to Harold Volkmer who came here, I saw him on the floor. Many of you knew him; he served many years in the House. He was a classmate of mine, and was very instrumental in making me elected whip.

So I thank them all and I look forward to a final year of service with them here. We are going to do wonderful things for our country together.

I take this floor tonight to express my appreciation to people who have made it possible for me to be the whip of my party and be a leader in my party, and that is my staff. They are an extraordinary group of people, some of whom I will miss dearly. Although I am sure we will be in contact with each other over the years and the months as they go by, but some of them are leaving now, and they have been part of my staff, and I express my thoughts and feelings to them today.

Bridget Andrews will be coming over to the Rayburn staff with me for the next year and she is just a bright, thoughtful, caring, quiet but smart woman, and I am truly honored to have her and look forward to working with her.

Brian Taylor, who is here on the floor as well, Brian has been with us a short time, but he has done a great, great job, and he has got all the abili- ties to be a great legislative assistant in this institution, and I wish him all the best. He has had the obligation of answering the phone when someone calls to find out what is going on and he does a great job. He knows how this place works now. He is a wonderful per- son.

Then Kim Kovach, who I will dearly miss. She started off not too long ago with us, a couple of years ago, several years ago, and she has done everything in the office, and she did our trade stuff for us on fast track. She has just pro- gressed in such a wonderful fashion.

She is caring, she is decent. She is going back to Pittsburgh. She got mar- ried. She is a lovely person, and who- ever is going to be in Pittsburgh is going to be very, very fortunate. I wish Kim all the best in her en- deavors.

I also want to take this opportunity to thank Howard Moon, who came from the gentleman from California’s (Mr. MATSUI) staff. Howard is one of our floor people here, and he will continue on. He has got all that capacity in the next session of this Congress. He and Kristen are very special people, smart, hard- working, thoughtful, competent, all the things you like to have in a staff person, and I wish Howard all the best and I will miss him. We will see him, though, on the floor. So I guess I will not miss him that much. He will be around.

Jerry Hartz. Jerry has been with me now for 15 years, and he will be continuing on serving this great insti- tution, and he is an enormously tal- ented individual, a floor person here who we relied on. Wonderful family.

Jerry started in on in mine when we were the chief deputy whip. There were just four of us in there Judy, my wife; Jerry, Kathy and then Sarah. I guess that is five, and he was so instrumental in our battles on Central America and disarmament issues and you name it, he is there. He is a great resource for this institution, and I wish Jerry all the best in his endeavors.

Sarah Dufendach and Kathy Gille have been with me the longest of the group. They worked on my first cam- paign 25 years ago. Sarah and Kathy and I, we all kind of grew up on the east side of Detroit, and as I said, they both worked on my first campaign, and Kathy came to work for me about 20 years ago, seems like 22, but she was in at the very beginning and she has been an enormous, wise consultant to me. She has great instincts. She has great hu- manitarian instincts. She has great po- litical wisdom and caring, and I am just going to miss her very, very much, but I know she is looking forward to the day when she can have a little bit of rest, as we all are, and I wish her and Doug much happiness. I know that she is here in another lifetime. They put together well in their lives the different pieces that make life so profound and wonderful. The spiritual, the physical, the emotional, the edu- cational, all those pieces they do very, very well, and she does extremely well.

Kathy traveled to Central America. She has been at all the battles that we have done over the years and the Viet- names veterans stuff, all the trade issues, worked on the Committee on Rules, as did Jerry, and she is just a very special person, and I thank her from the bottom of my heart for her service.

Then Sarah, who with Kathy, worked in that first campaign, has been with me in the office now for 25 years. She started in Michigan. She lived in the same community I did. She has worked in social services her whole life, and I consider this part of that. She has got enormous amounts of optimis- m and can-do-iveness and is a deeply caring person and was the ad- ministrative and political part of our operation that was so very, very impor- tant. She did a great, great job for many years.

She is going on to wonderful things working for an organization called the Vietnam Veterans of America Foundation, which was an offshoot of the original Vietnam Veterans of America. I did not start the foundation, but it is Bobby Muller who was instru- mental in forming both of those orga- nizations, one which is now a national
with great grace and she is a gracious, in our lives. And she is handling that, but we have other responsibilities now when we started out in this business, a half decades. And I am going to miss left recently from the Michigan office Cook, Christine Cook. And Christine actually the whole time, Kathy, Sarah, years as well and left just recently. I best in her endeavors, and I thank her for her service.

Another person who I should mention is Chris Cook, who was with me for 25 years as well and left just recently. I have four people that were with me virtually the whole time, Kathy, Sarah, Ed Bruley, who is still there and Chris Cook, Christine Cook. And Christine left recently from the Michigan office and those now kind of form the team that she has operated with for two and a half decades. And I am going to miss Christine. I will see her. She is busy now as a grandma. We were all young when we started out in this business, but we have other responsibilities now in our lives. And she is handling that with great grace and she is a gracious, lovely woman and I miss her already.

Then let me finally say that my wife, Judy, who worked in our office, in the whips' office, chief deputy whip's office and then in the majority whip's office and in the minority whip's office was an enormous piece in making things work and is the central piece of my life. And she was just fabulous in doing all the wonderful things she does. Carrying, loving and advocating and fighting for the things that are important to her, justice, racial justice. So she is a beacon of light for me and for many people, and I want her to know that. I look forward to marching through life with her.

To all the Hill staff who I had the pleasure to work with, thank you for your cooperation and for your support. To run a whips' shop is not easy. You do not just need your staff. There is a lot of people that are involved and a lot of energy and a lot of heart and soul gets poured into these issues. And, I hope over the next year, to thank you all individually and to give you my best wishes in your careers.

Mr. Speaker, you have been very generous. This has been a long 5 minutes, and I want to thank you for your kindness this afternoon. I want to wish my colleagues a very happy holiday season; a happy Hanukkah which has passed; a merry Christmas and a spiritual Kwanzaa and a Ramadan Koran for those who just finished their holy season.

We look forward to a good session the next part of this 107th Congress.
gentlelady from North Carolina (Mrs. CLAYTON). Her commitment to assistant people in the U.S. and the rest of the world feed themselves through the Farmer-to-Farmer program and other technical education programs will truly be missed in this Body during the next Congress.

Mr. Speaker a very special note of appreciation is extended to Dr. Fred Starr of the School for Advanced International Studies of Johns Hopkins University. He is the concepts that undergird this legislation and for his generous amount of time and advice to this member and my staff Alicia O’Donnell, as we drafted this legislation. The distinguished Dr. Starr first explained his views and proposal at an Aspen institute breakfast sponsored by the distinguished former senator from Iowa, Rich Clark.

One important incentive which the U.S. can extend is assistance to address one of its most immediate needs, the need to rebuild Afghanistan’s capability to feed itself. Indeed, nearly all of the indigenous tools for food production and rural development in the Afghanistan area have been destroyed. The people of Afghanistan, necessarily, have eaten their seed stocks and most have slaughtered all of their breeding livestock to meet their immediate food requirements. Additionally, over 20 years of civil war and political unrest in Afghanistan have resulted in the destruction of the country’s limited basic irrigation systems.

Unfortunately, the food production capabilities in the mountainous regions of Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, and Pakistan have reached abject levels, too, thus results in a regional crisis.

Mr. Speaker, the Afghanistan and Central Asia Republics Sustainable Food Production Trust Fund Act that I have introduced directs the Secretary of the Treasury to enter into negotiations for the creation of a multilateral global trust fund to address the food production crisis in Afghanistan and the surrounding Central Asian Republics. Through the trust fund, non-governmental organizations, working in conjunction with local and regional entities, would receive grants to conduct food production in rural development projects, including microenterprise programs, in Afghanistan and in the impoverished mountainous regions of the countries I previously mentioned.

Upon the creation of the trust fund, the NGOs would be immediately eligible to receive grants to execute projects in the countries of the Central Asian Republics. This is a model laid out for us by Dr. Fred Starr, a very distinguished member of SAIS at Johns Hopkins University, in a breakfast for the Afghanistan building several months ago.

In order to provide the important incentive during critical stages of state-building, Afghanistan would not be eligible for programming until the Secretary of State certifies that the people of Afghanistan have made substantial progress towards creating a national government which meets four criteria: one, independent and religious representation; two, does not sponsor terrorism or harbor terrorists; three, demonstrates a strong commitment to eliminating poppy production use for opium production; and, four, meets internationally recognized human rights standards.

Mr. Speaker, helping the people in the region feed themselves is not only benefits which we are creating for them, it is important to us and programs, will further demonstrate the opportunity to build good will in a region which has been neglected by U.S. policymakers and U.S. assistance programs. We cannot leave a vacuum there like the one that was left behind after the Soviets were expelled from Afghanistan.

U.S. leadership, in creating a long-term trust fund, can be a critical step towards rebuilding confidence in the USA. When public and private sources are gathered and distributed through a multilateral mechanism, it becomes much more difficult for governments in the region to dismiss the projects as ephemeral U.S. foreign policy initiatives. Additionally, providing programming funds for the Central Asian Republics and not solely to Afghanistan, which will certainly become the recipient of massive bilateral and multilateral human assistance programs, will further demonstrate an U.S. commitment to the entire region.

Mr. Speaker, I hope my colleagues will look at this legislation. I think it begins the process of seeking a long-term solution to the region’s dire food production challenges; and, furthermore, it is a real incentive for them to move the kind of government which will bring peace and stability to the region.

Mr. Speaker, this Member would note that the Afghanistan and Central Asian Republics Sustainable Food Production Trust Fund is not intended to replace similar bilateral projects which USAID has begun to conduct in the region. Furthermore, the trust fund is not intended to supplant the very necessary emergency food assistance programs in Afghanistan and the surrounding Central Asian Republics.

Mr. Speaker, it is critical that the U.S. and the rest of the global community begin to seek long-term solutions to the region’s dire food production challenges. Through the creation of the Afghanistan and Central Asian Republics Sustainable Food Production Trust Fund, the U.S. can take an important step toward that end.

INDIAN TRUST MANAGEMENT REFORM

The SPEAKER pro tempore (Mr. SIMPSON). Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, the U.S. Government has repeatedly committed to a trustee relationship with the American Indian nations. Defined by treaties, statutes, and interpreted by the courts, the trust relationship requires the Federal Government to exercise the highest degree of care with tribal and Indian lands and resources.

At first, the Federal trust responsibility served to protect tribal lands and tribal communities from intrusion. However, in a push to acquire tribal lands and turn Indians into farmers, the Federal Government transferred reservation allotment programs pursuant to the General Allotment Act of 1887. Under these policies, the selling and leasing of allotted lands and inherited interests became primary functions of the Bureau of Indian Affairs. Tribes lost 90 million acres and much of the remaining 54 million acres was opened to non-Indian use by lease. In sum, the Federal Government took the trust responsibility for Indian land upon itself in order to gain the tribal lands and resources that were guaranteed by treaty, executive order, and agreements for exclusive use by the tribes.

It is widely known, Mr. Speaker, that the BIA grossly mismanaged and squandered billions of dollars worth of resources that should have gone to the benefit of often impoverished American Indians. Today, the Secretary of the Interior is faced by a mandate from Congress to clean up the accounting and management of the Indian trust funds, and by a lawsuit alleging a great failure by the Secretary’s trust responsibility for Indian lands. In response, the Secretary has proposed a plan to create a new Bureau of Indian Trust Asset Management and remove the trust functions from the Bureau of Indian Affairs.

Mr. Speaker, in my opinion, this proposal will profoundly affect the BIA’s management of 54 million acres of Indian lands, the administration of trust funds derived from those lands, and nearly every aspect of economic development, agriculture, and land management within Indian country.

I am greatly concerned that this plan is repeating the failure of the many trust reform efforts of the past. Recently, 193 Indian tribes unanimously adopted a resolution opposing this reorganization and transfer of the responsibilities of the BIA. I strongly believe that this reorganization effort cannot go forward until the Department consults with Indian tribes in the development of a business processes plan for trust reform, a clear plan for performing the basic trust functions of accounting, collections, recordkeeping inspections enforcement and resource management. The plan must include policies, procedures and controls.

The fundamental and consistent criticism of the Department’s trust reform efforts over the last decade has been the failure to develop a plan for these
business operations of trust management. Instead, the DOI has a well-documented record of making short-term cosmetic changes in response to court-imposed deadlines or congressional inquiries.

Mr. Speaker, it is notable that this criticism, a lack of structural foundation, is exactly the same as has been leveled against the Department’s development of the Trust Asset and Accounting Management System. All tribes have strongly support trust reform and want to work constructively with the Department and with Congress to ensure sound management of tribal assets. In fact, it is the tribes that have the greatest interest in ensuring that tribal assets and resources are properly managed.

In this spirit, I will submit for the Record the following principles of the National Congress of American Indians, which should guide the Department of the Interior in its trust reform efforts. NCAI very clearly needs help in attending to the concerns of Native Americans, and I would hope these principles would be taken into consideration by her.

I. Put first things first. Creating a new agency does not create trust reform, and we unequivocally oppose this proposal as currently framed. Tribal leadership urges the Secretary to stop the BITAM reorganization effort until there has been an opportunity to actively engage and consult with tribes in developing an alternative plan for the business processes of trust management in an open and consensus-based process. Once the Department, working with tribes, has a clear definition of the tasks that must be accomplished, then any staff reorganization should be based on this business processes plan.

II. Tribes can help solve this problem, but the Secretary must consult and collaborate with the tribal leadership, sovereign-to-sovereign basis. Announce and defend is not consultation. The Secretary and the tribes should agree that the upcoming regional meetings should be to consult on the scope of the issues to be addressed. The scoping meetings planned at present are too fast and too few, and should be extended to cover all regions, with an extended timeline. A Tribal Leaders Task Force on Trust Reform should be created and consult with tribes and should include the IIM account holders. Consultation must continue throughout the trust reform effort, and the discussions must be marked by some fundamental ground rules. The tribes insist that the Department agree to deal in good faith, avoid self-dealing, and commit to full disclosure of relevant and material information (including that relating to known failures and losses).

III. In the past twelve years, Interior has paid more than a billion dollars in judgments and settlements for its failures to protect the trust assets. The costs of continued failure will far outstrip the costs of doing it right. Congress must fund trust reform, and the IIM beneficiaries and tribes should not bear the burden of paying to fix the trust system. We therefore oppose the Department’s proposed reprogramming of $200 million within the Fiscal 2002 budget from the BIA budget to fund the proposed BITAM, and any other proposal to remove funds from the BIA for this purpose.

IV. The Secretary of Interior should come forward in an honest and forthright way to settle on historic account balances. If she cannot do this, then Congress must address this issue substantively.

V. Do no harm. Many tribes and BIA field offices have been successful in establishing sound trust management for their lands pursuant to the tribal self-determination policy. These successful systems should not be harmed or modified by the trust reform efforts without tribal consent.

VI. Successful development and resource management in Indian Country are linked to Indian control. The future of trust management includes increased protection and tribal control over lands and resources, and a federal system that provides technical assistance and trust oversight on resource management in a flexible arrangement that is driven by self determination through the special circumstances, legal and treaty rights of each tribe and special regions within Indian Country and their specialization in grazing, timber, oil & gas, commercial real estate, agriculture, fisheries, water, etc., will all require different systems that must reflect the unique needs of each.

VII. The survival of tribal cultures and traditions is dependent upon the continuance of tribal lands and resources as durable means to live and be Indian. One role of the trustee is to protect the long-term viability of tribal lands and resources, and to ensure that the actions of the trustee are consistent with tribal control of the use and development of Indian lands.

ANNIVERSARY OF CEDAW
The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, this past Tuesday, December 18, marked the 22nd anniversary of the United Nations’ adoption of the Convention on the Elimination of All Forms of Discrimination Against Women, otherwise known as CEDAW. Adopted by the U.N. General Assembly in 1979, CEDAW established a universal definition of discrimination against women and provides international standards to discourage sex-based discrimination. These standards encourage equality in education, health, employment, and all other areas of public life.

This comprehensive United Nations treaty serves as a powerful tool for all women as they fight against discrimination, and this treaty has led to substantial improvements for women’s lives in countries including Japan, Brazil, Sri Lanka, and Zambia. In fact, when Brazil redrafted its constitution, it did so in our quest to help them human rights for women. The Brazilian constitution now contains provisions on gender equality, gender-based violence, equality of rights within marriage, family planning, and employment, paralleling those contained in CEDAW.

To date, 168 countries have ratified CEDAW. However, the United States is not one of those countries. In fact, the United States is the only industrialized nation that has not ratified CEDAW, a distinction that places us in the company of North Korea, Iran, and Afghanistan. The decision to abandon this embarrassing distinction is long overdue.

The last 5 months have focused on re-creating from the tsunami and on September 11 and fighting against terrorism. And as a part of our response to the terrorist attacks, the U.S. has overthrown the Taliban, a government that stripped Afghan women of all free-standing dignity, and now the United States will play an important role in rebuilding the Afghan Government. Critical to building this new democracy will be the inclusion and acceptance of Afghan women.

In our quest to help Afghanistan rebuild, we are presented with a shameful irony. While we are trying to teach the Afghani people that women must be an equal part of a post-Taliban democracy, we contradict ourselves by refusing to ratify the one international treaty that ensures the rights of all women. If we truly want to be regarded as a world leader and champion of human rights, our country must ratify this treaty. Women around the world are depending on our country to show support for CEDAW, because United States’ support will strengthen CEDAW’s purpose and enhance its credibility.

During my 9 years in Congress, the ratification of this treaty has been a top priority of mine. Although it is the purview of the other body to ratify a treaty, 90 bipartisan Members of the House of Representatives have signed a House Resolution asking the Senate to take up this issue and ratify CEDAW. Please join this effort to convince the administration and the other body that the time has come for the United States to join 168 other nations who have committed themselves to safeguarding basic human rights and ending gender discrimination and ratifying CEDAW.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

Ms. NORTON. Mr. Speaker, this past Tuesday, December 18, marked the 22nd anniversary of the United Nations’ adoption of the Convention on the Elimination of All Forms of Discrimination Against Women, otherwise known as CEDAW. Adopted by the U.N. General Assembly in 1979, CEDAW established a universal definition of discrimination against women and provides international standards to discourage sex-based discrimination. These standards encourage equality in education, health, employment, and all other areas of public life.

This comprehensive United Nations treaty serves as a powerful tool for all
The SPEAKER pro tempore. Under a previous order of the House, the gentle
man from Ohio (Mr. BROWN) is rec
ognized for 5 minutes.

(Mr. BROWN of Ohio addressed the
House. His remarks will appear here
after in the Extensions of Remarks.)

NO EXPRESSION OF SUPPORT IN
CONGRESS FOR WAR IN IRAQ

The SPEAKER pro tempore. Under a
previous order of the House, the gen
tleman from Massachusetts (Mr. FRANK) is recognized for 5 minutes.

Mr. FRANK. Mr. Speaker, along with
a large majority of the House, I voted for
a resolution that reiterated our op
position to the acquisition by Saddam
Hussein of Iraq of weapons of mass de
struction. But I am concerned that
some might try, quite inaccurately, to
take that large vote repeating our con
demnation of Saddam Hussein and our
insistence he comply with U.N. resolu
tions regarding these weapons, that
some might mistake this as an expres
sion of support for a war in Iraq.

First of all, we should be very clear:
there is no legislation, no resolution that
this House, that expresses support for war in Iraq. The post-September 11 resolution was ex
plicitly limited to involvement in the
attack on the World Trade Center. And
to date, no one has produced evidence,
as reprehensible as Saddam Hussein is,
as despicable as his regime was, that
he has any significant involvement in
that.

Many of us, in fact many of us who
voted for the resolution, signed a letter to
the President reiterating we do not be
lieve it would be appropriate to com
mit America to a major military ac
tion in Iraq or anywhere else in the
world without a congressional vote.
And I would be, at this point, voting
against that.

We did a very good job in Afghan
istan. The American military made us
mighty proud. And, by the way, that is
the American military that President Bush inherited from President Clinton. All
during the campaign of 2000 candidates
Bush and CHENNEY denigrated the Amer
ican military, claimed inaccurately that
Clinton had somehow left it impor
tant. All of a sudden it got very good in
a hurry, because that very military that
President Bush inherited from President Clinton showed a great ca
pacity to do its job.

But as good as they were and as care
ful as they were, innocent lives were lost, property was destroyed, the econ
omy, already in tough shape, was dis
rupted, food distribution was inhibited.
We had a moral right and a moral obli
gation to rebuild the Afghan
istan. But hav
ing done that, having unleashed sig
ificant military power in that poor coun
try, for good moral reasons, I think it is
now an equal moral obligation to show that we can work just as hard to
help rebuild the country, to help feed
people, and to help reconstruct it.

In the first place, I would say this:
until we have shown an equal ability
and commitment and dedication to giv
ing the people of Afghanistan a better
life, as we should, to helping them get
rid of that terrible regime, then I do not
think we have earned the right to go
do that somewhere else.

I do not think that we can simply go
from country and oppose destruction,
even when it is morally justified to go
after some bad people, without living up
to the second part that of commit
ment.

Secondly, an attack on Iraq, unlike the
war in Afghanistan, would be al
most universally opposed by a variety
of others. The Bush administration has
learned that going it alone is not the
best strategy. I am glad the Bush ad
ministration has abandoned the kind of
unilateralism that unfortunately
marked its early months. But if we
now attack Iraq, we would be back in
that situation. In fact, any hope of fur
ther cooperation with Arab regimes in
getting intelligence, in prosecuting
terrorists and continuing to go after al
Qaeda would be discouraged.

Mr. Speaker, I am no fan of the re
gime in Iraq. Saddam Hussein is lack
ing in so many respects; I have become
increasingly disenchanted with Mubarak in Egypt, but they, at this point, seem
to me better than what we would get as
an alternative if we were to launch an
attack on Iraq that could destabilize
those countries. And as King Abdullah,
the King of Jordan, in the tradition of
his father, seems to be a responsible in
dividual trying to do well, I do not want
to see those efforts undercut.

So it would be counterproductive in
the war against terrorism to go after
Iraq. I would love to see Saddam Hus
sein out of power. He is a vicious and
brutal man, but to attack him mili
tarily at this point, engendering the
opposition this would engender in the
Muslim world, seems to be counter
productive to our fight against ter
rorism.

Indeed, as a strong supporter of the
legitimate right of Israel for self de
fense, which is now under attack from
the most irresponsible elements in the
Arab world, people should understand
President Bush never said that he was
for a Palestinian state until after Sep
tember 11. The political need to show
some connection to the Muslim world
is so critical to our interests.

I fear that the Bush administration
would have in the Muslim world would,
in fact, lessen rather than strengthen
America’s support for Israel’s legiti
macy needs. I fear there would be a
tendency to trade-off a little bit of that
support for Israel at a time of great
crisis because of this.

Finally, they are not analogous. Not
only do we not have Saddam Hussein
not having attacked us the way the Af
ghan-supported Taliban allowed al
Qaeda to do it, we do not have the
same situation. There is no Northern
Alliance. One of the things that helps
morally vindicate our effort in Afghan
istan was the obvious joy of so many
people in Afghanistan that we helped
rid them of this barbarous regime.

Saddam Hussein is not a lot better
than the Taliban, but I do not see in
Iraq the kind of opposition that would
allow us to do the same thing. So while
continue to support the sanctions and
I continue to say we should work with
opposition within Iran, if possible, de
spite the majority will on Iran that we
would have in the Muslim world would,
in fact, lessen rather than strengthen
America’s support for Israel’s legiti
macy needs.

The SPEAKER pro tempore. (Mr.
SIMPSON). Under a previous order of
the House, the gentleman from American
Samoa (Mr. FALEOMAVAEGA) is rec
ognized for 5 minutes.

(Mr. FALEOMAVAEGA addressed the
House. His remarks will appear here
after in the Extensions of Remarks.)

MORATORIUM CALLED FOR ON
VETERAN PRESCRIPTION DRUG
CO-PAYS

The SPEAKER pro tempore. Under a
previous order of the House, the gen
tleman from Ohio (Mr. STRICKLAND) is
recognized for 5 minutes.

Mr. STRICKLAND. Mr. Speaker, I may
be the last speaker in this Chan
nel of this particular session of the
House of Representatives. I rise today
to say when it comes to the way we
treat our veterans in this country, talk
is cheap, but actions speak louder than
words. Why do I say that?

Mr. Speaker, I have in my hands this
afternoon a document from the Depar
tment of Veterans Affairs entitled, “Im
plementation of Medication Co-pay
ment Changes.” It is a document that
details the changes that will take place
in the level of co-payment made avail
able to veterans who get their prescrip
tion medications at the VA hospitals.
What we are proposing is outrageous in
my judgment.

Currently, most veterans who go to
VA hospitals and receive their medica
tions as an outpatient pay a $2 co-pay per prescription. On February 4, ac
cording to this document, that co-pay
will be increased from $2 a prescription to
$7 a prescription, a whopping 250 per
cent increase. An unacceptable in
crease. Why is this so outrageous? It is
outrageous because this House has re
cently passed a $15 billion bailout for the
huge airline companies, $15 billion.
This House has recently passed a bill
that would have provided $24 billion in
tax rebates going all of the way back
to 1986, giving profitable companies a
give-back of all of the taxes they had
paid under the alternative minimum
tax since 1986, estimated to be a $2 bil
liion tax give-back. At the same time,
we are in the process of increas
ing the co-pay for veterans’ medicines
from $2 to $7.
Mr. Speaker, I serve a veterans hospital in southern Ohio, the Chillicothe VA Hospital. I have been told by administration there that the average veteran who gets prescription drugs at that facility will get 10 or more prescriptions per month. If we take a $7 co-pay and multiply that by 10, it is $70, a sizable amount of money for a veteran living on a fixed income. These veterans frequently get not 1-month supply, but a 3-month supply at a time. If we take $70 times 3, it is $210. Why is it that we talk so eloquently in this House about our concern for our military, we honor our veterans, and yet when it comes to taking action, we penalize them at the same time we are willing to give huge, huge tax cuts to profitable corporations, many of them multi-national corporations.

A 250 percent increase on our veterans for medicines they need to stay healthy or maybe even to stay alive, and we are doing it at a time when we are passing out money up here like drunken sailors. We have passed so many give-backs and pork barrel spending bills in this session of this House of Representatives, and yet we are penalizing our veterans. It is no wonder that veterans across this country have a right to say when it comes to the actions of this House, talk is cheap, but actions speak louder than words.

On February 4 when veterans go to our VA facilities to get their medicines, and they have been used to pay $2 per prescription and they are asked to pay $7 for that prescription, I hope they rebel. I hope they let those of us in this Chamber know how they feel about this outrageous action.

Mr. Speaker, I have introduced a bill to place a 5-year moratorium on any increase for veterans’ prescription drugs. My bill is H.R. 2820. I currently have cosponsors, and I am hopeful that every Member of this Chamber will choose to cosponsor this legislation, and as soon as we get back here after the first of the year, we will pass this legislation so that we will not penalize our veterans. It is my hope that every Member of this Chamber will have 42 cosponsors. I am hopeful that every Member of this Chamber will have 42 cosponsors. I am hopeful that we will not penalize our veterans. It is no wonder that veterans across this country have a right to say when it comes to the actions of this House, talk is cheap, but actions speak louder than words.

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For bioterrorism, to protect our Nation from this growing threat, which we hope the Senate will complete this week.

The terrorist attacks pushed an already struggling economy into a recession. The House responded by passing an economic stimulus package. Unfortunately, the other body was unable to pass similar legislation. Our bill was a fair and balanced bill that would have helped workers who lost their jobs keep their health insurance. Most importantly, that would have helped these workers get back to work. It looks today that the other body will not complete work on our legislation. I think that is a shame.

One of the biggest frustrations this year has been the lack of production from our friends on the other side of the Rotunda. The House has led the way in implementing the President's agenda, but on too many occasions the Senate has dropped the ball.

Here is a list of items that passed this House but that the Senate has left for next year:

We passed the President's faith-based initiative, to give religious organizations the same rights as other groups to use Federal funds to help America's less fortunate.

We passed a comprehensive energy bill to step up energy production here at home, reduce our reliance on foreign sources of energy, and make energy cleaner and cheaper and more dependable for years to come. Not only does this bill set us on a more secure road for the future, it helps our economy by creating another 700,000 American jobs.

We passed a bill that banned human cloning for reproduction and research. Whether it be providing more resources for homeland security and getting more money for our armed services, whether it be the effort to prepare our Nation for biological and chemical terrorism, or our efforts to reform our insurance laws so that our Nation will be adequately prepared for the consequences of terrorist attacks, this Congress will do the right things for the American people.

Looking over the events of this last year, I cannot help but note the passage of several important Members of Congress: Joe Moakley, a great American from Massachusetts; Norm Sisisky, a wonderful person who served this House from Virginia; Floyd Spence, from South Carolina; and Julian Dixon, from California, all served their country with distinction, in different ways, but with the same sense of patriotic duty. They will be sorely missed in this House of Representatives.

In conclusion, let me report to you, Mr. Speaker, that this House of Representatives has served the people in a year of turbulence and war with distinction. I am proud of our efforts, and I look forward to an equally successful year in the second session of the 107th Congress.

Mr. Speaker, I would be remiss if I did not thank the people who make this Congress work, who are here day in and day out, in the wee hours of the morning, who enroll our bills, who make this great institution; and also those people who in the times of terror and terrorist attack spent countless hours and days and weeks making this place available to the American people so that this Congress could do its work. I thank you.

God bless America.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with an amendment to House amendment to Senate amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2884. An act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States on September 11, 2001.

The message also announced that the Senate agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3338) "An Act making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes."

GENERAL LEAVE

Mr. DOOLITTLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the topic of the out-of-order speech of the gentlewoman from California (Ms. Pelosi).

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

CONDITIONAL ADJOURNMENT OF THE HOUSE AND SENATE

Mr. THOMAS. Mr. Speaker, I ask unanimous consent that when the House adjoins today it adjourn to meet at 5 p.m. on Friday, December 21, 2001, unless it sooner has received a message from the Senate transmitting its passage without amendment of House Joint Resolution 79, in which case the House shall stand adjourned.
VICTIMS OF TERRORISM RELIEF ACT OF 2001

Mr. THOMAS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2884) to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States on September 11, 2001, with a Senate amendment to the House amendment to the Senate amendments thereto, and concur in the Senate amendment to the House amendment.

The Clerk read the Senate amendment to the House amendment, as follows:

Senate Amendment to House Amendment to Senate Amendment:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert:

SECTION 1. SHORT TITLE. This Act may be cited as the "Victims of Terrorism Tax Relief Act of 2001.''

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; etc.
Title I—Victims of Terrorism Tax Relief
Subtitle A—Relief Provisions for Victims of Terrorist Attacks
Title II—Relief Provisions for Victims of Armed Forces and Victims of Certain Terrorist Attacks
Subtitle A—Relief Provisions for Victims of Armed Forces
Subtitle B—Relief Provisions for Victims of Certain Terrorist Attacks

TITLES I—VICTIMS OF TERRORISM TAX RELIEF

Subtitle A—Relief Provisions for Victims of Terrorist Attacks

Sec. 101. Income taxes of victims of terrorist attacks.
Sec. 102. Exclusion of certain disability trusts.
Sec. 103. Estate tax reduction.
Sec. 104. Payments by charitable organizations treated as exempt payments.
Sec. 105. Exclusion of certain cancellations of indebtedness.

Subtitle B—Other Relief Provisions
Sec. 111. Exclusion for disaster relief payments.
Sec. 112. Authority to postpone certain deadlines and required actions.
Sec. 113. Application of certain provisions to terrorist or military actions.
Sec. 114. Clarification of due date for airline excise tax deposits.
Sec. 115. Treatment of certain structured settlement payments.
Sec. 116. Personal exemption deduction for certain disability trusts.

TITLE II—DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS

Sec. 201. Disclosure of tax information in terrorism and national security investigations.

TITLE III—NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

Sec. 301. No impact on social security trust funds.
“(c) RATE SCHEDULE.—

If the amount with respect to which the tentative tax is calculated is:

<table>
<thead>
<tr>
<th>Amounts</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $150,000</td>
<td>1 percent of the amount (by which such amount exceeds $100,000)</td>
</tr>
<tr>
<td>Over $150,000 but not over $200,000</td>
<td>$500 plus 2 percent of the excess over $150,000</td>
</tr>
<tr>
<td>Over $200,000 but not over $300,000</td>
<td>$1,500 plus 3 percent of the excess over $200,000</td>
</tr>
<tr>
<td>Over $300,000 but not over $500,000</td>
<td>$5,000 plus 4 percent of the excess over $300,000</td>
</tr>
<tr>
<td>Over $500,000 but not over $700,000</td>
<td>$12,500 plus 5 percent of the excess over $500,000</td>
</tr>
<tr>
<td>Over $700,000 but not over $900,000</td>
<td>$25,000 plus 6 percent of the excess over $700,000</td>
</tr>
<tr>
<td>Over $900,000 but not over $1,100,000</td>
<td>$40,000 plus 7 percent of the excess over $900,000</td>
</tr>
<tr>
<td>Over $1,100,000 but not over $1,200,000</td>
<td>$60,000 plus 8 percent of the excess over $1,100,000</td>
</tr>
<tr>
<td>Over $1,200,000 but not over $1,600,000</td>
<td>$90,000 plus 10 percent of the excess over $1,200,000</td>
</tr>
<tr>
<td>Over $1,600,000 but not over $2,100,000</td>
<td>$130,000 plus 12 percent of the excess over $1,600,000</td>
</tr>
<tr>
<td>Over $2,100,000 but not over $2,600,000</td>
<td>$180,000 plus 13 percent of the excess over $2,100,000</td>
</tr>
<tr>
<td>Over $2,600,000 but not over $3,100,000</td>
<td>$230,000 plus 14 percent of the excess over $2,600,000</td>
</tr>
<tr>
<td>Over $3,100,000 but not over $3,600,000</td>
<td>$280,000 plus 15 percent of the excess over $3,100,000</td>
</tr>
<tr>
<td>Over $3,600,000 but not over $4,100,000</td>
<td>$330,000 plus 16 percent of the excess over $3,600,000</td>
</tr>
<tr>
<td>Over $4,100,000 but not over $5,100,000</td>
<td>$430,000 plus 18 percent of the excess over $4,100,000</td>
</tr>
<tr>
<td>Over $5,100,000 but not over $6,100,000</td>
<td>$530,000 plus 20 percent of the excess over $5,100,000</td>
</tr>
<tr>
<td>Over $6,100,000 but not over $7,100,000</td>
<td>$630,000 plus 22 percent of the excess over $6,100,000</td>
</tr>
<tr>
<td>Over $7,100,000 but not over $8,100,000</td>
<td>$730,000 plus 24 percent of the excess over $7,100,000</td>
</tr>
<tr>
<td>Over $8,100,000 but not over $9,500,000</td>
<td>$830,000 plus 27 percent of the excess over $8,100,000</td>
</tr>
<tr>
<td>Over $9,500,000 but not over $10,000,000</td>
<td>$930,000 plus 30 percent of the excess over $9,500,000</td>
</tr>
<tr>
<td>Over $10,000,000</td>
<td>$1,030,500 plus 32 percent of the excess over $10,000,000</td>
</tr>
</tbody>
</table>

(d) DETERMINATION OF UNIFIED CREDIT.—In the case of an estate to which this section applies with respect to which any discharge of indebtedness was made by this section, the unified credit allowed shall be reduced by the amount of the tentative tax calculated under section 2004(d) with respect to such discharge.
For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.

(c) CROSS REFERENCES.—

For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.

(d) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 6011(e) is amended by adding at the end the following new subsection:

‘‘(1) Cross Reference.—

For purposes of this section.’’.

(2) Section 6011(c) is amended to read as follows:

‘‘(c) CROSS REFERENCES.—

(1) For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.

(2) Section 661(d) is amended by adding at the end the following new paragraph:

‘‘(2) Postponement of Certain Acts.—

For purposes of this section, the term ‘qualified order’ means a final order, judgment, or decree which—

(i) does not contravene any Federal or State statute or the order of any court or regulatory administrative body; and

(ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents; and

(A) finds that the transfer described in paragraph (1)—

(1) is applicable State statute; or

(2) is issued—

(i) under the authority of an applicable State statute by an applicable State court, or

(ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(3) APPLICABLE STATE STATUTE.—For purposes of this section, the term ‘applicable State statute’ means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted—

(A) the State in which the payee of the structured settlement is domiciled, or

(B) if there is no statute described in subparagraph (A), the State in which either the payee of the structured settlement is domiciled (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement, if it is domiciled or has its principal place of business.

(4) APPLICABLE STATE COURT.—For purposes of this section—

(A) IN GENERAL.—The term ‘applicable State court’ means, with respect to any applicable State statute, a court of the State which enacted such statute.

(B) SPECIAL RULE.—In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

(5) QUALIFIED ORDER DISPOSITIVE.—A qualified order shall be treated as dispositive for purposes of the exception under this subsection.

(c) DEFINITIONS.—For purposes of this section—

(1) STRUCTURED SETTLEMENT.—The term ‘structured settlement’ means an arrangement—

(A) which is established by—

(1) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 109(a)(2), or

(ii) agreement for the periodic payment of compensation under an unemployment compensation law excludable from the gross income of the recipient under section 109(a)(1), and

‘‘(2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and

‘‘(3) the amount of any credit or refund.

(b) Clarification of Scope of Acts Secretary May Postpone.—Section 7508(a)(1)(K) (relating to time to be disregarded) is amended by striking ‘‘in regulations prescribed under this section’’.

(c) Conforming Amendments to ERISA.—(1) Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following new section:

‘‘SEC. 518. AUTHORITY TO POSTPONE CERTAIN DUE DATES DUE TO PREVIOUSLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.—

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terrorist or military action (as defined in section 692(c)(2) of such Code), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.’’.

(2) Section 4002 of Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

‘‘(i) Special Rules Regarding Disasters, Etc.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terrorist or military action (as defined in section 692(c)(2) of such Code), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.’’.

(c) Conforming Amendments to ERISA.—(1) Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following new section:

‘‘SEC. 518. AUTHORITY TO POSTPONE CERTAIN DUE DATES DUE TO PREVIOUSLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.—

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terrorist or military action (as defined in section 692(c)(2) of such Code), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.’’.

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(3) Section 661(d) is amended by adding at the end the following new paragraph:

‘‘(4) Postponement of Certain Acts.—

For purposes of this section, the term ‘qualified order’ means a final order, judgment, or decree which—

(A) finds that the transfer described in paragraph (1)—

(1) does not contravene any Federal or State statute or the order of any court or regulatory administrative body; and

(ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents; and

(iii) is issued—

(A) the State in which the payee of the structured settlement is domiciled, or

(B) if there is no statute described in subparagraph (A), the State in which either the payee of the structured settlement is domiciled (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement, if it is domiciled or has its principal place of business.

(4) APPLICABLE STATE COURT.—For purposes of this section—

(A) IN GENERAL.—The term ‘applicable State court’ means, with respect to any applicable State statute, a court of the State which enacted such statute.

(B) SPECIAL RULE.—In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

(5) QUALIFIED ORDER DISPOSITIVE.—A qualified order shall be treated as dispositive for purposes of the exception under this subsection.

(c) DEFINITIONS.—For purposes of this section—

(1) STRUCTURED SETTLEMENT.—The term ‘structured settlement’ means an arrangement—

(A) which is established by—

(1) suit or agreement for the periodic payment of damages excludable from the gross income of the recipient under section 109(a)(2), or

(ii) agreement for the periodic payment of compensation under an unemployment compensation law excludable from the gross income of the recipient under section 109(a)(1), and
“(B) under which the periodic payments are—

(i) the creation or perfection of a security interest in the settlement payment rights entered into with the person to whom such settlement payment rights are payable by means of a blanket security agreement, a security agreement, a person who is a party to a suit or agreement or to the workers’ compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(ii) a subsequent transfer of structured settlement payment rights in a structured settlement factoring transaction to such institution (or agent or successor in interest).

(3) STRUCTURED SETTLEMENT FACTORING TRANSACTION—

(A) IN GENERAL.—The term ‘structured settlement factoring transaction’ means a transfer of structured settlement payment rights (including portions of structured settlement payment rights) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

(B) EXCEPTION.—Such term shall not include—

(i) the creation or perfection of a security interest in the settlement payment rights entered into with a person who is a party to a suit or agreement or to the workers’ compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction to such institution (or agent or successor in interest).

(4) FACTORING DISCOUNT.—The term ‘factoring discount’ means an amount equal to the excess of—

(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(5) RESPONSIBLE ADMINISTRATIVE AUTHORITY.—The term ‘responsible administrative authority’ means the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(6) STATE.—The term ‘State’ includes the Commonwealth of Puerto Rico and any possession of the United States.

(d) COORDINATION WITH OTHER PROVISIONS.—

(1) GENERAL.—If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement involving the structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) NO WITHHOLDING OF TAX.—The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding in the end the following new item:

“Chapter 55. Structured settlement factoring transactions.”

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than the provisions of section 5881(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code) for purposes of section 5891(d) of such Code if—

(i) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless such Code if—

(ii) the structured settlement factoring transaction is entered into on or after January 1, 2003.

(2) DEFINITIONS.—In this section—

(A) term ‘factoring discount’ means an amount equal to the excess of—

(i) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

(ii) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

(B) term ‘factoring discount’ means the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

(C) term ‘structured settlement factoring transaction’ means a transfer of structured settlement payment rights (including portions of structured settlement payment rights) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

(D) term ‘structured settlement factoring transaction’ means a transfer of structured settlement payment rights (including portions of structured settlement payment rights) made for consideration by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

(3) DEDUCTIONS IN LIEU OF PERSONAL EXEMPTION.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of enactment of this Act and ending on June 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless such Code if—

(B) the person acquiring the structured settlement payment rights discloses to the person from whom such structured settlement payment rights are acquired:

(i) the creation or perfection of a security interest in the settlement payment rights entered into with the person to whom such settlement payment rights are payable by means of a blanket security agreement, a security agreement, a person who is a party to a suit or agreement or to the workers’ compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(c) DISCLOSURE TO THE DEPARTMENT OF JUSTICE.—Returns and taxpayer return information may also be disclosed to the Attorney General under clause (i) to the extent necessary for the purposes of investigating and responding to such terrorist incident, threat, or activity. The head of the agency may disclose return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(d) DISCLOSURE TO THE DEPARTMENT OF SECURITY INVESTIGATIONS—

(1) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose written return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary for the purposes of investigating and responding to such terrorist incident, threat, or activity. The head of the agency may disclose written return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(2) PROCEDURES.—

(A) IN GENERAL.—The Secretary may disclose written return information to officers and employees of any Federal law enforcement agencies.

(B) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose written return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary for the purposes of investigating and responding to such terrorist incident, threat, or activity. The head of the agency may disclose written return information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(C) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.

(D) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer’s identity shall not be treated as taxpayer return information.

(E) GRANTS.—No disclosure may be made under this paragraph after December 31, 2003.

(F) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.

(G) DISCLOSURE TO THE DEPARTMENT OF SECURITY INVESTIGATIONS—

(1) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose written return information (other than taxpayer return information) to apprise appropriate officials of criminal activities or emergency circumstances.

(2) PROCEDURES.—

(A) IN GENERAL.—The Secretary may disclose written return information (other than taxpayer return information) to apprise appropriate officials of criminal activities or emergency circumstances.

(B) IN GENERAL.—Except as provided in paragraph (6), the Secretary may disclose written return information (other than taxpayer return information) to apprise appropriate officials of criminal activities or emergency circumstances.

(C) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.

(D) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer’s identity shall not be treated as taxpayer return information.

(E) GRANTS.—No disclosure may be made under this paragraph after December 31, 2003.

(F) TERMINATION.—No disclosure may be made under this paragraph after December 31, 2003.

(G) DISCLOSURE TO THE DEPARTMENT OF SECURITY INVESTIGATIONS—
agency who are personally and directly engaged in the response to or investigation of any terrorist incident, threat, or activity.

(ii) Disclosure to State and Local Law Enforcement Agencies. The concurring Federal law enforcement agency may disclose return information obtained under clause (i) to officers and employees of any State or local law enforcement agency, but only if such agency is a part of a team with the Federal law enforcement agency in such response or investigation and such information is disclosed to officers and employees who are personally and directly engaged in such response or investigation.

(iii) Request meets the requirements of this clause if—

(A) the request meets the requirements of this clause if—

(i) the request is made by the head of any Federal law enforcement agency (or his designee) in response to or investigation of any terrorist incident, threat, or activity,

(ii) the request sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity,

(iii) LIMITATION ON USE OF INFORMATION. Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (i), the Secretary may disclose return information (other than taxpayer return information) to those officers and employees of the Department of Justice, the Department of the Treasury, and other Federal agencies or any State or local law enforcement agency who are personally and directly engaged in the collection or analysis of intelligence concerning any terrorist incident, threat, or activity. For purposes of the preceding sentence, the information disclosed under the preceding sentence shall be solely for the use of such officers and employees in such investigation, collection, or analysis.

(ii) REQUIREMENTS.—A request meets the requirements of this subparagraph if the request—

(I) is made by an individual described in clause (iii), and

(II) sets forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iii) REQUESTING INDIVIDUALS.—An individual described in this subparagraph is an individual—

(I) who is an officer or employee of the Department of Justice or the Department of the Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the United States Secret Service, and

(II) who is responsible for the collection and analysis of intelligence concerning any terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY. For purposes of this subparagraph, a taxpayer’s identity shall not be treated as taxpayer return information.

(C) DISCLOSURE UNDER EX PARTE ORDERS.—

(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with respect to any specified taxable period of a taxpayer or any officer or employee of any Federal law enforcement agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence or counterintelligence information concerning any terrorist incident, threat, or activity. Return or return information opened to inspection or disclosure pursuant to the preceding sentence shall be made solely to officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the Federal law enforcement agency.

(iii) REQUESTING INDIVIDUALS. An individual described in this subparagraph is an individual described in subparagraph (B).

(iv) LIMITATION ON USE OF INFORMATION. Information disclosed under clause (i) may be disclosed only to the extent necessary as provided in such order.

(v) LIMITATION ON USE OF INFORMATION. Information disclosed under this subparagraph is an individual described in this subparagraph is an individual described in subparagraph (B).

(D) SPECIAL RULE FOR EX PARTE DISCLOSURE BY SUBPOENAS.—

(i) IN GENERAL.—Except as provided in paragraph (6), an application to a Federal district court judge or magistrate for the Federal law enforcement agency may be served upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

(2) SPECIAL RULE FOR EX PARTE DISCLOSURE BY SUBPOENAS.—

(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the Federal law enforcement agency.

(ii) REQUESTING INDIVIDUALS. An individual described in this subparagraph is an individual described in subparagraph (B).

(iii) LIMITATION ON USE OF INFORMATION. Information disclosed under clause (i) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity.

(iv) LIMITATION ON USE OF INFORMATION. Information disclosed under clause (i) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity.

(3) TERMINATION. —No disclosure may be made under this paragraph after December 31, 2003.

(c) CONFORMING AMENDMENTS.

(1) Section 6109(a)(2) is amended by inserting “any local law enforcement agency receiving information under subsection (i)(7)(A),” after “State,”.

(2) Section 6109(b) is amended by adding at the end the following new paragraph:

“(11) TERRORIST INCIDENT, THREAT, OR ACTIVITY.—The term ‘terrorist incident, threat, or activity’ means an incident, threat, or activity involving an act of domestic terrorism (as defined in section 2331(5) of title 18, United States Code) or international terrorism (as defined in section 2331(1) of such title).”.

(3) The heading of section 6109(i)(3) is amended by inserting “OR TERRORIST” after “CHARGED”.

(4) Paragraph (4) of section 6103(i) is amended by inserting “OR TERRORIST” after “CHARGED”.

(5) Paragraph (6) of section 6103(i) is amended—

(A) by striking “(3)(A)” and inserting “(3)(A) or (C),” and

(B) by striking “or (7)” and inserting “(7), or”.
THANKING THE STAFF

Mr. HOYER. Mr. Speaker, as the first session of the 107th Congress draws to a close, I wish to thank the staff for their assistance throughout this eventful year. None of us could discharge our responsibilities without the help and support of the staff.

Let me begin by expressing gratitude to the employees of the Architect of the Capitol, who maintain the Capitol buildings and grounds. Without the vital work of engineers, carpenters, painters, electricians and others, especially the custodians who clean our offices each night, we could not work. AoC employees do a wonderful job under difficult circumstances, and they deserve special recognition.

Next, I wish to thank the three House Officers and all their employees, who collectively maintain the framework in which the House operates. Jay Eagen, our Chief Administrative Officer, and his deputy Lawrence Davenport, manage a diverse organization that provides us with everything from furniture and carpets to office supplies and information technology, child care and other personnel-related support, including food services and even our paychecks. Bill Livingood, our Sergeant at Arms, and his deputy, Kerri Hanley, oversee Capitol security, including food services and even our paychecks. Bill Livingood, our Sergeant at Arms, and his deputy, Kerri Hanley, oversee Capitol security, including food services and even our paychecks.

I greatly value Noah Duncan, Muftiah McCartin, Tom Wickham, Charles Howell, Ellen McCarthy, Matt Farnen, Wanda Hardesty, Corey Jackson, Dayle Lewis, Kenya McGruder, Kathy May, Scott Nance, Faron Paramore, Andy Quinn, Thomas Richards, Betty Richardson, Betty Rogers, Erica Rossi, and Ryan Seggel of my personal office; Keith Abouchar, Robert Bean, Kevin Byron, Connie Goode, Michael Howard, Charles McCarthy, Matt Pinkus, Bernard Raimo, David Ransom, Brian Romick, and Sterling Springs of the House Administration Committee; Rob Nabors, of the Treasury, Postal Appropriations Subcommittee; and Marlene Kaufman, of the Helsinki Commission. I could not fulfill my responsibilities without them.

Mr. Speaker, Members aren't always aware of what all the staff do, and the staff aren't always aware of what Members do. But together, we make this House work for the American people. I hope all Members will join me in thanking the staff, where they work, and whatever they do, for all their hard work this year.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:
Mr. LUTHER (at the request of Mr. GEPHARDT) for today on account of family matters.
Ms. EDDIE BERNICE JOHNSON of Texas (at the request of Mr. GEPHARDT) for today on account of business in the district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(1) The following Members (at the request of Mr. FRANK) to revise and extend their remarks and include extraneous material:
- Mr. BONIOR, for 5 minutes, today.
- Ms. FALLONE, for 5 minutes, today.
- Ms. NORTON, for 5 minutes, today.
- Mr. WOOLSEY, for 5 minutes, today.
- Ms. WATSON of California, for 5 minutes, today.
- Mr. BROWN of Ohio, for 5 minutes, today.
- Mr. FRANK, for 5 minutes, today.
- Mr. FALKEOMAVARGA, for 5 minutes, today.
- Mr. STRICKLAND, for 5 minutes, today.
- Ms. JACKSON-LEE of Texas, for 5 minutes, today.
- Mr. HOYER, for 5 minutes, today.
- Ms. WOOLSEY, for 5 minutes, today.
- Mr. BEREUTER, for 5 minutes, today.

(1) The following Members (at the request of Mr. BEREUTER) to revise and extend their remarks and include extraneous material:
- Mr. RECOSTA, for 5 minutes, today.
- Mr. HASTERT, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

- Mr. DOLLIVER and to include extraneous material, notwithstanding the fact that it exceeds two pages of the Record and is estimated by the Public Printer to cost $17,963.63.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 219. An act to amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to permit any Federal law enforcement agency to enter into a cooperative agreement with the Metropolitan Police Department of the District of Columbia to assist the Department in carrying out crime prevention and law enforcement activities in the District of Columbia if deemed appropriate by the Chief of the Department and the United States Attorney for the District of Columbia, and for other purposes.
H.R. 2587. An act to amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the...
Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to enrolled bill of the Senate of the following title:

S. 1438. An act to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year to the Armed Forces, and for other purposes.

SINE DIE ADJOURNMENT

Mr. THOMAS. Mr. Speaker, pursuant to House Concurrent Resolution 295, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER, Accordingly, pursuant to your resolution of the House of Representatives of today, the House stands adjourned until 4 p.m. on Friday, December 21, 2001, unless it sooner has received a message from the Senate transmitting its passage without amendment of House Joint Resolution 79, in which case the House shall stand adjourned sine die pursuant to House Concurrent Resolution 295, the House adjours p.m.), pursuant to House Concurrent Resolution 295, the House adjourned under the previous order of the House until 4 p.m. on Friday, December 21, 2001, unless it sooner has received a message from the Senate transmitting its passage without amendment of House Joint Resolution 79, in which case the House shall stand adjourned for the first session of the 107th Congress sine die pursuant to House Concurrent Resolution 295.

OATH FOR ACCESS TO CLASSIFIED INFORMATION

Under clause 13 of rule XXIII, the following Members executed the oath for access to classified information:

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

4969. A letter from the Director, Office of Management and Budget, transmitting notification to modify a December 9th release of funds from the Emergency Response Fund; to the Committee on Appropriations.


4971. A letter from the Assistant Secretary for Communications, Department of Commerce, transmitting the Department’s final rule—Notice of Solicitation of Grant Applications (RIN: 0890–ZAO6) received December 19, 2001, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.


4973. A letter from the Secretary, Department of Transportation, transmitting the Department’s report entitled, “TREAD Follow-Up Report”; to the Committee on Energy and Commerce.

4974. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to Japan (Transmittal No. DTC 158–01), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

4975. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to Japan (Transmittal No. DTC 157–01), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

4976. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to Japan (Transmittal No. DTC 128–01), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

4977. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold under a contract to Japan (Transmittal No. DTC 154–01), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

4978. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for any major defense services sold under a contract to Japan (Transmittal No. DTC 154–01), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

4979. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for any major defense services sold under a contract to Japan (Transmittal No. DTC 154–01), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

4980. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for any major defense services sold under a contract to Japan (Transmittal No. DTC 158–01), pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

4981. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification that the Administration is final rule—Federal Acquisition Regulation; Definitions of ‘Component’ and ‘End Product’ [FAC 2001–02; FAR Case 2001–02; FAR Case 1999–01; Item II] (RIN: 9000–A171) received December 19, 2001, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

4982. A letter from the Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration, transmitting the Administration’s final rule—Federal Acquisition Regulation; Energy-Efficiency of Supplies and Services [FAC 2001–02; FAR Case 1999–01; Item II] (RIN: 9000–A171) received December 19, 2001, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

4983. A letter from the Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration, transmitting the Administration’s final rule—Federal Acquisition Regulation; Prompt Payment and Prompt Payment Under the Recovery Act; Rulemaking [FAC 2001–02; FAR Case 2001–02; FAR Case 2000–01; Item IV] (RIN: 9000–A182) received December 19, 2001, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

4984. A letter from the Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration, transmitting the Administration’s final rule—Federal Acquisition Regulation; Federal Acquisition Regulation; Definitions of ‘Component’ and ‘End Product’ [FAC 2001–02; FAR Case 2001–02; FAR Case 1999–01; Item II] (RIN: 9000–A171) received December 19, 2001, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.
Acquisition Regulation; Small Entity Compliance Guide—received December 19, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Government Reform.

4997. A letter from the General Counsel, Office of Management and Budget, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

4998. A letter from the Director, Office of Personnel Management, transmitting a report on the Federal Activities Inventory Reform Act of 2001; to the Committee on Government Reform.

4999. A letter from the Acting Director, Office of Management and Budget, transmitting the Department’s final rule—Kentucky Regulatory Program (KY-221-FOR) received December 18, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Resources.

5000. A letter from the Assistant Secretary, Department of the Interior, transmitting a proposed plan under the Indian Tribal Judg- ment Funds Act, 25 U.S.C. 1401 et seq., as amended, for the use and distribution of the Red Lake Band of Chippewa Indians (Tribe) judgment funds in Docket 188-C and the Crow funds remaining in Dockets 188-A and 188-B; to the Committee on Resources.

5001. A letter from the Assistant Attorney General, Office of Justice Programs, transmitting the Office for Victims of Crime’s Report to Congress on the Department’s implementation of the Victims of Crime Act, as amended; received December 14, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on the Judiciary.

5002. A letter from the Director, Policy Directives and Instructions Branch, Department of Justice, transmitting the Department’s final rule—Adjustment of Certain Fees of the Immigration Examinations Fee Account (RIN: 1110-AD26) received December 20, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on the Judiciary.

5003. A letter from the Director, Bureau of Transportation Statistics, transmitting the Transportation Statistics Annual Report 2000, pursuant to 49 U.S.C. 111(f); to the Committee on Transportation and Infrastructure.

5004. A letter from the Assistant Secretary, Department of the Interior, transmitting the Department’s Annual Report on the Financial Year 2002 Indian Reservation Roads (RIN: 1076-AE28) received December 20, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.

5005. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Boeing Model 767 Series Airplanes [Docket No. 2000–NM–39–AD; Amendment 39–12491; AD 2001–22–05] (RIN: 2120–AA64) received December 6, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.

5006. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Boeing Model 747 Series Airplanes [Docket No. 2000–NM–220–AD; Amendment 39–12483; AD 2001–22–06] (RIN: 2120–AA64) received December 6, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.

5007. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Boeing Model 747 Series Airplanes [Docket No. 2000–NM–220–AD; Amendment 39–12483; AD 2001–22–06] (RIN: 2120–AA64) received December 6, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.

5008. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Bombardier Model DHC-8 and –8Q–Series Airplanes [Docket No. 2000–NM–325–AD; Amendment 39–12482; AD 2001–22–03] (RIN: 2120–AA64) received December 14, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.

5009. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Honeywell International, Inc. LTP 101 Series Turboprop and L18100 Series Turboprop (Docket No. 99–NE–16–AD; Amendment 39–12486; AD 2001–22–07) (RIN: 2120–AA64) received December 6, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.


5011. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Overland Aviation Activities [Docket No. FAA–2000–116, 124, 125, 127; RIN: 2120–AA64] received December 14, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.


5014. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters [Docket No. 2001–SW–49–AD; Amendment 39–12470; AD 2001–22–10] (RIN: 2120–AA64) received December 14, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.


5016. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department’s final rule—Airworthiness Directives; Boeing Model 747 Series Airplanes [Docket No. 98–NM–225–AD; Amendment 39–12460; AD 2001–20–12] (RIN: 2120–AA64) received December 14, 2001, pursuant to 5 U.S.C. 301(a)(1)(A); to the Committee on Transportation and Infrastructure.
AA64) received December 14, 2001, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

5026. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Rolls-Royce plc. RB211 535 Turbofan Engines, Correction [Docket No. 2001–73–1; Amendment 74–241; AD 2001–19–05] (RIN: 2120–AA64) received December 14, 2001, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

5027. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Raytheon Model Beech 400, 400A and 400T Series Airplanes, Model Mitsubishi MU–300 Airplanes, and Model Beech 1900D Airplanes [Docket No. 2001–NM–347–AD; Amendment 39–12528; AD 2001–24–11] (RIN: 2120–AA64) received December 14, 2001, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

5028. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes [Docket No. 2001–NM–339–AD; Amendment 39–12519; AD 2001–12–24] (RIN: 2120–AA64) received December 14, 2001, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.


5032. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Airbus Model A300 B4–600, B4–600E and B4–600C (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes [Docket No. 2001–NM–349–AD; Amendment 39–12526; AD 2001–23–51] (RIN: 2120–AH54) received December 14, 2001, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.


5034. A letter from the Deputy Secretary, Department of Defense, transmitting notification on the status of the Department's annual report on the current and future military power of the People's Republic of China; jointly to the Committees on Armed Services and on Appropriations.

5035. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report on the Progress made toward the establishment of the United States Embassy in Jerusalem and notification of suspension of limitations under the Jerusalem Embassy Act (Presidential Determination No. 2002–5; 50 C.F.R. §653.45, section 6 (109 Stat. 400)); jointly to the Committees on International Relations and Appropriations.


5037. A letter from the Executive Director, Federal Retirement Thrift Investment Board, transmitting a proposed bill to amend the Federal Employees Retirement System Act of 1986; jointly to the Committees on Government Reform and the Judiciary.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. SHERMAN (for himself, Mr. MALONEY of Connecticut, Mr. WAXMAN of New Jersey, Mr. CHESNUTT, Mr. McNULTY, Mr. FROST, Mr. KUCINICH, and Mr. HOEFFEL), a bill to establish a National Foundation for the Study of Holocaust Assets; to the Committee on Financial Services.

By Mr. THOMAS (for himself, Mr. CRANE, and Mr. DREIER), a bill to provide for the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of the Russian Federation; to the Committee on Ways and Means.

By Mr. OSULLOHERN, a bill to transfer the State of California certain Federal land in Yolo and Solano Counties, California, to provide for the establishment of a wildlife area on that land, and for other purposes; to the Committee on Resources.

By Mr. MENENDEZ (for himself, Mr. GEPHARDT, Mr. HARKIN, Mr. SCOTT, Mr. SKELTON, Mr. BORSKI, Mr. PASCHELL, Mr. BISHOP, Mrs. TAUSCHER, Mr. TURNER, Mr. CONROY, Mr. MILLER, Mr. GALLARD, Mr. HONDA, Ms. JACKSON–LEE of Texas, Ms. FELOSI, Ms. DELAURO, Mr. CONNORS, Mr. TIDWELL, Mr. UDALL of New Mexico, Mr. ISRAEL, Mr. BACA, Mr. LARSON of Connecticut, Mr. BERMAN, Mr. THOMPSON of California, Ms. KAPUR, Mrs. CHRISTENSEN, Mr. HOEFFEL, Ms. MILLER, Mr. MALONEY of California, Mr. SHERMAN, Mr. LANTOS, Mr. ORTIZ, Ms. BEIKLY, Ms. McCARTHY of Missouri, Mr. HASTINGS of Florida, Ms. KILPATRICK, Mr. HOFF, Mr. GREEN of Texas, Mr. OWENS, Ms. LEE, Mr. ACEVEDO–VILA, Mr. JACKSON of Illinois, Mr. ROTHMAN, Mr. SANDLIN, Mr. CRUZ, Mr. KOCH, Mr. MALONEY of New York, Mrs. CAPPS, Mr. REYES, Mr. ALLEN, Mr. WYNN, Mr. RODRIGUEZ, Mr. BALDACCI, Mr. FARR of California, Mr. LANGVIN, Mr. DELAHUNT, Mr. UDALL of Colorado, Mr. HINOJOSA, Mr. MCMURTRY, Mr. TOWNSEND, Mr. ORTIZ, Mr. MORAN, Mr. MOGGIN, Ms. WOOLSEY, Mr. STUPAK, Mr. ENGEL, Mr. LARSEN of Washington, Ms. SCHAKOWSKY, Mr. PASCOUT, Ms. SANCHEZ, Mrs. McCArTHY of New York, Mr. FATTAH, Mr. BARCIA, Ms. MCCOLLUM, Mr. ETHERRIDGE, Mr. SCHIFF, Mr. LYNCH, Mr. HENEGH, Mr. DAVIS of Illinois, Mr. FRANK, Mr. MALONEY of Connecticut, Mr. CARDIN, Mrs. LOWEY, Mr. HOLDEN, Mr. SERRANO, Mr. DURKS, Mr. SAJO, Mr. McGovern, Mr. HEAL of Massachusetts, Mr. OLVER, Ms. HOOLY of Oregon, Mr. MORAN of Virginia, Mr. CLYBURN, Mr. UNDERWOOD, Mr. LAMPSH, Mr. FREES of North Carolina, Mr. LIPINSKI, Mr. CRAMER, Mr. PALOMAVARIA, Mrs. JONES of Ohio, Mr. THURMAN, Mr. ACKERMAN, Mr. HOYER, Mr. CUMMINS, Mr. DEUTCH, Mr. BRADY of Pennsylvania, Mr. KENNEDY of Rhode Island, Mr. PALLONE, Mr. KUCINICH, Mr. BLAGOJEVICH, Mr. FORD, Mr. THOMPSON of Mississippi, Ms. SLAUGHTER, Mr. FROST, Mr. CARSON of Indiana, Mr. BAIRD, and Mr. SAWTEN)

H.R. 3556. A bill to require the President to prepare for, and respond to the threat of terrorism in America, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure, Education and the Workforce, Government Reform, Ways and Means, and the Committees on International Relations, Intelligence (Permanent Select), Financial Services, and the Judiciary, for a period to be subsequently determined by the Speaker, and in the case of a discrete matter, to such provisions as fall within the jurisdiction of the committee concerned.

By Ms. WATERS (for herself and Mr. MICA)

H.R. 3556. A bill to prohibit assistance for Afghanistan unless the national government of Afghanistan undertakes efforts to control illegal drugs in Afghanistan, and for other purposes; to the Committee on International Relations.

By Mr. THOMAS:

H.R. 3557. A bill to repeal the antidumping provisions contained in the Act of September 18, 1916, to the Committee on the Judiciary.

By Mr. PALLONE, Mr. GILCHREST, and Mr. UNDERWOOD

H.R. 3558. A bill to protect, conserve, and restore native fish, wildlife, and their natural habitats on Federal lands through cooperative, incentive-based grants to control, mitigate, and eradicative harmful nonnative species, and for other purposes; to the Committee on Resources.

By Mr. VISCLOSKY (for himself and Mr. QUINN)

H.R. 3559. A bill to amend the Emergency Steel Loan Guarantee Act of 1999 to revise eligibility and other requirements for loan guarantees under that Act, and for other purposes; to the Committee on Financial Services.

By Mr. YOUNG of Alaska

H.R. 3560. A bill to require the use of certain vessels for laying cables and maintaining Federal submarine cables; to the Committee on Armed Services, and in addition to the Committee on Transportation and Infrastructure, 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.

By Mr. LINDER (for himself, Mr. DEAL of Georgia, and Mr. CALVERT):
H.R. 3561. A bill to establish the Twenty-First Century Policy Commission; to the Committee on Resources, and in addition to the Committee on Transportation and Infrastructure: To be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ACKERMAN: H.R. 3562. A bill to amend title 49, United States Code, to authorize the Under Secretary for Transportation for Security to establish a program to permit Federal, State, and local law enforcement officers to be trained to participate in the Federal air marshals program, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. DELEON: H.R. 3563. A bill to promote and facilitate expansion of coverage under group health plans, and for other purposes; to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, 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.

By Mr. BARR of Georgia: H.R. 3564. A bill to authorize the limited use of Federal funds absent a war declared by Congress in cases arising out of acts of international terrorism committed in the United States; to the Committee on the Judiciary, and in addition to the Committee on Armed 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.

By Mr. BARRETT: H.R. 3565. A bill to amend title XIX to include a geographic cost-of-practice index value for payments furnished under the Medicaid Program; to the Committee on Energy and Commerce.

By Mr. BEREUTER (for himself, Mrs. MYRICK, Mr. CRAMER, Mr. GRAHAM, Mr. SPARR, Mr. BROWN of South Carolina, Mr. KEINS, Mr. HAYES, Mr. EVANS, Mrs. KAPTUR, Mr. ENGLISH, and Mr. TURNER): H.R. 3571. A bill to amend the Tariff Act of 1930 to provide for an expedited antidumping investigation in the event of material injury from new suppliers after an antidumping order has been issued, and to amend the provision relating to adjustments to export price and calculated price; to the Committee on Ways and Means.

By Mr. BURREY of North Carolina (for himself and Ms. ESHOO): H.R. 3572. A bill to amend title XVIII of the Social Security Act to provide for coverage of remote monitoring services under the Medicare Program; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, 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.

By Mr. CAMP (for himself, Mr. FOLLEY, and Mr. WITTMER): H.R. 3573. A bill to amend the Internal Revenue Code of 1986 to modify certain rules applying to employees employed in the entertainments industry; to the Committee on Ways and Means.

By Mr. COYNE: H.R. 3574. A bill to amend the Internal Revenue Code of 1986 to change the calculation and simplify the administration of the earned income tax credit; to the Committee on Ways and Means.

By Ms. DUNN: H.R. 3575. A bill to amend the Internal Revenue Code of 1986 to repeal the disallowance provisions of the marital deduction where the spouse is not a United States citizen for purposes of estate and gift taxes; to the Committee on Ways and Means.

By Mr. LEOMAVAEVAEGE: H.R. 3576. A bill to provide that American Samoa hold a primary election when more than 2 eligible individuals file for candidacy to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KLECZKA (for himself and Mr. STARK): H.R. 3588. A bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program of substitute adult day care services; to the Committee on
Ways and Means, and in addition to the Committee on Energy and Commerce, 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.

By Mr. LEWIS of Kentucky:
H.R. 3586. A bill to amend the Internal Revenue Code of 1986 to clarify the limited exception from the tax-exempt bond arbitrage rebate requirement; to the Committee on Ways and Means.

By Mr. MALONEY of Connecticut:
H.R. 3587. A bill to amend title 10, United States Code, to provide for the award of a medal called the "Cross of the Purple Heart" to members of the Armed Forces who, while on active duty, suffered a qualifying injury or illness in connection with combatant activities during 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.

By Mr. MALONEY of Connecticut:
H.R. 3588. A bill to provide bonus funds to local educational agencies that adopt a policy to promote; to the Committee on Education and the Workforce.

By Mr. MALONEY of Connecticut:
H.R. 3589. A bill to direct the Secretary of Health and Human Services to award grants to eligible entities to implement and evaluate demonstrations of models and best practices in nursing care and to develop innovative solutions to ensure the availability of registered nurses, to the Committee on Energy and Commerce.

By Mrs. MALONEY of New York:
H.R. 3590. A bill to require operators of electronic marketplaces to disclose the ownership and financial arrangements of such marketplaces, to participate in the Credit Card Accountability, Responsibility, and Transparency Act of 2009; to the Committee on Transportation and Infrastructure.

By Mr. MOORE (for himself and Ms. HART):
H.R. 3592. A bill to reduce the impacts of hurricanes, tornadoes, and related natural hazards through a program of research and development, and for other purposes; to the Committee on Transportation and Infrastructure, 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.

By Mr. NADLER:
H.R. 3593. A bill to extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of the states of Hawaii and New Mexico; to the Committee on Ways and Means.

By Mr. ROTHMAN (for himself, Mr. CROWLEY, Mr. ENGEL, Mr. STARK, Mr. BLAGOJEVICH, Mr. CAPUANO, Mr. UDALL of New Mexico, Ms. HOOLIK of Oregon, Ms. SCHAKOWSKY, Ms. SLAUGHTER, Mr. MORAN of Virginia, Mr. OWENS, Mrs. CHRISTENSEN, Mrs. JONOSA of Wisconsin, Mr. JOHNSON of Kentucky, Mr. SOLIS, Mrs. CAPP, Mr. PALLONE, Mr. WEXLER, Mr. HOLT, and Mrs. MINK of Hawaii); H.R. 3593. A bill to amend Federal crime grant programs relating to domestic violence to encourage States and localities to implement gun confiscation policies, reform stalking laws, and increase access to domestic violence courts, and hire additional personnel for entering protection orders, and for other purposes; to the Committee on the Judiciary.

By Mr. RYAN of Wisconsin (for himself and Mr. GREEN of Wisconsin): H.R. 3594. A bill to extend the 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.

By Mr. SLAGA (for herself, Mr. HINCHRY, Mr. DEFAZIO, and Mr. MALONEY of New York): H.R. 3595. A bill to prohibit the Secretary of Defense from purchasing equipment containing electronic components that are not manufactured in the United States; to the Committee on Armed Services.

By Mr. SMITH of Michigan (for himself and Mr. WELLN of Pennsylvania): H.R. 3596. A bill to amend title 10, United States Code, to provide for the conveyance of certain property in the State of Alaska to the United States Government; to the Committee on Armed Services.

By Mr. SMITH of Mississippi (for himself, Mr. SCOTT, Mr. GEE of Wisconsin, Mr. EDWARDS, Mr. NADLER, and Mr. KIRK): H.R. 3597. A bill to promote charitable giving, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, 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.

By Mr. TANCREDO (for himself, Mr. GOODE, Mr. DRAL of Georgia, Mr. HAYWORTH, and Mr. SCHAFFER): H.R. 3598. A bill to establish a National Border Security Agency; to the Committee on Government Reform, and in addition to the Committees on the Judiciary, Transportation and Infrastructure, and Ways and Means, 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.

By Mr. TANCREDO (for himself, Mr. UPSON, Mrs. CAPP, Ms. MILLICENT-McDONALD, Mr. WAXMAN, Mr. LEWIS of Georgia, Mr. ABECROMBIE, Mr. RUSH, Mr. LIGCH, Mr. BALDACCI, Mr. RIVERS, Mrs. MORELLA, Mr. THOMPSON of Mississippi, Mr. PALLONE, Mr. HINCHRY, Mrs. LOWE, Mrs. MALONEY of New York, Mr. PRICE of North Carolina, Mr. UDALL of New Mexico, Mr. OXLEY, Mr. GILLMOR, Mr. KENNEDY of Rhode Island, Mr. BARR, Mr. SULLIVAN, Mr. OWENS, Mr. MOORE, Mr. STRICKLAND, Mr. THOMPSON of California, Mr. WINER, Mr. DAVIS of Illinois, Mr. HILLIARD, Mr. MCNULT, Mrs. MCCARTHY of New York, Mr. McGOV- EEN, Mr. KILPATRICK, Mr. ROYBAL-ALABAMA of Alabama, Mr. H.-H.R. 3602. A bill to amend title XVIII of the Soical Security Act to provide for reimbursement of certified midwif services, to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, 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.

By Mr. VITTER: H.R. 3603. A bill to amend the Internal Revenue Code of 1986 to provide a refundable credit of $500 to public safety volunteers; to the Committee on Ways and Means.

By Mr. VITTER: H.R. 3604. A bill to amend title 10, United States Code, to improve the ability of students at institutions of higher education to enroll in units of the Senior Reserve Officer Training Corps; to the Committee on Armed Services, and in addition to the Committee on Education and the Workforce, 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.

By Mr. VITTER: H.R. 3605. A bill to amend title 44, United States Code, to provide for the suspension of fines under certain circumstances for first-time paperwork violations by small-business concerns; to the Committee on Government Reform, and in addition to the Committee on Small Business, 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.

By Mr. WALDEN of Oregon:
H.R. 3606. A bill to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes; to the Committee on Resources.

By Ms. WATERS: H.R. 3607. A bill to amend the Truth in Lending Act to strengthen protections and prevent predatory loan practices, and for other purposes; to the Committee on Financial Services.

By Mr. YOUNG of Alaska:
H.R. 3608. A bill to provide for the conveyance of certain property in the State of Alas- ka, and for other purposes; to the Committee on Resources, and in addition to the Com- mittee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provi- sions as fall within the jurisdiction of the committee concerned.

By Mr. YOUNG of Alaska (for himself, Mr. TAUSIN, Mr. PETRI, Mr. BARTON of Texas, Mr. GRASM, Mr. SANDLIN, Mr. CARSON of Oklahoma, and Mr. HALL of Texas): H.R. 3609. A bill to amend title 49, United States Code, to enhance the security and safety of pipelines; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, 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.

By Mr. ARMED: H.J. Res. 80. Joint resolution authorizing the President to convene the sixty-second session of the One Hundred Seventh Congress; considered and passed.
By Mr. ISTOOK (for himself, Mr. ABERHOLTZ, Mr. AKIN, Mr. ARMSTRONG, Mr. BAKER, Mr. BALLenger, Mr. BARR of Georgia, Mr. BARTLETT of Maryland, Mr. BASS, Mr. BASS of Texas, Mr. BACHUS, Mr. BERBERET, Mr. BROWN of South Carolina, Mr. BURTON of Indiana, Mr. CALVET, Mr. COMBEST, Mr. CRANE, Mr. CRAWFORD of Alabama, Mr. DEAL of Georgia, Mr. DEMINT, Mr. DOLLITTLE, Mr. DUNCAN, Mrs. EMERSON, Mr. EVERTT, Mr. FORBES, Mr. GANDRICH, Mr. GOODE, Mr. GRAHAM, Mr. GRAVES, Mr. GRUCCI, Mr. HALL of Texas, Mr. HANSER, Ms. HART, Mr. HAYES, Mr. HAYWORTH, Mr. HARLEY, Mr. HUNTER, Mr. JONES of Texas, Mr. KERR, Mr. KINGSTON, Mr. LARGENT, Mr. LEE of Kentucky, Mr. LINDER, Mr. LIPINSKI, Mr. MCJUNKIN, Mr. MYRICK, Mr. OXLEY, Mr. PENCE, Mr. PETRIN of Pennsylvania, Mr. PICKERING, Mr. PITTS, Mr. POMBO, Mr. RAHALL, Mr. RILEY, Mr. RYUN of Kansas, Mr. SCHAFER, Mr. SHOWS, Mr. SHUSTER, Mr. SMITH of New Jersey, Mr. SMITH, Mr. TAYLOR, Mr. TAYLOR of Texas, Mr. THIBODEAUX, Mr. THOMAS, Mr. THOMAS of New York, Mr. THOMPSON of Mississippi, Mr. BONO, and Ms. EDDIE BERNICE JOHNSON of Texas).

By Mr. BARR of Georgia (for himself, Mr. BACHUS, Mrs. JO ANN DAVIS of Virginia, Mr. GOODE, and Mrs. MYRICK).

By Mr. BARR of Georgia (for himself, Mr. BACHUS, Mrs. JO ANN DAVIS of Virginia, Mr. GOODE, and Mrs. MYRICK).

H. Con. Res. 296. Concurrent resolution urging the President to negotiate a new base rights agreement between the United States and the Republic of the Panama in order for United States Armed Forces to be stationed in Panama for the purposes of defending the Panama Canal Zone and the Panama Canal to the Committee on International Relations, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in which case the resolution for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HOEKSTRA (for himself and Mr. MANZULLI of Virginia).

H. Con. Res. 297. Concurrent resolution recognizing the historical significance of 100 years of Korean immigration to the United States to the Committee on Government Reform.

By Mr. ISRAEL:

H. Con. Res. 298. Concurrent resolution expressing the sense of the Congress that State and local officials should designate school nurses as “first responders” and remove any legal or ARMY barriers that would impede school nurses from responding to a biological or chemical attack; to the Committee on Energy and Commerce.

By Ms. MCCARTHY of Missouri (for herself, Ms. MCCOLLUM, Mr. BERGER, Mrs. LEW, Mr. BLUMENAUER, Mr. GUTENKNETT, Mr. KENNEDY of Minnesota, Mr. PETRINSON of Minnesota, Mr. LUTHER, Mr. SKELTON, Mr. THIET, Mr. MOORE, Mr. MORAN of Kansas, and Mr. SABO):

H. Con. Res. 299. Resolution encouraging more revenue sharing among major league baseball teams as an alternative to team eliminations; to the Committee on Energy and Commerce.
H.R. 3412: Mr. Skeen, Mr. Forbes, Mr. Saxton, and Mr. Rohrabacher.
H.R. 3414: Mrs. Thurman.
H.R. 3415: Ms. Schakowsky.
H.R. 3424: Mr. Rogers of Michigan, Mr. Tausin, Mrs. Wilson of New Mexico, Mr. Mascara, Ms. Schakowsky, Mr. Lewis of Kentucky, Mr. Vitter, Ms. Lofgren, and Mr. Weldon of Pennsylvania.
H.R. 3429: Mr. Kerens and Mr. Simmons.
H.R. 3435: Ms. Kilpatrick and Mr. Underwood.
H.R. 3443: Mr. Wicker, Mr. Sam Johnson of Texas, and Mr. Faleomavaega.
H.R. 3464: Mr. DeFazio, Ms. Eddie Bernice Johnson of Texas, Mr. Schiff, and Ms. Solis.
H.R. 3478: Mr. Kerens.
H.R. 3479: Mr. Graves, Mr. Stupak, and Mr. Hobson.
H.R. 3498: Mr. Faleomavaega and Mr. Lipinski.
H.R. 3501: Ms. Eshoo.
H.R. 3505: Mr. George Miller of California.
H.R. 3511: Mr. English.
H.R. 3514: Mr. Frost.
H.R. 3524: Ms. Millender-McDonald.
H.Con. Res. 30: Mr. Forbes.
H.Con. Res. 32: Mr. Goodlatte.
H.Con. Res. 220: Mr. Akin.
H.Con. Res. 285: Mr. Thompson of California, Ms. Solis, and Mr. Capuano.
H.Res. 281: Ms. Solis.
H.Res. 300: Ms. McCarthy of Missouri.
H.Res. 302: Mr. Combest, Mr. Baca, Mr. Bryant, Mr. Shaw, and Mr. Manzullo.
H.Res. 313: Mr. Neal of Massachusetts, and Mr. Stark.
H.Res. 325: Mr. McNulty, Mr. Fossella, and Ms. Velazquez.
The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska.

PRAYER
The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear Father, sovereign of this Nation, we press on with the work of the Senate with the message and meaning of this sacred season in our hearts. Although the Senators worship You in different liturgies based on their religious backgrounds, they all believe in You as sovereign of this Nation. Help them and their staffs work together in a way that exemplifies to our Nation that people who trust in You can trust one another; that people who experience Your goodness can be people of good will. May this historic Chamber be a place of creative exchange of insight that leads to greater unity around shared convictions about what is best for America. You are here listening, watching, judging. When we end this week, may we hear Your affirmation: "Well done, you have pulled together for the sake of America." Amen.

PLEDGE OF ALLEGIANCE
The Honorable E. BENJAMIN NELSON led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE
The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,

To the Senate:
Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable E. BENJAMIN NELSON, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. NELSON of Nebraska thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME
The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002—CONFERENCE REPORT
The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to consideration of the conference report to accompany H.R. 3061 which the clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3061) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2002, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment and the Senate agree to the same, signed by all conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of Wednesday, December 19, 2001.)

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the time that has been assigned run equally against all parties during this time. There is no one here on the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOTICE
Effective January 1, 2002, the subscription price of the Congressional Record will be $422 per year or $211 for six months. Individual issues may be purchased for $5.00 per copy. The cost for the microfiche edition will remain $141 per year with single copies remaining $1.50 per issue. This price increase is necessary based upon the cost of printing and distribution.

Michael F. DiMario, Public Printer

This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Mr. REID. Mr. President, I didn’t want this morning to disturb the mood of our last day here. Therefore, I didn’t do anything about the message delivered from the House of Representatives. When she came in and bowed—and I appreciate the dignity that creates here—I had a big smile on my face. I wrote on my pad here “laughter,” because it is laughable.

A stimulus package now? What in the world are they trying to do in the House of Representatives? They are going home at 1:30 this afternoon. Did they think, after we worked on this so long and hard, we are going to accept that in the Senate? It makes the original bill they did that was so bad look good.

So I hope the American public understands the charade. That is what it is. The House of Representatives, including our nationally celebrated economists, have laid forth a stimulus package strictly for political purposes. It has no substantive merit whatsoever. They knew that, and they know it has no chance of passing over here. That is to bad.

We started out with a stimulus package that made sense. Senator Byrd and I wanted to do something to create jobs. We knew that for every billion dollars spent on road building, 42 thousand jobs are created, and those 42 thousand people need food and drink and buy refrigerators and cars. The Republicans would not go along with that. We were always attempting to protect the American worker—their unemployment benefits, health benefits.

Because of the very narrowminded of the Republican House of Representatives, we are unable to do anything. That is too bad. I am disappointed that we have, on the last day of the session, the House of Representatives. That is what it is—a silly package.

COMPLIMENTING SENATOR HARKIN

Mr. REID. Mr. President, changing the subject for a minute, while I still have the floor, I have spent 2 or 3 weeks with the Senator from Iowa on the farm bill. He has done a wonderful job getting the bill out of committee, trying to satisfy the disparate groups throughout America that have farm interests. He has done that. Again, because of a filibuster, he was unable to bring the bill forward. He is here again today as chairman of the Labor-HHS Appropriations Subcommittee, which is, other than Defense, the biggest money-spending bill we have.

There are so many important provisions for the State of Nebraska and every State in our Nation. I hope people in Iowa understand what a resource they have in Tom Harkin, chairman of the Agriculture Committee, chairman of the Labor-HHS Appropriations Subcommittee, a great senior member of the Appropriations Committee. I didn’t have a chance, because of the parliamentary situation in the
last few days, to say anything complimentary about my friend. I want him to understand, on behalf of the entire Democratic caucus, how much we appreciate what he does. He is a resource that is invaluable to the Senate and to this country.

Mr. HARKIN. I thank my friend from Nevada for the very kind words. I, again, thank him for all of his great support and help as we tried to get the farm bill through, but it was stopped by the other side. I thank my friend from Nevada for his great help on getting our appropriations bill through.

As Senator Reid said, this is the second largest appropriations bill—second only to Defense. But what is important is that this is the appropriations bill that binds our country together. This is the bill that makes America unique in the world. This is the appropriations bill that says to every kid in America: No matter where you are born, no matter the circumstances of your birth, you are going to get a good education; we are going to put the resources out there. No matter what your resources are, we are going to get you the funds you need to go to college, or for job training if you don’t want to go to college.

This provides the underpinning of our medical research. This bill underpins the health care of America in so many ways. This is the bill that provides all of the support for our jobs, our Job Corps, our training programs, all of the worker training programs that come through the Department of Health. This is the bill that covers the Department of Education, the Department of Health and Human Services, and the Department of Labor, and all biomedical research.

So I am very proud and I feel very privileged to be a Senator, but also to be on the Appropriations Committee and to chair this subcommittee that I believe in so much about what America really is. I am also on the Defense Appropriations Subcommittee. That is the committee that defends our interests around the globe. This is the subcommittee that makes America what it is in the world community—unique among nations.

I am proud and privileged to bring to the Senate Chamber this morning the conference report on the Labor, Health and Human Services, Education and related agencies Appropriations Bill. First, I thank my good friend and longtime partner in this effort, Senator SPECTER. We have had a great partnership for a number of years. Some time ago, I was chairman of this subcommittee, and he was my ranking member. Then when the other party took control of the Senate, he became chairman and I was ranking member. Now I am chairman again and he is ranking member again. We have had a great partnership, going back now just about 20 years. I thank him and his staff, who I will name after a bit, for helping put together this bill on a truly bipartisan basis.

The conference report is a good bill. It is one I can strongly recommend to my colleagues. Senator SPECTER and I worked with our subcommittee members, the House leaders, Congressmen OBSLEY and REGULA, to help shape it. We have done our best to accommodate the literally thousands of requests we have received from our colleagues.

I wish to highlight some of the main features of our conference report. First, it takes a number of important steps to improve quality, affordability, and accessibility of health care in America. We included a record increase for the National Institutes of Health of $3 billion—again, building upon the excellent work done when Senator SPECTER chaired this subcommittee, in meeting the stated goal of the Congress to double NIH funding over 5 years. So we put a record $3 billion into this bill for NIH.

We have also combined with that an additional approximately $200 million for NIH in South Dakota, to help prevent bioterrorism, which is included not in this bill but in the supplemental appropriations bill. This keeps us on track in doubling our commitment. This action holds the hope of improving the lives of millions of people affected by killers such as Alzheimer’s, cancer, Parkinson’s, heart disease, diabetes, osteoporosis, and so many other things.

The conference agreement also makes a major improvement in access to affordable health care by providing a $175 million increase to community health centers and major increases in critical prevention activities, such as cancer and heart disease screening. These changes will save lives and improve health around the country.

As a Senator from Iowa and cochair of the Rural Health Caucus of the Senate, I am pleased to report that the agreement includes a major new effort to improve health care in rural areas and small towns.

We will bring more doctors, nurses, and other health professionals to places they are needed by expanding the National Health Service Corps and the Nurse Loan Repayment Program. Our struggling rural hospitals are given help to deal with Medicare paperwork and help to expand into other activities, such as adult daycare.

This agreement also includes substantial new resources to improve education. While I am disappointed that additional funds were not provided by beginning to fully fund special education as a part of the education reform bill, I believe we did a good job with the resources we were provided.

The agreement makes college more affordable for millions of young people by increasing the Pell grant maximum to $4,000. We increase the TRIO Program by $72.5 million, which brings total funding for the TRIO Program to $802 million.

The bill also increases funding for title I reading and math by $1.6 billion for a total of $10.35 billion to title I.

We increase afterschool programs by $154 million. We finally broke the $1 billion threshold. We provide for $1 billion in afterschool programs.

We increase the funding for teacher quality by three-quarters of a billion dollars. The total we have in this bill for teacher quality is $2.85 billion.

The Senate bill contained nearly $1 billion when we passed it to make needed repair to our schools, including security enhancements. We increased this initiative last year. It has been a great success. I am very disappointed we could not reach an agreement to continue it this year. However, I have made it clear that I will bring the issue back again next year. We have schools crumbling all over America, and I think it is a legitimate role for the Federal Government to play to help our States and local communities repair, rebuild, and modernize their schools to make them adaptable for the 21st century. The average age of our schools now is well over 40 years, many 50 years old and over 75 years old. They need to be upgraded. They need to be modernized. Our property-tax payers in my State and I know that if the building is not secure, if the Officer’s State are overburdened as it is. Property tax is not a real reflection of one’s ability to pay, and yet that is still how we fund the rebuilding of our schools across America.

The bill started on this last year. I am disappointed we could not continue it this year, but hopefully we will be back again next year to meet that need.

I am also pleased this agreement improves our community workforce training and safety. We funded our State unemployment offices to handle the increased caseloads they are facing now and probably will face for the remainder of the winter. At this time of economic downturn, these investments are crucial.

I wish to highlight a substantial initiative in this bill to improve services to our Nation’s elderly. We will allow more homebound people to receive Meals on Wheels. We provide a major increase in services, such as adult daycare, to help the elderly stay in their own homes and to give their loved ones who are taking care of them needed respite care and support.

Finally, our subcommittee held a series of four hearings on the need to better protect Americans from the threat of bioterrorism. Based on these hearings, Senator SPECTER and I put together a comprehensive antibioterrorism funding plan.

While the agreement before us contains a modest level of funding to address this need, our comprehensive $3 billion plan is included in the home health and long-term care provision. We will work on later today on the Defense appropriations bill. Between the two, we will be substantially improving the security of Americans against a bioterrorist attack. For the record, in the bioterrorism supplement, we have provided $655 million to expand State and local public health capacity, to expand the health alert network, and for
round-the-clock disease investigators in every State.

We provided $512 million to acquire enough smallpox vaccine for every American, and hopefully the smallpox vaccine will be available for every American sometime towards the end of next year, maybe as early as September of next year.

We included $593 million to beef up our entire vaccine stockpile in America; $135 million to help our hospitals with surge capacity. If, God forbid, we did have a terrorist attack, our hospitals in so many areas just would not be able to handle it. We have provided $135 million that will help hospitals meet that surge capacity if they require it.

We provided $155 million to improve vaccine research and lab capacities at NIH. And we included up to $10 million for a new national tracking system for deadly pathogens such as anthrax. Right now, we track every microscopic ounce of material that is in our powerplants, in our laboratories, and weapons. We keep a good inventory and tracking system of radioactive nuclear materials, but we do not have such a capacity with our deadly pathogens, which with anthrax.

It now looks as though the anthrax that was sent to Senator Daschle’s office and Senator Leahy and others that came through the mail originated in this country. There are all kinds of stories of it coming through Fort Detrick, MD, and Dugway in Utah, but no one knows because we have never had in place an inventory and tracking system for deadly pathogens. The money we appropriated will begin the process of making sure this situation does not happen again.

We put in $71 million to improve security at our Nation’s laboratories.

That is all the money we put into the bioterrorism portion of the bill which will help beef up our Defense appropriations bill later today.

I believe we have a good bill of which we can be proud. It is the product of a bipartisan compromise. As I said, it is not perfect. Some of us wanted different provisions. I wish we could have kept the money in for school construction, but that is the legislative process. We had good bipartisan cooperation in getting to the end result.

I close by thanking my chairman, Senator Harkin, for his support and for the excellent leadership he has provided to make this bill and the bioterrorism package possible. I thank our ranking member, Senator Stevens. Again, at every step of the way he has been a strong supporter and has made sure we received the necessary allocations for our bill.

Finally, this bill, as I said earlier, would not have been possible without the tireless and outstanding staff work. Our Appropriations Committee and now our Appropriations Subcommittee has the responsibility to make sure that Americans’ lives are worth living, whether it is education, health care or a commitment to labor. Time and again Senator Harkin and Senator Specter and the staffs have put into it. I am going to be an anxious supporter of this bill.

I have been fortunate to have served 12 years on the House Appropriations Committee and now 3 years on the Senate Appropriations Committee, but my dream to be on this Appropriations Subcommittee is still yet to be realized. I hope someday to make it because I think it is most important and certainly reflects your hard work has made it to the bill that will be considered on what may be the last day.

VERIFICATION OF PERSONAL IDENTITY

Mr. DURBIN. Ten minutes.

Mr. HARKIN. I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois?

Mr. HARKIN. How much time does the Senator desire?

Mr. DURBIN. Ten minutes.

Mr. HARKIN. I noticed Senator Inouye on the floor of his party is calling the Chair. I yield to the Senator from Florida.

Mr. DURBIN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Senator from Florida?

Mr. DURBIN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Senator from Florida?

Mr. DURBIN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Senator from Florida?

Mr. DURBIN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Senator from Florida?

Mr. DURBIN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Senator from Florida?

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The PRESIDING OFFICER. The Senator from Florida?

Mr. DURBIN. Thank you, Mr. Chairman.

The PRESIDING OFFICER. The Senator from Florida?

Mr. DURBIN. Thank you, Mr. Chairman.

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The PRESIDING OFFICER. The Senator from Florida?
residency from anyone. In fact, any foreign tourist could walk into a motor vehicles office, fill out a form on his own, and get one.

I am certainly not asserting that the September 11 attacks would have been avoided if the terrorists not had these driver's licenses. Clearly, there is little direct connection between the cards these evil men carried and the ungodly deeds that they carried out.

But what these driver's licenses—which came from the most widely used form of personal ID in the country—gave these terrorists was the cover of legitimacy that allowed them to walk around and mingle into American society without being detected.

A driver's license is a key that opens many doors. In America, anyone who can produce a valid driver's license can access just about anything.

It can get you a motel room, membership in a gym, airplane tickets, flight lessons, and even buy guns—all without anyone ever questioning you about who you are. If you can produce a driver's license, we just assume that you are legitimate, and you have a right to be here.

I realize that the investigations surrounding September 11 are still ongoing, but I think we can safely assume what some of the problems were that led to the vulnerability we left for the terrorists to exploit.

The terrorists took advantage of a combination of weaknesses in our intelligence, law enforcement, border patrol, aviation security, and other infrastructure that, at some point, should have been able to discover and identify these individuals as threats.

As we enhance homeland security, it is critical that we improve all of these areas. But no amount of data sharing among Federal, State, local, and international law enforcement and regulatory agencies can be useful if one of the most significant pieces of the data that they transmit back and forth is unreliable.

And today, verification of personal identification is that weakest link in the process.

Whenever someone presents identification to a government official, we must be able to rely on that ID to be sure that the person is in fact who he says he is. That is the only way to ensure accurate results when a government official inputs that person's name into various databases that agencies use.

But today, with hundreds of different forms of ID cards that are in use across the Nation and with rampant identity theft problems, it is nearly impossible to know with certainty who a person is standing before you, no matter how many ID cards they can produce.

To further aggravate the problem, one form of ID often begets another, and can help someone assume a completely false identity.

For example, a person can start with a fake driver’s license; and then pick up a fake Social Security number—this is really easy to get, and you don’t even need a photo.

With this, he can easily obtain credit cards, library cards, video rental membership cards, etc.—all genuine forms of ID based on the fake original.

To be able to critically review our Nation’s ID system, I am drafting legislation to enhance the reliability of today’s most popularly-used form of identification—the driver’s license and State ID card.

My bill addresses this problem by authorizing the Social Security Administration, Immigration and Naturalization Service, law enforcement agencies and any other sources of appropriate, relevant, real-time databases to provide motor vehicle agencies with limited access to their records.

My bill would also authorize and fund an initiative to ensure that all of these databases are compatible and can communicate with each other effectively.

Let me emphasize here that the access to the records is for the limited purpose of cross-checking and verifying individuals’ name, date of birth, address, social security number, passport number if applicable, or legal status. It is not a carte blanche access to records that could contain many confidential and sensitive and private information.

But we know that there may be unscrupulous employees in any organization, and some DMV employee, unfortunately, may be tempted to cut corners.

In order to discourage and prevent anyone from accessing these records without authorization, or use it in an unauthorized manner, my bill provides stiff penalties for any employee, agent, contractor, or anyone else who engages in unlawful access to such records.

Similarly, my bill provides for internal fraud within a department of motor vehicle where state employees access
DMV records to make fake IDs or to personally profit in any way.

My bill also encourages individuals to report any suspicious activities within such offices by providing whistleblower protection to those who uncover illegal activities.

But setting up the uniformity and data sharing are not enough to ensure security. I also want to make sure that the driver licenses and other forms of government identification cards issued by departments of motor vehicles are tamper proof so that there is no other source from which someone can obtain such a card.

It is time to stamp out the multi-billion dollar cottage industry of fake IDs.

My bill will make life miserable for those who manufacture, distribute, market, or sell fake driver’s licenses or other forms of government identification cards, by raising the stakes for those caught in the act.

Identifying the theft as a national problem, and it deserves a national response. That is why I propose to make it a Federal offense to engage in the fake ID business.

I have heard from State and local officials across the country who complain that they didn’t have sufficient tools to go after these crooks who hang out in parking lots and on the web luring people to buy fake IDs.

In most States, such offenses are dealt with in the same manner as theft of the wrist and the criminals are back on the streets eagerly trying to earn back the fines they just paid with the sale of a few more fake cards.

So I believe we need to federalize the illegal nature of this activity and go after the manufacturers, distributors, and marketers with full force of the law.

Likewise, I propose severe penalty for anyone who purchases fake IDs, obtains legitimate IDs in a fraudulent manner, or engages in any activity that misrepresents personal identification in any way by using a fake or altered government-issued ID card.

Last year, I worked with Senator Collins to pass the Internet False Identification Prevention Act of 2000 which addressed many of these problems. My bill is designed to ensure that this and other laws dealing with fake IDs which are already in the books are working or if they are not, that we find ways to ensure they are enforced against criminals.

Since September 11, all of us have been working around the clock with a singular goal: enhancing security of our homeland. I believe this bill will help us seal some of the cracks in our internal security systems, and I urge my colleagues to join me in this effort.

As chairman of the Governmental Affairs’ Subcommittee on Oversight of Government Management, I will be holding a hearing when we return from the holidays to address this problem.

The PRESIDING OFFICER. Who yields time?
It is long past time to end this unjust discrimination. Unfortunately, we have just suffered a serious setback in the ongoing battle for the rights of the mentally ill. The House Republican leadership has blocked passage of the Domenici-Waxman Mental Health Equitable Treatment Act, which assures fair health insurance coverage of mental illness for the millions of Americans who must live with depression, post-traumatic stress, anorexia, and other mental illnesses. This bill was approved by the Senate Health, Education, Labor, and Pensions Committee last month on a unanimous vote. It passed the Senate without a word of opposition. This success was achieved by the skilled leadership and hard work of the bipartisan team of Senator Paul Wellstone and Senator Pete Domenici.

That bill deserved to become law this year, but the House Republican leadership has refused to act. Three House committees have jurisdiction over parts of this legislation, but none has held a markup. Not one has held a single day of hearings. Now, operating behind the closed doors of the conference committee, the House Republican leadership has again struck the amendment which the Senate added to the Labor, Health and Human Services Appropriations bill to achieve this essential goal.

The House leadership has bowed to the pressure of insurers and big business, at the peril of the health of millions of Americans. This legislation has the support of the American people. It has the support of a broad bipartisan majority of the Congress. It is cosponsored by 65 Members of the Senate. Over 240 Members of the House have signed a letter urging the House leadership to accept the Senate mental health parity amendment as part of the appropriations bill. The collective will of Congress has been flagrantly disregarded.

The message of the opponents on this basic issue is the same message of delay and denial that has been such a shameful blot on our national history when it was applied to African-Americans, to women, to the disabled, and to the elderly.

One of the most disappointing things about this first session of Congress has been the apparent retreat from the principles of equality and nondiscrimination.

On the education bill, the Congress failed to provide needed funding for IDEA. The Congress retreated from the commitment made a quarter of a century ago to assure that every child with disabilities would have a fair and equal chance for a quality education. Today, Congress has once again retreated on a basic question of civil rights and nondiscrimination—fair treatment for the mentally ill.

As a member of Congress who has been involved in these struggles to end discrimination throughout my career, I know that the American people understand that discrimination against any American diminishes all Americans. They understand that discrimination is not only a denial of our brotherhood as human beings, it denies our country the ability to benefit from the talents and contributions of all our citizens.

Surely, the cowardly patriotism in the struggle against the common enemy of terrorism is the wrong time to retreat from our basic American ideals.

Equal treatment for the mentally ill is not just an insurance issue, it is a civil rights issue. At its heart, mental health parity is a question of simple justice.

The House Republican leadership has now succeeded in blocking action for this session of Congress. But the battle goes on, and it will not end until true parity has been achieved once and for all. The American people understand that this battle is about justice for the mentally ill and their families. The American people understand that this battle is about justice.

Equal treatment for the mentally ill, parity in health care coverage, is a question of justice.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa?

Mr. HARKIN. Madam President, before I yield time to my good friend from Minnesota, let me again thank Senator Specter, who showed up here from the hearing in which he has been tied up.

Let me thank Senator Kennedy for his great leadership on the two areas on which he spoke. Basically, I want to speak about education. I am privileged to serve on his committee and have for almost all the time I have been in the Senate. There isn’t anyone I could even think of mentioning here in the Chamber who has devoted more of his or her life to the education of our kids and making sure they have a good quality education than Senator Kennedy of Massachusetts. It has been a privilege and honor to work with him all these years.

We have had a tough fight over the last year in reauthorizing the Elementary and Secondary Education Act. I believe we came out with a good bill, and I hope the country will move forward. But now, as I said at the time when the authorizing bill passed: We have created the authorization, now show us the money.

I think this is an appropriate time to say the President’s budget will be coming down in a couple of months, the budget for next year. The President, I know, is a strong supporter of the reauthorization of the Elementary and Secondary Education Act. It has all these requirements for schools for testing and accountability, for competition and improvement, for all the things on which we agreed. But will we have the resources? Will this President, in his budget, provide those resources to back up the authorization bills we passed? That will be the real test.

I hope this President will meet that test. I hope we get a budget from him next year that reflects those priorities. I know that on the issue of mental health parity, we had it on this bill.

As the Senator from Massachusetts said—I know Senator Wellstone will speak about it here in just a second—we had it in the bill, and it was widely supported, almost unanimously, in the Senate. It was widely supported in the House. But for some reason which I can’t really divine and understand, the House Members decided they were going to vote against it. But it was the moment in time when we could have finally gotten over this, when we finally could have provided the same access to health care for mental health problems as we do for physical health problems.

Quite frankly, I believe we have failed in this country to provide what we have been doing. We held as long as we could, but when the House decided they would not agree to it, we had to abide by that and come back to the Senate without that provision in it. It is perhaps the biggest glaring loophole in our entire approach, where we are now reporting back to the Senate.

My friend from Minnesota, Senator Wellstone, has been the leader in fighting for the people with mental health problems in this country to assure that they have the same kind of health care coverage in their policies that people have for physical health problems. He has been the leader. He has led the charge on it. I know he is not going to give up. If I know anything about Paul Wellstone, he is not going to give up on this fight. We will be back again next year. I will look to him next year for the same kind of leadership he provided this year, and for so many years in the past, for fighting for the rights of those with mental illness.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I begin by congratulating my distinguished colleague, Senator Harkin, with whom I have worked closely on the subcommittee which has the responsibility for appropriations for the Departments of Labor, Health and Human Services, and Education for many years. While I liked it better when I was chairman for 6½ years, I believe the work of the subcommittee goes on seamlessly regardless of whether Tom Harkin, my chairman, or Arlen Specter is chairman. I think Senator Harkin and I both recognize you can’t get anything done in Washington if you are not willing to cross party lines and make accommodation. So I am almost apologetically note my very deep disappointment that there has not been an agreement on a stimulus package before Congress adjourns,
There is very important funding in this bill.

The health subcommittee has taken the lead in increasing the funding for the National Institutes of Health—some $11 billion in the past several appropriations cycles. This year’s increase was $2.9 billion. Frankly, I would like to have seen more, but there were other priorities.

The mark from our Senate subcommittee was $3.4 billion. The National Institutes of Health are the crown jewels of the Federal Government—maybe the only jewels of the Federal Government. They have made marvelous strides in conquering Parkinson’s, with perhaps a slight 5 years down the road to cure Parkinson’s, Alzheimer’s, cancer, heart disease, and virtually every known malady.

Three years ago, there burst upon the scene the stem cell issue. Stem cells are extracted from embryos. Now they are working on inserting the stem cells into the brains of Parkinson’s or delay Alzheimer’s; or into the heart, or into many other parts of the body.

A controversy has arisen because some object to stem cell research because they are extracted from embryos. Embryos come from conception. But the one that is to be discarded, I think the sensible thing would be marvelous to produce life. If that could be done and use all of the embryos, that would be discarded. Embryos are created from in vitro fertilization—customarily about a dozen. Mainly three or four are used, and the balance are being discarded. If any of those embryos could produce life, I think they ought to produce life and ought not be used for stem cell production. If they are not going to produce life, why throw them away? Why not use them for saving lives?

We have put into this bill $1 billion for research on embryo adoption. Let us try to find people who will adopt embryos and take the nec- essary steps on implanting them in a woman to produce life. If that could be done and use all of the embryos, that would be marvelous to produce life.

But where those embryos are going to be discarded, I think the sensible thing to do is to use them for saving lives.

We have had in this Chamber an effort by our subcommittee and then the full committee to expand Federal funding for research on stem cells.

Right now Federal funding is permitted on centers where they have been extracted but not to extract them. My view is, that is something in which the Federal Government ought to participate, with the extensive funding available now in NIH.

On cloning, our subcommittee has held extensive hearings. With respect to education, this bill contains more than $48 billion. There is an enormous increase for Federal participation in education. Last year’s budget increased education funding by $5 billion. This year’s budget increases education funding by $8 billion more.

Not only is there additional Federal funding but, as a result of action by the Congress, we are directing more of this money to the neediest students. I have provided very extensive funding on Pell grants and on guaranteed student loans in our recognition that education is a priority second to none and a major capital investment for the United States.

On a brief personal note, education was very heavily emphasized in the Specter household, perhaps because my mother had so little of it. My father was an immigrant from Russia in 1911 and had no formal education but became very extensively self-educated. My mother only went to the eighth grade but increased her educational background on her own. But my brother and my two sisters and I have been able to share the American dream because of our educational opportunity. When the Senate talks about homeless no child behind, it is not only for children, it is for college students, adult education, and literacy training.

There is an important increase in the Department of Labor on worker safety, funding for the National Labor Relations Board, funding for the various other agencies such as Mine Health Safety Board, and OSHA.

It is my hope yet that we will resolve the critical question of ergonomics on which we await action by the Department Of Labor subcommittee. The subcommittee has held extensive hearings.

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To enable all children to develop and function at their highest potential, the agreement includes $6.5 billion for the Head Start Program, an increase of $338 million over the last year’s appropriation. This increase will provide services to 16,000 children in 49,420 classrooms and support pre-kindergarten programs.

To help provide primary health care services to the medically indigent and undeserved populations in rural and urban areas, the agreement contains $1.34 billion for community health centers. This increase represents an increase of $175.1 million over the fiscal year 2001 appropriation. These centers provide health care to nearly 12 million low-income patients, many of whom are uninsured.

Again this year, the conference placed very high priority on women’s health. Included in the amount is $26.8 million for the Public Health Service, Office of Women’s Health, an increase of $9.5 million over last year’s funding level to continue support of the program to develop model health care services for women, provide monies for a comprehensive review of the impact of heart disease on women, and to launch an osteoporosis public education campaign.

In fiscal year 2001, the Labor-HHS Subcommittee held several hearings to explore the factors leading to medical errors and received testimony from family members and patients detailing their experiences with medical mistakes. The Institute of Medicine also gave testimony and outlined findings from their recent report which indicated that 98,000 deaths occur each year because of medical errors and that these errors may cost up to $29 billion in excess health care expenditures and lost productivity each year. The conference report bill before the Senate contains $55 million to determine ways to reduce medical errors.

The agreement maintains $2 billion for the low Income Home Energy Assistance Program LIHEAP. The amount, when combined with the additional $300 million in emergency appropriations, will provide a total of $2.3 billion for LIHEAP in fiscal year 2002.

LIHEAP is the key energy assistance program for low income families in Pennsylvania and in other cold weather states throughout the Nation. Funding supports grants to states to deliver critical assistance to low income households to help meet higher energy costs.

For programs serving the elderly, the agreement includes: $357 million for supportive services and senior centers; $566.5 million for Congregate and home delivered nutrition services; and $206 million for congregate and home supportive services and senior centers.

For special education, the $8.6 billion for special education, the $8.6 billion in the agreement includes $265 million for family planning programs; $124.4 million to support the programs that provide assistance to women who have been victims of abuse and to initiate and expand domestic violence prevention programs.

For school improvement programs, the agreement includes $7.8 billion, an increase of $1.6 billion over the fiscal year 2001 appropriation. Within this amount $50 million is provided for a new state grant program for improving teacher quality. The agreement also includes $700.5 million for educational technology state grants.

For Impact Aid programs, the agreement includes $1.145 billion, an increase of $150.1 million over the 2001 appropriation. Included in the recommendation is: $50 million for payments for children with disabilities; $862.5 million for basic support payments $108 million for construction and $50 million for payments for Federal property.

For bilingual education, the agreement provides $655 million to assist in the education of immigrant and limited-English proficient students. This recommendation is an increase of $205 million over the 2001 appropriation.

For special education, the $8.6 billion provided in the agreement will help local educational agencies meet the requirement that all dis abilities have access to a free, appropriate public education, and all infants and toddlers with disabilities have access to early intervention services. The $1.2 billion increase over the FY’01 appropriation will serve an estimated 6.5 million children at the President’s amount of $1,133 per child. Also while supporting 612,700 preschoolers at a cost of $637 per child.

For student aid programs, the agreement provides $12.3 billion, an increase of $1.6 billion over last year’s amount. Pell grants, the cornerstone of student financial aid, have been increased by $250 for a maximum grant 34 million,
the work study program is held at the FY ’01 level and the Perkins loans programs is increase by $7.5 million.

The agreement includes $380 million for the Corporation for Public Broadcasting. In addition to the core amount provided for CPB, the committee will fund $25 million for the conversion to digital broadcasting.

There are many other notable accomplishments in this agreement, but for the sake of time, I have mentioned just several of the key highlights so that the nation may grasp the scope and importance of this bill.

In closing, Madam President, I again thank Senator HARKIN and his staff and the other Senators on the subcommittee for their cooperation.

I thank my distinguished colleague from Minnesota for his patience, if, in fact, he was patient.

I yield the floor. And may I note for the record that I am going to have to return to the Commerce Committee, but I will be back to carry forward on the floor consideration of the conference report.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I, first of all, say to Senator SPECTER that was very gracious. Senator SPECTER and Senator HARKIN—Senator HARKIN and Senator SPECTER—are the ones who have led us, the ones who have been the leaders on this bill. So it was important to hear Senator SPECTER and Senator HARKIN, and I yield the floor.

I am proud of what they have done, given the resources with which we had to work.

I also thank Ellen Gerrity because she is the one who has really driven, for me, and for lots of people, the mental health work. I am blessed to have her working with me. Senator DOMENICI and I are blessed to have her working with us.

On the vote which occurred 2 days ago in the conference committee, 10 House Members basically decided to eliminate the provisions of this legislation which would have ended the discrimination against people who struggle with this illness. This was the chance to end the discrimination, and they decided not to do so.

There were 67 Senators who were co-sponsors of this legislation. It passed our committee—the HELP Committee—with the leadership of Senator KENNEDY, by a 21-to-0 vote. It was unanimously accepted on the floor of the Senate. And 244 House Members called the Senate conference committee: Please, don’t block this legislation. This is an idea whose time has come. You can do something very good. You can end the discrimination against people struggling with this illness.

But the insurance companies won the day. The insurance companies lobbied furiously, and they got the House leadership to stop this. And the White House did not give us the support. No. The White House did not give us the support.

House leaders say next year they will hold hearings. They never have in the last 6, 7, 8, 9 years, but they say they will hold hearings. The White House says: We want to help next year. They could have helped this year. They could have helped now. It is not as if this discrimination just started yesterday. It is not as if we have not been working on this legislation for years. But they did not help now.

But I am confident, working with Senator DOMENICI—I am proud to work with him—that we will get their support next year. All of the groups and organizations representing all the people who struggle with this illness, and who have loved ones who struggle with this illness, will be back.

My hope is that next year there will be a thousand people who struggle with this illness and who have friends and who have loved ones with this illness who will go to the House of Representatives and get 1 inch away from these Members who have blocked this bill and say: We are not going to let you do this to us any longer. We are men and women of worth and dignity and substance, and we refuse to accept this discrimination any longer.

They argue premiums would go up, but the Congressional Budget Office said premiums would go up 0.9 percent. They say it would be too expensive, but they do not talk about the $70 billion a year that we save by getting the treatment to people who now work, who can work with more productivity, with less absenteeism, or whose children now will be in school and will not be in jail, incarcerated, and needing to receive social services help.

The Washington Post editorialized last week that “the new asylums of the 21st century” for people struggling with mental illness are the prisons. I visited some of these juvenile “correctional” facilities. I have seen these children who never should have been there.

I say to Senator HARKIN, if there had been the will of the people and establishment for people with mental illness. They decided they would not. The Mental Health Equitable Treatment Act (S. 543), supported by 67 Senators and 244 House members, was included in the Senate version of the LHHS appropriation bill, but not in the House version. Most of the 32 conferees had expressed strong support for this bill, and thus had their chance to vote their conscience and resist the enormous pressure that had been brought to bear by the business and insurance industries to kill this measure. Unfortunately, these lobbyists were joined by the House Republican Leadership and the White House to stop this bill in its tracks. They succeeded when the 10 House Republicans voted against accepting the mental health provision. Mental health parity was dropped.

House leaders are reportedly promising to hold hearings on parity for next year, and I strongly urge them to do so. I also call for no further delay to accepting the mental health provision. Mental health parity was dropped.

House leaders are reportedly promising to hold hearings on parity for next year, and I strongly urge them to do so. I also call for no further delay to accepting the mental health provision. Mental health parity was dropped.

I look forward to the day when people with mental illness will receive decent, humane, and timely health care. It will be a good day for our country.

A critical vote occurred in the Labor Health and Human Services conference committee earlier this week when 10 House members decided whether Congress would respond to the will of the people and establish treatment for people with mental illness. They decided they would not. The Mental Health Equitable Treatment Act (S. 543), supported by 67 Senators and 244 House members, was included in the Senate version of the LHHS appropriation bill, but not in the House version. Most of the 32 conferees had expressed strong support for this bill, and thus had their chance to vote their conscience and resist the enormous pressure that had been brought to bear by the business and insurance industries to kill this measure. Unfortunately, these lobbyists were joined by the House Republican Leadership and the White House to stop this bill in its tracks. They succeeded when the 10 House Republicans voted against accepting the mental health provision. Mental health parity was dropped.
working with the House to ensure that such hearings are fair and represent all those with mental illness. Mental health parity supporters on the House side have waited nine years for the authorizing committees to do just that and mental health parity legislation in the House. The White House too has expressed support for working on mental health parity legislation next year, though they had no explanation for their opposition to moving the House bill. It was very, very pleased with the bill as it was voted out of the Senate HELP committee with a vote of 21–0 on August 1, 2001. Yet, when Americans with mental illness needed the support of their President, now more than ever, he was not there for them.

Sometimes opponents claim that ending unfair limits for mental health care will cost too much, yet the Congressional Budget Office reported that the bill would increase total premium costs by only 0.9 percent. Moreover, this estimate does not even take account the cost savings that have resulted in overall health care costs when mental health care is properly covered. Nor does it consider the cost savings in the workplace when absenteeism and productivity losses have increased. Something else is lurking behind the claim of cost problems. What is lurking there is the continuing and widespread discrimination against people with mental illness in our health care system.

The stigma against people with mental disorders has persisted throughout history. As a result, people with mental illness are often afraid to seek treatment for fear that they will not be able to receive help, a fear all too often realized when they encounter outright discrimination in health coverage. Why is it that because the illness is located in the brain, and not the heart or liver or stomach, that such stigma persists? One of the most serious manifestations of stigma is reflected in the discriminatory ways in which mental health care is paid for in our health care system. Health plans routinely set aside ‘mental’ illnesses as distinct from ‘physical’ illnesses in health care coverage. Inexplicably, they set an arbitrary number of hospital days or visits, or a higher level of copayments or deductible, as a way to handle mental health care. There is no clinical or scientific evidence that mental illness is any different from any illness for that matter, can always be treated successfully within a fixed number of days. Nor is there any economic or moral justification for charging people with mental illness more money for their care. One can only conclude that health plans try to save money at the expense of people with mental illness, and they bank on the stigma that accompanies this illness to discourage individuals from demanding better care. What a sad commentary on our health care system, and on our country.

The opponents, business and insurance lobbyists and their Congressional friends, who cite cost issues fail to recognize that proper treatment of mental illness actually saves money. They ignore the $70 billion per year cost of untreated mental illness. They also fail to recognize that our society picks up the cost of untreated mental illness in any case, for untreated illnesses don’t just go away. Children with mental illness may end up in public institutions, foster care, or jail because their parents cannot afford their care. Adults who have private insurance are often forced into public health care systems financed through State governments, Medicare, and Medicaid. These systems are then forced to take scarce resources from those who have no insurances. Families are forced into bankruptcy, lives are broken; and lives are lost.

We also know that the number of people with serious mental illnesses in America’s jails and prisons today is five times greater than in state mental hospitals. That is what happens when people, including those with jobs and private health insurance, do not get adequate care. How can our country tolerate this kind of abuse of basic human rights? Prisons, as the President declared last year, Monday, are “the new asylums of the 21st century.” This criminalization of the mentally ill is inhumane. It is also emotionally and financially costly, and a testament to government failure at all levels. We cannot say we save any more lives and we must not let those with mental illness go on being treated as criminals or as unworthy of medical care.

Opponents also often try to defeat mental health parity legislation by claiming they want to cover mental illness, but only “serious” mental illness, and thus they would limit coverage to a selected list that is also designed to discriminate, most of all against children. The legislation this year was carefully crafted to address the health needs of all those with mental illness as well as the concerns of employers, and it did so without discriminating against particular diagnoses. The insurance industry is very aware that 90 percent of their costs associated with mental illness are associated with the most severe, as is true for other kinds of health issues as well. And yet, they want to oppose coverage for any expensive conditions for accountants, and not doctors, have listed as not “serious”. Any effort on the part of the lobbyists, the House Republicans, or the White House to limit coverage by particular diagnoses should be stopped immediately. It is just another way to try to stop the efforts to provide fairness in treatment for people with mental illness.

We know that mental illness is a real, painful, and sometimes fatal disease. It is also a treatable disease. The gap between what we know from scientific research and clinical expertise and what we do on behalf of patients is lethal. Suicide is the third leading cause of death of young people in the U.S. Each year, 30,000 Americans take their lives, and in 90 percent of these situations, the cause is inadequate treatment mental illness. This is one of the true costs of delaying this bill that I hope those who voted against this un目的在于 for the world. Every child or adult takes their lives because of the unmitigated, searing pain of depression or other mental illness. Next year, while Americans wait for fairness in mental health care, thousands will die and millions will suffer.

Parity will do so much to end the unfair cost requirements, access limits, and personal indignities that people seeking mental health care have been forced to endure. Parity in private insurance has been shown to save other health care costs and would revolutionize our country and our health care system in extraordinarily humane ways. Congress was stopped from doing this right now because of a few members and their lobbyist friends. We must not let these powerful lobbyists subvert the will of the Congress and the will of the 154 supporting organizations of the 2001 Mental Health Equitable Treatment Act and the millions of Americans they represent whose lives are touched by the pain, suffering, and sorrow of mental illness.

I thank the 67 Senate and the 244 House colleagues who worked hard to do the right thing for people with mental illness and I think that we must not take this defeat lightly. I especially want to thank the 154 organizations who supported this legislation and fought for its passage, particularly the Coalition for Fairness in Mental Illness Coverage and its member organizations: American Managed Behavioral Healthcare Association, American Medical Association, American Psychiatric Association, American Psychological Association, Federation of American Hospitals, National Alliance for the Mentally Ill, National Association of Psychiatric Health Systems, and National Mental Health Association.

We must return quickly to this bill early in 2002 and accept no excuses from the Administration or the House and move the mental health parity legislation in 2001. We must do the right thing for people with mental illness. And I want to make absolutely sure that we do not subvert the will of the Congress and the country. Not this year, not next year, not the year after that. We will do the right thing for people with mental illness. We will do the right thing for the 57,000 Americans who commit suicide each year; the 20 percent of the population who suffer from mental illness; and the 67 Senators and 244 House colleagues who worked hard to do the right thing for people with mental illness.
based portfolio. These properties have been operating for the past 20 years on long term rental subsidy contracts, many of which are currently paying above-market rents. The program we seek to reauthorize provides HUD with the tools to restructure market mortgage levels and to restructure the underlying mortgages so that the new, lower rents will be sufficient to cover the debt. At the same time, the program provides for the rehabilitation of these properties and requires another long term commitment to keep the properties affordable.

The appropriators asked that this re-
authorization be incorporated into this appropriations bill in order to make use of the $300 million in savings that this legislation will generate. We were happy to accommodate this request.

I would like to thank Senator Reed, the Chairman of the Subcommittee on Housing and Transportation, Senator Gramm, Senator Reed and Senator Allard for their hard work, support and cooperation throughout this process.

Below is a detailed description of title VI, which I would like to submit for the record of myself and Senators Reed, Gramm and Allard.

I ask unanimous consent that the two statements be printed in the RECORD. There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR SARBANES, SENATOR GRAMM, SENATOR REED, AND SENATOR ALLARD REGARDING THE MARK-TO-MARKET PROVISION FOR MULTIFAMILY ASSISTED HOUSING IN FY-20 LABOR-HHSS APPROPRIATIONS LEGISLATION

The following represents the views of the Chairman and Ranking Members of the Senate Committee on Banking, Housing, and Urban Affairs and its Subcommittee on Housing and Transportation regarding the “Mark-to-Market Act” of 2001, which is part of the Labor-HHS Appropriations Conference Report.

SUBTITLE A—MULTIFAMILY HOUSING MORTGAGE AND VACANCY IN POSITION OF DIRECTOR

Section 602: Purposes

The bill includes a number of new purposes that reflect some of the concerns of the Committee and a number of stakeholders regarding the administration of the mark-to-market (MTM) program. For example, concerns were raised that the private participating administrative entities (PAEs) might not be providing the amount of rehabilitation and reserves necessary for the properties to meet the 30-year rental subsidy commitment required by the law. Likewise, it is important for the PAEs, both public and private, to accurately calculate project expenses. Underestimation of expenses, as with inadequate investment in rehabilitation, will undermine the physical and financial condition of the properties. Failure to account realistically and accurately for the expenses of running a project could result in the project underwriting being too “tight” with too little debt restructured, and too little cash flow. In such circumstances, energy expenses, such as increased in energy prices, could force the property into default. Such an outcome would under-

The Committee believes that none of these results is desirable: properties with rents that are above market should go through the program in order to get a thorough financial and physical review. Moreover, whatever organization is establishing the comparable market rent, whether it is the PAE or the FHA, the results should be consistent so that the owner’s decision to stay in the program or opt out is not determined by who is doing the rent study. In this section, the Committee directs the Secretary to establish procedures for ensuring rents as determined through this program, the contract renewal process, or for enhanced vouchers for the same units are reasonably consistent.

Section 603: Eligibility of Renewal Rents for Partially Assisted Buildings

Allows certain projects that are partially assisted with section 8 to get budget-based rents up to comparable market rents, sufficient to cover the costs of maintenance of the property.

Section 604: Eligibility of Restructuring Projects for Miscellaneous Housing Insurance

Amends Section 226(a)(7) of the National Housing Act to allow HUD-held mortgages on properties in the program to be treated as FHA-insured loans to expedite the refinancing process. In addition, the maximum term of FHA-insured and HUD-held mortgages refinanced under this subsection to 30 years.

SUBTITLE C—MISCELLANEOUS HOUSING ASSISTANCE

Section 605: Reauthorization of Office and Extension of Program

Extends the program to October 1, 2006. Extends the Office until July 1, 2005. Amends Sections 622 and 623: Appointment of Director and Vacancy in Position of Director

Establishes the procedure for appointing the Director of OMHAR and for filling vacant positions. Directs the President to appoint the Director, but would no longer be a Senate confirmed position.

Section 606: Oversight by Federal Housing Commissioner

Places OMHAR under the jurisdiction of the FHA Commissioner: Assistant Secretary of Housing, as requested by the Administration. The Office is being directed to work in closer coordination with the Office of Housing and Urban Affairs. The Committee does this with the understanding, as expressed by Assistant Secretary Allen Wechsler at the Committee’s June 19, 2001 hearing, that HUD has “every expectation that [OMHAR] will continue to be fully dedicated to [the mark-to-market] work.”

The Committee also expects the FHA Commissioner to work conscientiously to maintain the highly qualified staff that exists at OMHAR. At the hearing, the GAO witness noted several times of the need to retain OMHAR’s “contract staff that have unique expertise in this program. . . .”

Section 607: Limitations on Subsequent Employment

Prohibits certain OMHAR employees from subsequent compensation from parties with financial interests in the program for a period of 1 year.

SUBTITLE C—MISCELLANEOUS HOUSING PROGRAM AMENDMENTS

Section 608: Extension of CDBG Public Services Program

Exempts the expanded public services cap for Los Angeles for an additional 2 years. It is expected that this will be the last in a number of extensions.

Section 609: Use of Enhanced Vouchers for Prepayments

Extends eligibility for enhanced vouchers to projects that prepaid in 1996.
December 20, 2001

S13785

CONGRESSIONAL RECORD — SENATE

Section 633: Prepayment and Refinancing of Loans for Section 202 Supportive Housing

Makes the refinancing provisions for elderly (section 202) projects in the American Homeownership and Economic Opportunity Act of 2000 self-enacting. The Committee believes that the provisions enacted last year should have already been implemented by HUD. This Section makes it clear that the provisions from the 2000 Act are self-enacting, and do not need implementing regulations from the Department.

CHANGES TO THE 2001 AND 2002 APPROPRIATIONS COMMITTEE ALLOCATIONS AND THE BUDGETARY AGGREGATES

Mr. CONRAD. Madam President, section 314 of the Congressional Budget Act, as amended, requires the chairman of the Senate Budget Committee to adjust the budgetary aggregates and the allocation for the Appropriations Committee by the amount of appropriations designated as emergency spending pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. The conference report to H.R. 3061, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for 2002 includes $300 million in emergency-designated funding for the Low-Income Home Energy Assistance Program. That budget authority will result in $75 million in new outlays in 2002.

Pursuant to section 302 of the Congressional Budget Act, I hereby revise the 2002 allocation provided to the Senate Appropriations Committee in the concurrent budget resolution in the following amounts.

### TABLE 1—REVISED ALLOCATION FOR APPROPRIATIONS COMMITTEE, 2002

<table>
<thead>
<tr>
<th>Purpose</th>
<th>General Purpose Discretionary</th>
<th>Mandatorv</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outlays</td>
<td>106,828</td>
<td>272,968</td>
<td>379,796</td>
</tr>
<tr>
<td>Budget Authority</td>
<td>105,957</td>
<td>272,968</td>
<td>378,925</td>
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</tbody>
</table>

I ask unanimous consent that a table showing the budgetary purposes and the amount of budget authority as did the conference report by being printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 3061, CONFERENCE REPORT TO THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

(Spending comparisons—Conference Report, in millions of dollars)

<table>
<thead>
<tr>
<th>General Purpose</th>
<th>Mandatory</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget Authority</td>
<td>123,371</td>
<td>396,308</td>
</tr>
</tbody>
</table>

Mr. DURBIN. Mr. President, during this summer’s debate on the ESEA reauthorization legislation, I offered an amendment to increase the authorization for the new math and science partnerships program from $500 million in the Senate bill to $900 million in fiscal year 2002. Raising the authorization to this level brought math and science partnership participated and science partnership funding to the same level as the Reading First program also created in the education bill. My amendment passed by voice vote.

During that debate, I joined several of my colleagues in emphasizing the critical need to improve math and science education in our nation’s elementary and secondary schools. U.S. students consistently score lower than their counterparts in other nations in math and science, yet more than one in four high school math teachers and nearly one in five high school science teachers lack even a minor in their main teaching field. The training and preparation of math and science teachers must be a top priority.

I am disappointed that the Labor-HHS-Education Appropriations bill dealt with math and science partnerships at just $12.5 million in fiscal year 2002— a level far below the $450 million authorized by Congress for this program in the final ESEA legislation.

But I am encouraged by language included in the conference report that states, the conferences believe math providing high-quality math and science instruction is of critical importance to our nation’s future competitiveness, and agree that math and science professional development opportunities should be expanded. The conferences therefore strongly encourage the Secretary and the State to continue to fund math and science activities within the Teacher Quality Grant program at a comparable level in fiscal year 2002.

I understand that the conferences intend to establish a minimum, the current commitment to the training of math and science teachers will be upheld. The conference report urges the Secretary of Education and the States to use the Teacher Quality grant program, funding available schools, and science partnerships and through other federal grants to bring math and science education at a level that adequately prepares our young people for...
the demands for the demands of the 21st century. I hope that States and districts continue to increase their efforts in the area. I look forward to working with my colleagues next year to further support strong math and science education in schools.

SALKOPX VACCINATION FOR FIRST RESPONDERS

Mrs. BOXER. Mr. President, smallpox is a deadly disease that if not treated within the few first days after initial exposure, can cause death in 1 out of 3 cases. Fortunately, this is not a disease to take lightly.

The problem with smallpox, unlike our recent experience with anthrax, is that it is highly contagious, and not simply infectious. Thus, one person can spread the disease to hundreds of people within a matter of days.

In this new climate of threatened bioterrorist attacks, it is essential that we prepare ourselves for the worst case scenario and not simply sit back and hope for the best.

This fact was highlighted in disturbing detail in the “Dark Winter” exercise conducted by the Center for Civilian Biodefense Studies at John Hopkins University. The exercise showed that a smallpox release would spread easily, and that the dose needed to cause infection is very small. The modeled confirmed cases could result in as many as 300,000 additional infections and 100,000 deaths in just 3 short weeks.

In light of this, the Federal Government is working quickly to ensure that public health officials at all levels of government are able to work together should an outbreak occur.

I applaud the steps already taken by the Centers for Disease Control to vaccinate some of its first response personnel and to ensure the safety of those vaccinations.

I believe that not only essential to have a trained and ready team in place at the federal level to respond immediately to a possible outbreak, I believe that such a vaccination program should be expanded.

That is why I sent a letter to Health and Human Services Secretary Thompson urging him to work with Governors to identify and vaccinate key first responders in all 50 States. I specifically asked Secretary Thompson to instruct CDC to work with out to Governors and work with them to create lists of critical first responders in their States, and to authorize those vaccinations within the next 60 days.

We must also work quickly to make sure we have at least 290 million doses of smallpox vaccine available to treat the entire population as well as support additional research on antiviral therapies and other vaccines to help control and contain any bioterrorist attack.

In California, many companies are already making progress toward such antiviral therapies for smallpox, and I hope that we will not delay in providing funding for this type of research.

Mr. HARKIN. I commend my colleague from California on her thoughtful comment on the dangers of smallpox. I agree with her that much more research on antiviral therapies is needed and am proud of the many companies across the nation that are leaders in this important effort.

As my colleague indicates, the CDC has recently completed a strategy for vaccination in response to a smallpox outbreak and the funding provided in the Labor, Health and Human Services and Education Appropriations bill will help the CDC in carrying out this goal. Additionally, I believe that the funding provided for the Office of Emergency Preparedness for bioterrorism-related activities can be especially useful in making the vaccine available to first responders.

Mrs. BOXER. I thank my distinguished colleague from Iowa for his supportive remarks, and hope that Secretary Thompson will seriously consider his suggestion.

I truly believe that a small cadre of vaccinated first responders from each of the 50 states would provide an indispensable complement to the CDC staff already inoculated.

Mr. HARKIN. I agree with my colleague from California that vaccinating first responders should be given serious consideration as the CDC and the Office of Emergency Preparedness pursue bioterrorist activities.

Mrs. BOXER. I continue to discuss funding to prepare for potential bioterrorist attacks, we should also have confidence in this country’s ability to react to a smallpox outbreak promptly. Ensuring that first responders are “armed” with a vaccination and in a position to respond is a responsible way to achieve this goal.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the conferees on this bill for their hard work. This is important legislation that provides Federal funding for the Departments of Labor and Health and Human Services, and Education, and related agencies. I am pleased to see increased funding for many programs, especially in light of our Nation’s war on terrorism. This includes an increase in funding for bio-terrorism activities and for strengthening our nation’s public health infrastructure. This funding is critical for all our States, localities, and our Nation as a whole to ensure that we are ready to respond to all contingencies.

There is funding to ensure our Nation’s fight on new vaccines and the resources for helping meet the health care needs of the uninsured. In addition to funding key public health programs, this bill provides funds for helping States and local communities educate our children. Furthermore, it funds our schools’ costs associated with finding treatments, if not cures, for many illnesses, including Parkinson’s, Alzheimer’s, and ALS.

The legislation also ensures our Nation’s most vulnerable, our children, senior citizens and the disabled, have access to quality health care.

Funds are also provided for important programs that assist working families, including child care, adult daycare for elderly seniors, and Meals on Wheels.

For all the good in this bill, I ask: How many other worthy programs are being shortchanged because of our parochial projects? I believe we are competing in the unpleasant position of speaking about parochial projects in yet another conference report. I have identified nearly $1 billion in earmarks. The total amount in porkbarrel spending appropriated in bills considered so far is $35 billion.

I would like to start out by asking unanimous consent to print in the RECORD the Web site of the U.S. Senate Committee on Appropriations where being no objection the material was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE COMMITTEE ON APPROPRIATIONS

AUTHORIZATIONS AND APPROPRIATIONS: WHAT’S THE DIFFERENCE?

Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite under House and Senate rules (and sometimes under statute) for the Congress to appropriate budget authority for programs.

Some authorization laws provide spending during a fiscal year. In fact, well over half of federal spending now goes to programs for which the authorizing legislation itself creates budget authority. Such spending is referred to as direct, or mandatory, spending. It includes funding for most major entitlement programs. (Some entitlements are funded in annual appropriation acts, but the amounts provided are controlled by the authorization law that established the entitlement.) The authorization laws that provide direct spending are typically permanent, but some major direct spending programs, such as the Food Stamp program, require periodic renewal.

Discretionary spending, which is provided in the 13 appropriating bills now makes up only about one-third of all federal expenditures. For discretionary spending, the role of the authorizing committees is to enact legislation that serves as an authorization for a program and that provides guidance to the Appropriations Committees as to an appropriate level of funding for the program. That guidance typically is expressed in terms of an authorization of appropriations. Such authorizations are provided either as specific dollar amounts (definite authorizations) or as “as is necessary” (indefinite authorizations).

In addition, authorizations may be permanent and remain in effect until changed by the Congress, or they may cover only a specific fiscal year. Authorizations that are limited in duration may be annual (pertaining to one fiscal year) or multiyear (pertaining to two, five, or any number of specific fiscal years). When such an authorization expires, the Congress may choose to extend the life of a program by passing legislation commonly referred to as reauthorization. Unless the underlying law expressly prohibits it, the Congress may also extend a program simply by providing new appropriations. An authorization for a program after its authorization has expired is called “unauthorized appropriations.”
Longstanding rules of the House allow a point of order to be raised against an appropriation that is unauthorized. During initial consideration of a bill in the House (which by 1966, any appropriation bill), unauthorized appropriations are sometimes dropped from the bill. However, the House Committee on Rules typically grants waivers for appropriations that are contained in a conference agreement. In the Senate, there is a more limited prohibition against considering unauthorized appropriations.

Both House and Senate rules require that when the Committees on Appropriations report a bill, they list in their respective committee reports any programs funded in the bill that lack an authorization. The information in the committee reports, however, differs somewhat from the information shown in the Appropriations Committee reports. Appropriations that at one time had an explicit authorization that either has expired or will expire. Unlike the lists shown in the Appropriations Committee reports, this CBO report excludes programs that have never received explicit authorizations. They receive appropriations nonetheless because the authority to obligate and spend funds is considered to exist in the underlying legislation or executive action that originally empowered the Treasury to perform particular functions.

As noted above, many laws establish programs with authorizations of discretionary appropriations which do not expire. Both the Appropriations Committee and this CBO report exclude programs with that type of authorization because its effect is permanent.

WHERE DOES THE MONEY GO?

While the size of the annual federal budget has increased in dollar terms (reflecting inflation, increased population and economy) over the years, the proportion available for common government services has shrunk dramatically. Over the last three decades, discretionary spending has been cut significantly to accommodate rapid growths in other expenses. Discretionary spending covers everything from road building to police protection to national defense, and this CBO report excludes programs that might otherwise be considered "organic"—inherent in the underlying legislation or executive action that previously existed.

Current budget projections show the same pattern. By 1996, entitlement spending took half of the budget: 1966—$241 billion, interest; $859 billion, entitlement; $438 billion (42%), discretionary. By the mid-1980's, interest payments on the national debt began to rise: 1986—$136 billion, interest; $90 billion (63%), discretionary. By 1996, entitlement spending took half of the budget: 1966—$241 billion, interest; $859 billion, entitlement; $438 billion (42%), discretionary.

The proportion of the budget allocated to entitlement programs has increased in dollar terms (reflecting inflation, increased population and economy) over the years, the proportion available for discretionary spending has decreased. In just 30 years, the amount appropriated for discretionary programs has been cut significantly to accommodate growths in other expenses. The proportion available for discretionary spending has decreased from 73% in 1966 to 36% in 1996. Over the last three decades, discretionary spending has been cut significantly to accommodate growths in other expenses. Discretionary spending covers everything from road building to police protection to national defense.

5. On a point of order made by any Senator, no amendment shall be received to carry out the provisions of an existing law, or treaty stipulation, or act or resolution previously passed by the Senate during that session.

On a point of order made by any Senator, no amendment shall be received to carry out the provisions of an existing law, or treaty stipulation, or act or resolution previously passed by the Senate during that session.

Mr. McCAIN. I will quote from it. It says:

"Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite—" I emphasize, a prerequisite—"for appropriating the money to carry out the provisions of such laws. The Senate has a more limited prohibition against considering unauthorized appropriations that are contained in a conference agreement. In the Senate, there is a more limited prohibition against considering unauthorized appropriations."
Mr. MCCAIN. I thank you, but it is an example. The manager of the bill doesn’t even know where a place that we are giving $1 million of the taxpayers' dollars is located.

Mr. HARKIN. It is in Massachusetts.

Mr. MCCAIN. That is instructive about the proliferation of the pork in this legislation.

Let me cite a few others: $500,000 for the Mattatuck Museum in Waterbury, CT; $800,000 for the Mind-Body Institute of Boston, MA—the Mind-Body Institute of Boston, MA—$150,000 for the Lady B Ranch Apple Valley, CA, for the Therapeutic Horsecase Riding Program.

I want to go back to what the Senator said, that there are 1,600 earmarks. So the manager of the bill doesn’t even know where $1 million goes. Maybe $1 million isn’t much to the manager of the bill, but it sure as heck is a great deal of money to my constituents. I won't pursue this. Again, the $150,000 for the Lady B Ranch Apple Valley, CA, for the Therapeutic Horseback Riding Program. If you asked the average citizen if a therapeutic horseback riding program was at the top of their priority list, I don't think the average citizen would know what that program is. Therapeutic horseback riding has to be earmarked for Apple Valley, CA.

Continuing, $500,000 for the Massachusetts Museum of Science, a wonderful museum that is in the Springfield area. Again, the $150,000 for the Therapeutic Horseback Riding Program. If you asked the average citizen if a therapeutic horseback riding program was at the top of their priority list, I don't think the average citizen would know what that program is. Therapeutic horseback riding has to be earmarked for Apple Valley, CA.

Continuing, $500,000 for the University of Massachusetts Medical Services BioVentures Incubator for equipment needed for wetlabs used in training; $200,000 for Bishops Museum. I dare not ask the manager where Bishops Museum is, but I can find out for myself.

Continuing with the list: $200,000 for the Mississippi State University, Center for Advanced Vehicular Systems, Mississippi State, MS, for automotive engineering training.

The list goes on and on and on. Here is something that is really entertaining, or saddening, depending on whether or not you are a taxpayer. For example, it earmarks $5 million. $5 million for a program never authorized—never a hearing through the Commerce Committee—$5 million for a program to promote educational, cultural apprenticeships, and exchange programs, native Hawaiians, and their historical whaling and trading partners in Massachusetts. That is remarkable, remarkable—$5 million. This is a new program authorized by the Senate-passed version of the ESEA authorization bill. It was not requested by the administration.

It is interesting to note that even though the United States does not engage in whaling and we are against commercial whaling—we are willing to provide $5 million for a program highlighting the practice.

Another issue of concern is the report's inclusion of $25 million for an equipment subsidy for public broadcasters with the transition to digital television. I would remind my colleagues that this request was never the subject of a hearing by the Commerce Committee, which is the authorizing committee. I don’t believe that Congress is exercising sound fiscal policy when it decides to appropriate millions of dollars to publicly funded television stations so that they may purchase the latest in digital technology.

Rather, the Corporation for Public Broadcasting should have come before the Commerce Committee to discuss with us the best way to achieve the goals of public broadcasters and ensure that taxpayer dollars are spent wisely.

So as the manager said, there are 1,600 earmarks in this bill, very few of them, if any, previously authorized; all of them in violation of the Web site the Appropriations Committee has. The overwhelming majority of these earmarks are for members of the Appropriations Committees that represent the States that are not represented on the Appropriations Committee are short-changed. There is no competition. There is no authorization. There is no hearing. We are talking about a billion dollars here. It is remarkable.

The rules of the Senate have to be changed. The rules of the Senate have to be changed so that those of us who don’t support these programs will have an opportunity to have our States’ priorities considered. I have something that my staff put in front of me regarding the Rose. Apparently, it is in London, England. It was built in 1587 by Philip Henslowe. The Rose was the first theater on London’s South Bank. Its repertory included plays by Kyd, Jonson, Shakespeare, and Marlowe. In 1989 its remains were discovered and partially excavated amidst a blaze of international press coverage.

Are we now giving a million dollars to a theater in London? Absolutely. I have opposed every earmarked project for my State, and I have done so for all the years I have been here. I am sorry the Senator from Iowa doesn’t know that.

Mr. HARKIN. The Senator knows full well that the other Senator from Arizona supports those.

Mr. MCCAIN. The other Senator does not support those. It came from the House.

Mr. HARKIN. So does the Congressman.

Mr. MCCAIN. I came from the House. He doesn’t even know where the theater is in London.

Mr. HARKIN. The Congressman also supports them. I want to mention a couple of other projects. The Senator mentioned the Bishop Museum located in Honolulu. The other Senator did in Massachusetts. The Senator made fun of a horseback riding project that he kind of mocked. I don’t know that program intimately, but I remember when it was brought up. This is a program in California for therapy for severely mentally retarded and brain-injured kids. It is a program where they have found that by using this kind of therapy, it allows these kids to have a little bit better life. I am not a medical expert. I do not know how this works. But according to the Member of Congress who brought this up, this is something the health care professionals believe is very important to these disabled kids.

I am told that the Senator from Arizona may be slightly mistaken, that the Senator from Arizona did ask for some of these projects. The Pima County Department of Health in Arizona, a $400,000 grant was asked for by the Senator from Arizona. Mr. KYL, I can count this. I am sorry, Mr. KYL. It was asked for by the other Senator from Arizona. Certainly, the other Senator from Arizona—I can’t speak for him—would not say just this is mine and nobody else’s. So I say that there are four projects in Arizona. Mr. KYL, I am sorry. The Senator from Arizona never mentioned the projects in Arizona in the amount of $6.7 million. Let me read a couple: University of Arizona for a border health initiative. There is one for Pima Community College in Arizona for minority students to attend college. There is the Pima County Department of Health and the University of Arizona. The Senator is supposed to fund that. Phoenix to develop exhibits and educational programs about the historic Phoenix Indian School and the Native Americans who attended the school. Does the Senator want us to knock all those out?

Mr. MCCAIN. Absolutely. I have opposed every earmarked project for my State, and I have done so for all the years I have been here. I am sorry the Senator from Iowa doesn’t know that.

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Mr. MCCAIN. Absolutely. I have opposed every earmarked project for my State, and I have done so for all the years I have been here. I am sorry the Senator from Iowa doesn’t know that.

Mr. HARKIN. The Senator knows full well that the other Senator from Arizona supports those.

Mr. MCCAIN. The other Senator does not support those. It came from the House.

Mr. HARKIN. So does the Congressman.

Mr. MCCAIN. I came from the House. He doesn’t even know where the theater is in London.

Mr. HARKIN. The Congressman also supports them. I want to mention a couple of other projects. The Senator mentioned the Bishop Museum located in Honolulu. The other Senator did in Massachusetts. The Senator made fun of a horseback riding project that he kind of mocked. I don’t know that program intimately, but I remember when it was brought up. This is a program in California for therapy for severely mentally retarded and brain-injured kids. It is a program where they have found that by using this kind of therapy, it allows these kids to have a little bit better life. I am not a medical expert. I do not know how this works. But according to the Member of Congress who brought this up, this is something the health care professionals believe is very important to these disabled kids.

I am told that the Senator from Arizona may be slightly mistaken, that the Senator from Arizona did ask for some of these projects. The Pima County Department of Health in Arizona, a $400,000 grant was asked for by the Senator from Arizona. Mr. KYL, I am sorry. The Senator from Arizona never mentioned the projects in Arizona in the amount of $6.7 million. Let me read a couple: University of Arizona for a border health initiative. There is one for Pima Community College in Arizona for minority students to attend college. There is the Pima County Department of Health and the University of Arizona. The Senator is supposed to fund that. Phoenix to develop exhibits and educational programs about the historic Phoenix Indian School and the Native Americans who attended the school. Does the Senator want us to knock all those out?

Mr. MCCAIN. Absolutely. I have opposed every earmarked project for my State, and I have done so for all the years I have been here. I am sorry the Senator from Iowa doesn’t know that.

Mr. HARKIN. The Senator knows full well that the other Senator from Arizona supports those.

Mr. MCCAIN. The other Senator does not support those. It came from the House.
Mr. BROWNBACK, I believe I have 10 minutes.

The PRESIDING OFFICER. Correct.

Mr. BROWNBACK. I yield a minute to the Senator from Arizona.

Mr. MCCAIN. The Senator from Iowa knows that Senators speak for themselves. My record is clear over many years. I have never supported earmarks, not because of its virtue or vice, but because it didn’t go through an authorizing procedure. The Pima County Coliseum project may be good and beneficial, and the therapeutic horseback riding project might be good and beneficial. I happen to be ranking member of the Commerce Committee. Those are under the oversight of our Committee and they should be authorized. It is disgraceful the way these are put in.

The Senator from Kansas will soon bring out an example of a problem of legislating on appropriations. There is a major issue in his State concerning Indian gaming on which there has never been a hearing, never consideration. It was stuck into an appropriations bill, and it has profound effects on the State of Kansas. He is here, and rightly so, I say the least, about the fact that he, as a Senator from Kansas, never had any input into it and it was stuck into an appropriations bill.

I tell the Senator from Kansas that I will do everything I can to help him in the authorizing process to see that the process is carried out in a legitimate fashion.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

INDIAN GAMING

Mr. BROWNBACK. Madam President, I want to draw attention to something that happened in my State that I think is completely wrong in the appropriations process. The Senator from Nevada is aware of this and stated yesterday he would help me out with this problem. I hope I can get the attention, as well, of the Senator from Iowa. This is what happens in the worst situations in the appropriating committees. It is not about money or an appropriation for a particular line item. In a conference committee, a half sentence was written in the report that overturned a Tenth Circuit Court of Appeals decision about Indian gaming in Kansas. It affects the Huron Cemetery in Kansas City, KS. You can look at this picture. This is not a casino site. This is a cemetery site. Huron Indian Cemetery. It has been there several hundred years. It is on the banks of the Kansas River. It is a beautiful site, maintained well. What took place was this. We have four recognized Indian tribes in Kansas, and all four have casinos. A fifth tribe from outside the State, the Wyandotte tribe of Oklahoma, bought adjacent land and said: We want to make it into a reservation, even though the Wyandotte tribe is in Oklahoma. We want to do this in Kansas City because this looks lucrative to us.

So they said, first, they wanted to put it right on top of this site. Then the courts and local opinion said no. Then they wanted to build the casino on stilts on the site. They said no to that, also. So they bought an adjacent building. That was blocked. That was blocked in the courts. The State of Kansas fought it.

The four recognized tribes of Kansas fought against it. I fought against it. The other Senator from Kansas fought against that. It has been stopped. The people of Kansas City don’t want this taking place there.

OK. So then the tribe from Oklahoma litiates it in court. They are defeated at the Tenth Circuit Court of Appeals. They can’t do this casino in Kansas, according to the Tenth Circuit Court of Appeals. The Governor don’t want it, we Senators don’t want it, and the tribes don’t want it. Then they go into a conference committee—Department of Interior—and in the conference, at the last minute, hand-written note was put in that overturns the Tenth Circuit Court of Appeals. Now they are going to be able to go forward and build a casino next to this beautiful cemetery.

This is a sacred site to a number of Native Americans in the United States. But because in a conference committee they got a half sentence in, written in pencil, it will overturn all of this work by all of these people. Is that right? Is that fair to take place? Is that the way the system is supposed to work? I don’t think that is what is supposed to take place.

So we came back in the Labor-HHS appropriations bill and on the floor we worked with the managers and said: Look, this isn’t right. Let’s correct this in this appropriations bill.

The managers in the Senate, to their great credit—and I thank the Senator from Iowa—said: You are right; we will correct this in the Labor-HHS bill. Then it got stripped out of the bill because the House would not recede. We were trying to correct what took place in the dark of night through this conference committee report on Labor-HHS, and we were not able to get it done.

Now we are left with the possibility of a casino being built next to a cemetery by an out-of-State tribe that the tribes in Kansas, the Governor of Kansas, and the Senators from Kansas do not want, and it took place in the Appropriations Committee process.

We need a rule change so it does not happen again. I am here today to tell my colleagues that I am going to be working on this next year to get this overturned, to get this clarified. There were no hearings on this issue—none—in either the House or the Senate. It was stuck in at the last minute. It should not have taken place, yet it did, and now it is the law of the land, in spite of the input of the people involved in this think about it.

This is clearly not appropriate. I hope we can put a rule in place to raise a point of order, requiring a 60-vote supermajority, against situations such as this happening to the Huron Indian Cemetery in Kansas City, KS. This just is not right. I am going to raise this issue next year. I hope my colleagues, and those on the Appropriations Committee, will work with us to correct such an injustice.

Thank you, Madam President. I yield the floor.

The PRESIDING OFFICER. Who yields the floor?

Mr. HARKIN. Madam President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Iowa has no time remaining. Mr. HARKIN. How much time does Senator Specter have remaining?

The PRESIDING OFFICER. Twenty-nine minutes.

If no one yields time, time is charged equally to both parties.

Mr. HARKIN. Madam President, parliamentary inquiry: If a quorum call is inspired, does that time run against both sides?

The PRESIDING OFFICER. Under a previous order, it will run against all sides.

Mr. HARKIN. In that case, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. LANDRIEU. Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I ask unanimous consent for 5 minutes to speak on the underlying bill and another unrelated subject.

The PRESIDING OFFICER. Against whose time?

Ms. LANDRIEU. Whatever time is remaining.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. I thank the Chair.

Ms. LANDRIEU. Mr. President, I realize there is time remaining and I thank the Senators for yielding. I have spoken many times on this issue, but I want to take another minute to speak about the underlying appropriations bill, particularly the educational aspects and components of this legislation. There were a few things I didn’t get to say that I would like to add for the Record.

I thank the chair of the subcommittee, the Senator from Iowa, Mr. HARKIN, for his extraordinary work in this area for helping bring forward an appropriations bill that reflects the positive changes of the authorization bill, to have the appropriations reflect those new strategies for improving our schools and strengthening our move for reform, for strengthening the notion that every child is worth that, that we can really have excellence in every school, that we are not happy with the status quo, that we recognize some schools...
are terrific, some teachers are wonderful, but the system itself is not as invigorated and as strong as it should be, and it can be improved.

That is what this legislation says: No to the status quo and yes to change; no to process and yes to progress; no to “incomes” and yes to outcomes; and yes to results.

In this holiday season it is a wonderful gift to ourselves, to our Nation, to change the way we are appropriating funding for public schools and for all schools in this Nation.

Today marks a historic moment. For the first time in 35 years since the Federal Government says we will work in partnership with States to help educate our children, it needs to be a local responsibility, but it must be a national priority. Our Nation cannot be strong, it cannot be great, it cannot be economically as vital if we don’t have good schools, that does not begin in kindergarten or end with a college degree; that is pre-kindergarten, early childhood education, and lifelong learning.

It is clearly in our Nation’s interest to help States and local communities educate and bring schools to our citizens. The best place to begin doing that is in the home. The second best place to shore that up is in schools, starting with the lower grades and working up. As a mother with young children, I know directly and very personally that those first few years, the foundation, are important.

This bill is historic because in that whole partnership, for the first time, we have actually funded something we talk about. We targeted the grants for title I. We have funded the effort to help get the money to the districts that need a helping hand, that have difficulty raising, whether sales tax or property tax or industrial tax and corporate tax because the tax base is not there, but the children are. The tax base might not be there, but there are smart children who live in that county. The tax base is not there, but their parents are working hard.

This bill, for the first time, sends the new money through the targeting formulas to bring that help to poor and disadvantaged children so they can take the new tests, pass them, and meet the new standards of accountability.

It is an extraordinary accomplishment. I thank the Senator from Vermont for having cast his vote—it was a difficult vote to cast—against the authorization bill because we failed to fully fund special education. I am disappointed in that. I will work with him and pledge to work with Democrats to pick up more of our fair share of those special education dollars. I will work to reform special education, to make sure it works for our students, our families, our children who are greatly challenged, mentally and physically, as well as our teachers.

Without Senator Jeffords, the Senator from Vermont, his untrrning com-mitment and focus to education, we never would have had $3 billion added to the Education bill. It would have been left on the table and there would not be the energy to get it. I know he is disappointed, but I hope he hears my words this morning and is encouraged. There are a number of parents and teachers who recognize without his complete commitment and dedication to the schoolchildren of this Nation, this bill would be a short lot of money. But because he put his political muscle behind it and did when others have seen a tremendous increase in these investments. He should be happy and grateful. I know he is disappointed in special education, but I commit to him I will work diligently to see if we cannot shore up that part of the bill.

I ask unanimous consent to have printed in the RECORD the list of the money the States will receive, additional funds. Every State and county will be helped, but we will get resources to those communities that need a helping hand. It is a historic moment.

The PRESIDING OFFICER. The Senator from New Mexico has 5 minutes remaining.

MR. DOMENICI. Did I lose time?

The PRESIDING OFFICER. There was a quorum call in progress that was evenly divided.

MR. DOMENICI. Mr. President, fellow Senators, let me take a few minutes. First, I rise with a sense of great sadness and yet a feeling of great hope. You really can have both votes in yourself at the same time. Two nights ago Mental Health Equitable Treatment of 2001 was dropped from the Labor-HHS appropriations conference report. The Senate passed a wonderful bill. We sent it to the House as part of Labor appropriations, even though it was a major, major authorizing bill. We had our hopes high because in the Senate the support was overwhelming. The time had come. The time had come to make sure, 2 years from now in the United States, most insurance policies would cover the mentally ill. That meant to this Senator in 8 or 10 years we would be able to look back and see a very different America when it came to street people, people who during cold winter months we see on the grates of our cities with the blankets wrapped around them.

In our jails and prisons, we know that not only the mentally ill, those who have mental illnesses such as distress that comes from depression, manic depression, schizophrenia, and a whole host of serious mental diseases, are more apt to be found in the county jail or the State jail than they are in treatment centers, be they treatment centers to which you take your sick person, and they are run privately or publicly. More mentally ill people, men and women, are in jails and facilities not intended for them than there are in facilities intended for them.

We in the Senate, with the leadership and help of my friend, Senator Wellstone, have a bill. We call it the Domenici-Wellstone bill. It is moving right along. It cleared the Senate, sending a powerful signal to those in America by the millions who are sick with these diseases, their relatives, and their friends. They had an extremely high hope that ran through the bodies of those of us who were offering some hope for those who were mentally ill who worked for them; that we would begin to see the same thing happen there that has happened to people with heart conditions. We would have doctors taking care of them. We would have research taking place. We would have centers and facilities for research and for care growing up across this land. I appeal to you, the Members of this Senate, let’s do the thing, serious mental illness is going to receive treatment. I ask consent I have 5 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MR. DOMENICI. Insurance companies will be putting forth the kind of coverage necessary. What a day this will be. What a time that will be. What joy will come to those who have worked so hard. But more importantly, what joy will come to the millions of parents who will now see their children, when they probably have the first signs of these dread diseases, and these parents are going to be able to say we are not going to go broke trying to take care of an uninsured child with one of these dread diseases. What a marvelous, wonderful thing America will have done.

What do we hear? Over on the side, a dull but powerful beat of the insurance companies that are saying: This hasn’t been covered before. Let’s not cover it now. We hear a large undercurrent saying: We have never done this before. We should not start now. It is going to cost too much.

To them let me say: We hope you will join us when this bill clears both Houses, and when at that point you have to start writing insurance for people who are sick, people who are sick with schizophrenia, manic depression, those kinds of diseases—and there are many other diseases that will be covered. Research will start to take place because these kinds of sick people are carrying on their backs a package of assets, assets that are the payments that will be forthcoming from the sick person running to the doctor, to the clinic, to the research facilities. What a change and how America will have grown up when that occurs.

There are a lot of workers in this vineyard. There are thousands upon thousands of Americans who are busy in this field, in their home cities, in
Mr. HARKIN. Again, I inquire, if there is a quorum call, then the time runs on both sides? The PRESIDING OFFICER. It will all be charged to the Senator from Pennsylvania.

Mr. HARKIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER (Mr. REID). Without objection, it is so ordered.

Mr. NELSON of Florida. Mr. President, I ask if the Senator from Pennsylvania would give me 2 minutes of his time.

Mr. SPECTER. Mr. President, I am delighted to yield 2 minutes to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida is recognized for 2 minutes.

Mr. NELSON of Florida. I thank the Senator.

TERRORISM INSURANCE

Mr. NELSON of Florida. Mr. President, we are coming down to the crunch time with the conclusion of this session. One of the issues to be decided this afternoon is whether or not we are going to have any protection on terrorism insurance—not only for large and small businesses but also for homes and cars, and for personal lives.

Since there are so many agendas going on with this topic, I urge, since this is the very last gasp, the Senate to come to an agreement for a fallback and a short period of time—say 6 months—and adopt legislation that would have the Federal Government assume the terrorism risk for that short period of time with a freeze on rates so the consumer is not paying the high rates now being jacked up; and a moratorium on the cancellations so the consumers, businesses, and individual homes and cars could have protection against a terrorist risk of loss.

We can do that. That is a fallback position. The alternative is to do nothing. That is unconscionable.

Rates are being jacked as we speak, and cancellations of terrorist coverage is now occurring in the 50 States.

I thank the President for letting me bring this to the attention of the Senate. I thank the Senator from Pennsylvania for yielding the time.

Mr. SPECTER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Pennsylvania has 13 minutes remaining.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Florida has 13 minutes remaining.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Florida is recognized for 2 minutes.

Mr. GRAMM. Mr. President, I hope we get an opportunity on the stimulus package. I liken our situation to a situation we would face if in the cold of winter a storm came along and blew the roof off of an apartment house. It is clear unless something is not done that people would get pneumonia, frostbite, and suffer from exposure.

We have one group of Congressmen and Senators rushing in to say that we have to hire doctors. We have to buy penicillin. We need blankets. We have another group that says: Why don’t you rebuild the roof? Then it is suggested that rich people live on the upper floors and they would benefit more by putting the roof back on.

Then the President proposes the classic political compromise, which is: Why don’t you rebuild some of the roof and buy some of the penicillin?

I hope we can go that route. At least we would benefit people. I hope we get a chance to vote on that package today.

I yield the floor. I thank the Senator for this and for many other things.

Mr. SPECTER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Nelson of Florida). The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, we are about at the end of the time in this session. I just want to make a comment or two about the subject matter of the Domenici-Wellstone amendment to try to bring parity to mental health. I regret very much that the Appropriations Committee did not act on it.

That amendment passed the Senate floor and it had some support from some in the House, really divided along party lines. There are some assurances from the President and at least one of the
S13792
CONGRESSIONAL RECORD — SENATE
December 20, 2001

Authorizing committees in the House that there will be action to bring parity.

Mental illness is as much an illness as is physical illness, and that ought to be corrected. In the conference, I made the point of my hope that if action was not taken by the authorizers that the appropriators would proceed, again, next year at this time and act in our conference.

Mr. President, how much time remains?

The PRESIDING OFFICER. There are 8 minutes remaining for the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that I may proceed for the remainder of that time—the 8 minutes—as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPORTS ON THE CASES OF DR. WEN HO LEE AND DR. PETER LEE

Mr. SPECTER. Mr. President, before the first session of the 107th Congress ends, I want to put on the RECORD reports on the cases of Dr. Wen Ho Lee and Dr. Peter Lee, which were subject to oversight by the Judiciary Committee and the Department of Justice during the 106th Congress.

The committee’s work was controversial, partly because it included oversight of Attorney General Reno’s handling of the investigations into campaign finance matters. On President Clinton and Vice President Gore.

Without going into all the details, suffice it to say that bipartisan agreement could not be reached within the Subcommittee on a report or in the full Committee on issuance of subpoenas to obtain necessary testimony.

When a subpoena was sought for FBI Director Louis Freeh, the opposition of Senator Hatch, the Chairman of the Committee, proved decisive. In April 2000, the Subcommittee obtained a memorandum from Director Freeh dated December 1996 which recited a conversation between a ranking FBI official and a ranking Department of Justice official to the effect that the investigation of the Department of Justice would effect the Attorney General’s tenure at a time before President Clinton had reappointed her. The Freeh memo further referenced a conversation between Attorney General Reno and Director Freeh. The Subcommittee’s inability to subpoena and question Freeh was a significant hindrance to pursuing that important matter.

That memorandum and other files have been inaccessible since October with the closing of the Hart Building due to the anthrax mail. The terrorist attack of September 11 has further hindered the finishing of the Subcommittee’s work because the FBI has, understandably, been occupied with investigating terrorists, which preempted other probes.

The Subcommittee’s oversight was thwarted repeatedly by delays by the FBI and the intransigence of the Department of Energy. Once Wen Ho Lee was indicted, the FBI refused to provide additional information, claiming it would hamper the prosecution. Even after Dr. Wen Ho Lee entered a guilty plea and the prosecution was concluded, the FBI continued to refuse to provide information that it would impede their debriefing of Dr. Lee in obtaining the tapes which he took.

Congressional oversight is traditionally a vital matter because the House and the Senate are so busy with legislative matters and it is like pulling teeth, at best, to get cooperation from the Executive branch. The Subcommittee’s oversight efforts on Dr. Wen Ho Lee have been even tougher. In addition to the general difficulties, the Subcommittee’s oversight efforts have been further complicated by the change in party control in May 2001, the terrorist attack on September 11 of this year, and the departure of the Chairman of the Subcommittee’s key investigator Mr. Dobie McArthur. Mr. McArthur did an extraordinary job, virtually single-handedly conducting the oversight investigations and the reports.

With the new FBI Director Robert S. Mueller, III focusing on reorganization of the Bureau and the additional responsibilities of the FBI occasioned by the September 11 terrorist attack, and the shift of the Department of Justice in the focus of FBI activities, it is very difficult to pursue further the Subcommittee’s inquiry on Dr. Wen Ho Lee, but it is my hope that at some date that might be done. Because of the “pressure” on the FBI’s handling of the Dr. Wen Ho Lee investigation, it will never be known beyond a reasonable doubt whether Dr. Wen Ho Lee was a spy, although there is substantial evidence to that effect in the McArthur reports. The FBI’s handling of the Dr. Wen Ho Lee investigation on Dr. Wen Ho Lee and Dr. Peter Lee will enable readers to evaluate the seriousness of espionage in damaging our national security interests, the failure of the Executive to cooperate with the investigation, the need for changes in procedures by the Department of Justice, including the FBI, and the Department of Energy. Some legislation, as noted in the McArthur reports, has already been enacted as a result of the Subcommittee’s oversight and further legislative reforms are needed. Publication of these reports will promote those objectives.

Mr. President, I ask unanimous consent that the text of the two-page Freeh memorandum of December 1996 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECEMBER 9, 1996.

To: MR. ESPOSITO,
From: DIRECTOR,
Subject: DEMOCRATIC NATIONAL CAMPAIGN MATT

As I related to you this morning, I met with the Attorney General on Friday, 12/6/00, to discuss the above-captioned matter. I stated that DOJ had not yet referred the matter to the FBI to conduct a full, criminal investigation. It was my recommendation that this referral take place as soon as possible.

I also told the Attorney General that since she had declined to refer the report to an Independent Counsel it was my recommendation that she select a first rate DOJ legal team from outside Main Justice to conduct the inquiry. In fact, I said that these prosecutors should be “junk-yard dogs” and that in my view, PIS was not capable of conducting the thorough, aggressive kind of investigation which was required.

I also advised the Attorney General of Lee Radek’s comment to you that there was a lot of “pressure” on him for this case because the “Attorney General’s job might hang in the balance” (or words to that effect). I stated that those comments would be incriminating for many of those Criminal Division on the case completely.

I also stated that it didn’t make sense for PIS to call the FBI the “lead agency” in this matter while operating a “task force” with DOC IGs who were conducting interviews of key witnesses without the knowledge or participation of the FBI.

I also recommended that the FBI and hand-picked DOJ attorneys from outside Main Justice run this case as we would any matter of such importance and complexity.

Nevertheless, based on information recently reviewed from PIS/DOC, we should determine whether or not an Independent Counsel referral should be made at this time. If so, I will make the recommendation to the Attorney General.

Mr. SPECTER. Mr. President, I am now going to commence with the reading of the report on Dr. Wen Ho Lee: My understanding, after consulting with the authorities, is that once I begin the reading of the report, the remainder may be incorporated in the RECORD as if read in full.

The PRESIDING OFFICER. And the Senator is advised he has 2 1/2 minutes left.

Mr. SPECTER. I thank the Chair. I shall not use the full 2 1/2 minutes.

This report augments and completes the bipartisan report released on March 8, 2000, regarding the Government’s investigation of espionage allegations against Dr. Wen Ho Lee who pleaded guilty on September 13, 2000 to criminal violations of national security law and of national defense information. 1 The special Judiciary subcommittee on Department of
Justice Oversight, which I chaired in the last Congress, began oversight on the Wen Ho Lee case in December 1998, which became law as Title VI of Public Law 106-567 on December 27, 2000. That bipartisan joint session of the Senate Judiciary and Select Intelligence committees without a single vote in opposition despite sometimes strong disagreements about certain aspects of the case. This report, consisting of an executive summary and report text, provides a thorough review of the case, completes the oversight record on the Wen Ho Lee matter.

HIGHLIGHTS OF THE REPORT

The government’s investigation of Los Alamos National Laboratory (LANL) nuclear weapons scientist Dr. Wen Ho Lee was so inept that despite scrutiny spanning nearly two decades, both the FBI and the Department of Energy (DOE) failed to detect repeated solicitation activities to discover and stop his illegal computer activities. As a consequence of these numerous failures, magnetic computer tapes containing Los Alamos classified nuclear secrets are now missing when they could have been recovered as late as December 1988 and possibly even earlier.

One great tragedy of the Wen Ho Lee case is that the entire truth will likely never be known. As a consequence of an inept investigation, the government has lost the credibility of its version of the absolute truth. Dr. Lee also lacks the credibility to tell the definitive tale of this case: he repeatedly lied to investigators, created his own personal nuclear weapons designs library without proper authority, copied nuclear secrets to an unclassified computer system accessible from the Internet, and passed up several opportunities to detect Dr. Lee’s illegal downloading.

Lee’s own conduct. Moreover, there is absolutely no evidence that Dr. Lee's ethnicity was a factor in the decision to prosecute Dr. Lee or to hold him in unusually strict pretrial confinement.

The government’s conduct in this case is so troubling and serious for every agency involved that it almost defies analysis and makes determining responsibility for the failures a very complicated matter. The full report which follows addresses each of these matters in detail, as well as several other important issues.

The Department of Justice was wrong to reject the 1997 request by the FBI for electronic surveillance under the Foreign Intelligence Surveillance Act. Had the request been permitted to go forward, Dr. Lee’s illegal downloading could have been detected and halted in 1997. The Department of Justice’s own internal review, conducted by the assistant attorney general Randel Bellows, concluded that the request should have been approved.

The Department of Energy was wrong to allow Wenckhut to contact polygraph examiners to administer a polygraph to Dr. Lee on December 23, 1998. The Wenckhut consultation was released with no monitoring whatsoever, raising troubling questions. The government’s handling of the plea agreement for Lee’s illegal downloading could have been detected and halted in 1997. The Department of Justice's own internal review, conducted by Assistant U.S. Attorney Randy Bellows, concluded that the request should have been approved.

The move by the National Security Agency to classify the case against Dr. Lee. The case against Dr. Wen Ho Lee

Most Americans had never heard of Dr. Wen Ho Lee before Los Alamos National Laboratory in New Mexico on March 8, 1999. The first vague hints of the story that would explode on the national scene in March 1999 had come in a January 7, 1999, Wall Street Journal article by Carla Anne Robbins, which alleged that “China received secret design information for the W-88 reentry body and quoted unnamed U.S. officials as saying that the ‘top suspect is an American working at a U.S. Department of Energy laboratory.’ The Wall Street Journal reported that the loss of information related to the W-88 warhead was the “most significant in a 20-year espionage effort by Beijing that targeted the U.S. nuclear weapons laboratories,” that “China was given general, but still highly secret, information about the warhead’s weight, size and explosive power, and its internal-configuration, which allowed designers to miniaturize size and weight without losing power.”

The U.S. government law enforcement and intelligence officials were informed of Dr. Lee’s illegal downloading as early as January 1999. The government missed several opportunities to detect Dr. Lee’s illegal downloading, including putting him in solitary confinement and requiring him to be manacled does, however, raise troubling questions. The government missed such a threat, he had to be held in pretrial confinement under very strict conditions is inconsistent with the long delay from March to December 1999—when the last of the downloaded secrets until he was arrested—and the acceptance of a plea agreement in September 2000 by which Dr. Lee was released with no monitoring whatsoever, and which is only marginally better than it could have had in December 1999, at least in terms of finding out what happened to the tapes. Taken together with the many missed opportunities to detect Dr. Lee’s illegal computer activity and recover the tapes, the government’s handling of the case raises questions as to whether the harsh tactics were intended to coerce a confession.

The government’s claim that Dr. Lee presented such a danger that he had to be prohibited from communicating is severely undercut by its failure to even seek any type of electronic surveillance on him even after the existence of the tapes was known. If the government was truly concerned that Dr. Lee could potentially alter the global strategic balance, then it was irresponsible to indulge him as “Uncle Wen says hello,” or might send a signal to a foreign intelligence service to extract him, it should have sought to monitor his communications.

Some of the most controversial and misguided steps in the case appear to have been motivated more by a desire to protect the affected agency’s image than the national security. This is particularly true of the Department of Energy’s decision to administer a polygraph to Dr. Lee on December 23, 1998. The government repeatedly incorrectly reported that Dr. Lee passed the polygraph, prompting the FBI to near shuts down its investigation. The mere fact that the FBI obtained classified nuclear weapons information should have been sufficient to trigger a thorough investigation, but the FBI’s investigation was anything but thorough.

The government’s investigation of Los Alamos National Laboratory in New Mexico on March 8, 1999. The first vague hints of the story that would explode on the national scene in March 1999 had come in a January 7, 1999, Wall Street Journal article by Carla Anne Robbins, which alleged that “China received secret design information for the W-88 reentry body and quoted unnamed U.S. officials as saying that the ‘top suspect is an American working at a U.S. Department of Energy laboratory.’ The Wall Street Journal reported that the loss of information related to the W-88 warhead was the “most significant in a 20-year espionage effort by Beijing that targeted the U.S. nuclear weapons laboratories,” that “China was given general, but still highly secret, information about the warhead’s weight, size and explosive power, and its internal-configuration, which allowed designers to miniaturize size and weight without losing power.” The article further noted that the government law enforcement and intelligence officials were informed of Dr. Lee’s illegal downloading as early as January 1999. The government missed several opportunities to detect Dr. Lee’s illegal downloading, including putting him in solitary confinement and requiring him to be manacled does, however, raise troubling questions. The government missed such a threat, he had to be held in pretrial confinement under very strict conditions is inconsistent with the long delay from March to December 1999—when the last of the downloaded secrets until he was arrested—and the acceptance of a plea agreement in September 2000 by which Dr. Lee was released with no monitoring whatsoever, and which is only marginally better than it could have had in December 1999, at least in terms of finding out what happened to the tapes. Taken together with the many missed opportunities to detect Dr. Lee’s illegal computer activity and recover the tapes, the government’s handling of the case raises questions as to whether the harsh tactics were intended to coerce a confession.

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The Department of Justice was wrong to reject the 1997 request by the FBI for electronic surveillance under the Foreign Intelligence Surveillance Act. Had the request been permitted to go forward, Dr. Lee’s illegal downloading could have been detected and halted in 1997. The Department of Justice’s own internal review, conducted by Assistant U.S. Attorney Randy Bellows, concluded that the request should have been approved.

The Department of Energy was wrong to allow Wenckhut to contact polygraph examiners to administer a polygraph to Dr. Lee on December 23, 1998. The Wenckhut consultation was released with no monitoring whatsoever, raising troubling questions. The government’s handling of the plea agreement for Lee’s illegal downloading could have been detected and halted in 1997. The Department of Justice’s own internal review, conducted by Assistant U.S. Attorney Randy Bellows, concluded that the request should have been approved.
Risen and Gerth then explained that their own investigation had revealed that “throughout the Government, the response to the nuclear theft was plagued by delays, inactions, and even the occasional total absence of any response at all. The intelligence officials regarded it as one of the most damaging spy cases in recent history.” In support of their charges, they cited the denial of the former PRC intelligence chief Nota Trulock, who was the main proponent of the view that Chinese weapons advances were attributable to espionage, but whose other administration officials, including former Acting Energy Secretary Elizabeth Moler, who was said to have ordered the chair of the President’s Science Committee “for fear that the information would be used to attack the President’s China policy.”

Ms. Moler denied the allegations that she had interfered with Mr. Trulock’s congressional testimony, but the die had been cast so that as the story unfolded over the following months there was always an underlying hint that the Clinton Administration had ignored or downplayed an important espionage case to avoid criticism or complications to its China policy.

On March 8, 1999, Dr. Lee was publicly named for the first time in an Associated Press story by Josef Hebert. Quoting a statement by the Department of Energy, Hebert wrote that Dr. Lee had been fired for “failing to properly safeguard classified material” and containing “information from a sensitivity code.” Shortly thereafter, the New York Times ran another article by James Risen, who had interviewed Energy Secretary Bill Richardson. Hebert told Hebert that on March 8 “for security breaches after the FBI questioned him in connection with China’s espionage activities.”

On March 12, 1999, the key government witness, Dr. Stephen Younger, Associate Laboratory Director of Los Alamos, testified under oath that were held. Then, in his final judgment, Judge Parker’s statements at the plea hearing were a stunning rebuke of the government when he said: “. . . I believe you were terribly wronged by being held in custody pretrial . . . under demeaning, unnecessarily punitive conditions. I am truly sorry that I was led by our Executive Branch of government to order your detention last December.”

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has been an unmitigated disaster. The investigation of Dr. Lee since 1982 has been characterized by a series of errors and omissions by the Department of Energy and the Department of Justice, including the FBI, which have permitted Dr. Lee to threaten U.S. supremacy by putting at risk information that could change the "global strategic balance.

While Dr. Lee, of course, must bear primary responsibility for any damage that might result to national security from his mishandling of classified nuclear secrets, those officials in the DOE, the FBI and, to a lesser degree, the DOJ, who participated in the investigation of Dr. Lee must accept responsibility for their failure to detect and stop Dr. Lee's illegal activity.

It would be one thing if an individual who had never shown up on the counterintelligence radar scope were to make a stop to Dr. Lee's illegal computer activity. Dr. Lee was under active investigation during the very time he was engaged in illegal computer downloads, yet his activities were not stopped.

In fact, Dr. Lee was investigated on multiple occasions over seventeen years, but none of these investigations—or the security measures at Los Alamos—were close to discovering and preventing Dr. Lee from putting the national security at risk by taking classified information from a secure to an unsecure system where they could easily be accessed by even unsophisticated hackers. It is difficult to comprehend how officials with no apparent responsibility for protecting our national security could have failed to discover what was really happening with Dr. Lee, given all the indicators that were present.

The 1982-1984 Investigation

Dr. Wen Ho Lee was born in Nantou, Taiwan, in 1939. After graduating from Texas A&M University with a Doctorate in 1969, he became a U.S. citizen in 1974, and began working at Los Alamos National Laboratory in 1975.

In 1982, Dr. Lee was a Computer Technician at the Livermore Laboratory in California. During this time, Dr. Lee was under active investigation, and in March 1982 he was interviewed by the FBI.

The second area of concern is that the FBI had an unmitigated disaster. The investigation of Dr. Lee since 1982 has been characterized by a series of errors and omissions by the Department of Energy, the DOE Office of Security, the FBI, and the DOJ. These representations were patently false.

The first area of concern is that the FBI did not discover evidence of Dr. Lee's illegal activity. Although Dr. Lee admitted that he had been in contact with Taiwanese nuclear scientists, he minimized the risk, and the FBI did not pursue it.

The FBI did not discover the information that Dr. Lee was sending to Taiwan's Coordination Council of North America, and the status of the documents that he was sending to the Taiwanese Embassy, and his contacts with the LLNL scientist, and his contacts with the DOE.

If the FBI had discovered the information that Dr. Lee was sending to Taiwan's Coordination Council of North America, it would have been able to prevent Dr. Lee from obtaining a security clearance.

During this interview, Lee explained that he had been in contact with Taiwanese nuclear researchers since 1977 or 1978, and had done consulting work for them, and had sent some information that was not classified but that should have been cleared with DOE officials. He tried to explain that he had not been acting as an intelligence collector.

He then went on to discuss his work at Los Alamos—came close to discovering and preventing Dr. Lee from being able to put at risk, years later, the massive volume of nuclear weapons, and Dr. Lee was part of a team working on five Lagrangian mathematical models, which are used in weapons development.

Dr. Lee's wife, Sylvia, also worked at LANL from November 1980 until 1996. The last position she held was "Computer Technician," and she held a Top Secret clearance from 1991 through 1996.

The third and final area of concern about the FBI's handling of the 1982-1984 investigation relates to the FBI's reporting of Dr. Lee's assistance in the investigation of the LLNL scientist. The FBI did not use Dr. Lee in its investigation of the LLNL scientist. Had the FBI been more cautious in assessing Dr. Lee's trustworthiness in the first place, it would likely have not allowed him to participate in the investigation of the other scientist, and would therefore have been in a better position to facilitate his termination from LANL or, at the very least, the removal of his security clearance.

The second element of Dr. Lee's conduct in the 1982-1984 investigation that deserved special mention relates to the FBI's actions after they had the LLNL scientist's FISA coverage removed.

The final draft of the 1997 request for FISA coverage on Dr. Lee, in this case, is troubling because it has the effect of presenting an incomplete picture of the initial investigation of Dr. Lee. Judgements regarding whether an individual is acting as an agent of a foreign power should be made in consideration of the totality of the circumstances, and the FBI's decision to use Dr. Lee in the investigation of the LLNL scientist is just one element of the total circumstances.

The failure to mention the assumption that was made by the FBI in its investigation of the LLNL scientist, that fact is that Dr. Lee had been in contact with the LLNL scientist during the initial investigation of Dr. Lee on March 12, 1987.

Although the FBI's 1982-1984 investigation was not sufficiently thorough to investigate Lee's involvement in the LLNL scientist's situation, the FBI's failure to use Dr. Lee in the investigation of the LLNL scientist is troubling because it has the effect of presenting an incomplete picture of the initial investigation of Dr. Lee. Judgements regarding whether an individual is acting as an agent of a foreign power should be made in consideration of the totality of the circumstances, and the FBI's decision to use Dr. Lee in the investigation of the LLNL scientist is just one element of the total circumstances.

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acquainted with a high-ranking Chinese nuclear scientist who visited Los Alamos as part of a delegation in 1994. And that he was alleged to have helped Chinese scientists with the NADIR system. Dr. Lee was reported meeting this scientist, which he was required to do by DOE regulations, so his relationship with this person aroused the FBI's suspicion. Even Dr. Lee was flabbergasted like Dr. Lee. 

While 180 is a substantial number of individuals, it would not be impossible to devise a system by which counterintelligence personnel can review these records to determine whether or not any individuals who are already under investigation have been identified by the system.

In response to another question about what happened to the NADIR records for 1994 (which, according to testimony from Ms. Wampler are missing), DOE replied simply that: "...in 1993 NADIR was a new and developing technique and many other scientists in addition to Dr. Lee were downloading data due to a change in the computer environment at that time. During the 1993-1994 timeframe, Dr. Lee was not a suspect."

Apart from the fact that the DOE's response is incorrect—Dr. Lee was a suspect beginning in 1993—the records should have been available for review when the FBI used the NADIR system in 1994. It is clearly stated that the DOE was able to confirm that Dr. Lee was flagged by NADIR in 1993 proves that point, but it does not explain the absence of these records on the LHM. Dr. Lee is reported to have tried to check with the DOE computer personnel, and there should have been no doubt that Dr. Lee had no expectation of privacy with regard to the NADIR system. In normal system operations, Dr. Lee's illegal downloads could have been detected and halted.

The DOE computer and counterintelligence personnel could also have been more helpful in this situation. Had DOE transmitted this information to the FBI, and had the FBI had this additional information, it might have been stopped in its tracks. And, if there should have been no doubt that Dr. Lee had no expectation of privacy with regard to the NADIR system, it is a serious error to allow the investigation to be managed in such a way. For example, the FBI did not have access to the LHM, which described the research that Dr. Lee was putting at risk.

The near perfect correlation between the LHM and the NADIR system's alerts in 1994 suggests that Dr. Lee was being warned by the NADIR system. And, according to testimony from Ms. Wampler, the LHM was given the code name Kindred Spirit. Although he was not its author, former DOE intelligence chief Notra Trulock has been closely associated with this document, which contained highly classified details of some of our most advanced nuclear warheads.

The public perception of the government's actions in the Wen Ho Lee case, particularly with regard to the handling of the FBI's investigation, has been fueled by misunderstanding of the Department of Energy's Administrative Inquiry (AI) which was presented on March 28, 1996. With the DOE AI in hand, the FBI resumed its investigation of the Lee case to understand why the investigation was dormant from November 1995 until May 1996, when DOE shut it down to await the arrival of DOE's Kindred Spirit Administrative Inquiry (AI). Unfortunately, the opening of the DOE's AI did not provide the FBI with any new information that it could use to proceed with its investigation. Instead, it was a golden opportunity to do a much broader investigation required. The perception that DOE's AI was the weakest link in the FBI's Kindred Spirit investigation is unfortunate. In fact, it obscures a far more complex set of circumstances. This perception has also unfairly undermined the government's credibility on the ethnic profiling question and seriously damaged Notra Trulock's reputation and career. A more complete public record on this matter may be helpful in reining in some of the damage.

In an October 29, 1999 letter, Energy Secretary Bill Richardson reacted to the FBI's attempt to lay blame for the開啟 of the Kindred Spirit investigation on the Administrative Inquiry: "... I think there has been a tendency to overstate the adverse influence that DOE's technical analysis and preliminary investigative support had on the conduct of the
KINDRED SPIRIT Investigation. There also has been, in my opinion, an over-emphasis on the degree to which DOE input served to limit the FBI’s investigative work. [7] The two agencies’ decisions and actions regarding the scope of the investigation were clearly, mutually agreed-upon by DOE and the FBI, based on security and other concerns.\footnote{Thus, while the AI strongly points toward the Lees there are also enough qualifiers to make it clear that other suspects should also be investigated.}

In the Secretary Richardson is correct. The FBI’s failures in the Wen Ho Lee investigation should not be blamed on the AI. The Department is, by law, limited by the scope of the agreement at issue. The FBI could have disagreed and should have looked at the AI as a starting point. Instead, the FBI case agents seemed to have missed the DOE input they had done their job for them, and never seriously looked at the premise of the AI and its relationship to Dr. Lee’s activities.\footnote{What is and the controversy surrounding it can be stated in an unclassified fashion as follows: (A) The U.S. government concluded in 1995 that the PRC had obtained significant progress in its nuclear weapons program in the early 1990s. (B) The government also learned in 1995 that the PRC had obtained certain classified nuclear weapons design information on the W-88 warhead and other weapons. (C) The agreement that both A and B are true: the Chinese made rapid advancements in their nuclear weapons program in the early 1990s, and they obtained classified nuclear weapons design information sometime before 1995. The controversy arises over whether there is any causal relationship between the two facts. One school of thought—embodied in the Kindred Spirit AI—holds that the Chinese advances occurred because they obtained classified U.S. nuclear weapons design information, particularly the W-88. The other school—embodied in the KSA—has basically, exhausted all logical ‘leads’ regarding this inquiry which could involve multiple transfers from various sources, quite possibly by numerous individuals.}

Investigations predicated upon these two schools of thought would take remarkably different paths. If one took as a starting point, as did the authors of the AI, the belief that the PRC’s nuclear weapons design advances were in large part attributable to espionage, one would proceed by looking for the wholesale transfer of W-88 design information. The alternative view—that the Chinese had obtained the W-88 information independently of the acknowledged acquisition of classified U.S. weapons data in the “walk-in” document—would lead to an investigation focused on the specific bits of classified information the Chinese were known to have obtained, not only about the W-88 but about weapons systems in general. The former theory paints a picture consistent with a single act of espionage, conducted by a single individual transferring information from a specific place. The latter theory, while implicitly acknowledging that the information could involve multiple transfers from multiple sources, quite possibly by numerous individuals. While the debate over whether or not the PRC’s nuclear weapons advances resulted from espionage is important from both a counterintelligence and an intelligence perspective, it is not clear that the AI cast strong light on either the Lees or the W-88.

Any fair reading of the Administrative Inquiry makes clear that its authors (a DOE AI, a CIA investigation, and a BDI agent seconded to the DOE to assist with the AI) considered Wen Ho and Sylvia to be the prime suspects in the alleged loss to the PRC of certain classified design information, and that the loss had likely occurred at Los Alamos. The AI reaches a preliminary conclusion:... It is the opinion of the writer that Wen Ho Lee is the only individual identified during this inquiry who had, opportunity, motive, and access.\footnote{Restricting access to both W-88 weapons system information and the information reportedly received by [the PRC].} A fair reading of the document also shows that the authors explicitly recognized the limitations of their investigation and recommended that the Lees and Los Alamos be the subject of a fresh look at the case, and that the loss had likely occurred at Los Alamos. The AI reaches a preliminary conclusion...

The report concluded with the following recommendation: “The writer believes the ECI [DOE Counterintelligence] has basically exhausted all logical ‘leads’ regarding this inquiry which could involve multiple transfers from multiple sources, quite possibly by numerous individuals.”

The FBI and the AI therefore had been investigating Wen Ho Lee, albeit not very competently, on the basis of credible allegations from 1994 that he had possessed classified nuclear weapons design information. In this context, the AI served to reinforce the FBI’s existing perceptions of Dr. Lee as a likely espionage suspect. Instead of using the AI as a starting point for a comprehensive investigation, the FBI did little or no additional analysis and began focusing on the CIA’s expressed concern in the summer of 1996 that the individual who provided the “walk-in” document might be under the control of a hostile intelligence service, the Chinese.\footnote{The report concluded with the following recommendation: “The writer believes the ECI [DOE Counterintelligence] has basically exhausted all logical ‘leads’ regarding this inquiry which could involve multiple transfers from multiple sources, quite possibly by numerous individuals.”}

Thus, the recent attempts to dissect the AI, outlined elsewhere in this report, miss the mark. The FBI had an opportunity when the CIA raised a red flag about the “walk-in” in 1996 to review the structure of their investigations. They knew, based on the review they conducted at the time, that there had been some discrepancies in the KSAG, but that espionage had, in fact, occurred. Unfortunately, when the FBI restarted its investigation in August 1998, agents never questioned the underlying assumptions of the AI or the impact of these assumptions on the structure and course of the investigation. By restarting the investigation where they left off, the FBI failed to take into consideration massive amounts of information in the public domain and did not examine whether the investigation should extend beyond the W-88 information, beyond Los Alamos, and beyond the Lees. More importantly, the FBI never seems to have taken into account what, if any, relationship existed between the Kindred Spirit allegations and the investigation.
of Dr. Lee that was already under way related to computer codes and software. The FBI’s failure to ask this basic question sent the investigation on a wild goose chase for more than three years while Dr. Lee’s illegal computer activities, which were highly relevant to the 1994 allegations against him, continued unchecked and unimpeded.

The “walk-in” document

The “walk-in” document is central to the Kindred Spirit investigation, so it should be described in the greatest detail consistent with classification concerns. This document, dated April 19, 1995, is an excerpt from a Chinese modernization plan for Beijing’s First Ministry of Machine Building, which is responsible for making missiles and nose cones.66 The document contains facts about U.S. warheads, mostly in a two-page chart. On one side of the chart are various US Air Force and US Navy warheads, including some older bombs as well as the W-80 warhead (cruise missiles), the W-87 (Minuteman III); and the W-88 (Trident II).66 Among the most important items of information in the “walk-in” document are details about the W-88 warhead.

The Cox Committee Report provides the following description and assessment of the “walk-in” document: “In 1995, a “walk-in” approached the Central Intelligence Agency outside of the PRC and provided an official PRC document classified as containing classified information on the W-88 Trident D-5 warhead, the most modern in the U.S. arsenal, as well as technical information concerning other thermonuclear warhead design information. The CIA later determined that the “walk-in” was directed by the PRC intelligence services. Nonetheless, the CIA and other intelligence agencies reviewed the document and concluded that it contained U.S. thermonuclear warhead design information.

The “walk-in” document recognized that the U.S. nuclear warheads represented the state-of-the-art against which PRC thermonuclear warheads should be measured. “Over the following months, an assessment of the information in the document was conducted by a multidisciplinary group from the U.S. government, including the Department of Energy and scientists from the U.S. intelligence community. Reviewers concluded that no FISA warrant was necessary to conduct a preliminary investigation of Dr. Lee’s computer activity to record the information in the document without a FISA warrant. Had these facts been known at the time, the critical opportunity was lost to find and remove from an unsecure system information that could alter the global strategic balance. Moreover, the FBI developed an adequate factual basis for the issuance of a FISA warrant.

The FBI’s failure to ask this basic question sent the investigation on a wild goose chase for more than three years while Dr. Lee’s illegal computer activities, which were highly relevant to the 1994 allegations against him, continued unchecked and unimpeded.

The FBI also learned of the Lees’ purchase of the Asian Skyline apartment from a Hong Kong travel agent in 1994. On a trip to that colony and to Taiwan in 1992. On the basis of the record, the FBI determined that there was reason to believe that tickets for an unreported side trip across the border into the PRC to Beijing. Wen-Ho Lee had visited IAPCM in both 1986 and 1988 and had filed “contact reports” claiming to recount all of the Chinese scientists he met there, he had failed to disclose his relationship with the PRC scientists who visited LANL in 1994.

Wen-Ho Lee was a skilled computer user, which describes certain hydrodynamic processes and are used to model some aspects of the functions of thermonuclear weapons. The FBI also learned of the Lees’ purchase of the Asian Skyline apartment from a Hong Kong travel agent in 1994. On a trip to that colony and to Taiwan in 1992. On the basis of the record, the FBI determined that there was reason to believe that tickets for an unreported side trip across the border into the PRC to Beijing. Wen-Ho Lee had visited IAPCM in both 1986 and 1988 and had filed “contact reports” claiming to recount all of the Chinese scientists he met there, he had failed to disclose his relationship with the PRC scientists who visited LANL in 1994.

Wen-Ho Lee worked on Los Alamos’ so-called “legacy codes” related to nuclear testing data—that were a particular target for Chinese intelligence.

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to light. This investigation was based upon an FBI investigative lead that Lee had pro-
vided significant assistance to the PRC.

"The FBI obtained a copy of a note on IAPC's LAN that was created in 1997 listing three LANL reports by their laboratory publica-
tion number. On this note, in English, was a handwritten comment to 'Linda' saying '[the material] is not suitable for publication [for] these paper[s].' His name is Dr. Zheng Shaotang. Please check if they are unclassi-

The FBI request was worked into a draft FISA application by Mr. David Ryan, a line attorney from the Department of Justice's Office of Intelligence Policy and Review (OIPR) with considerable experience in FISA matters. It was then reviewed by Mr. Allan Kornblum, as Deputy Counsel for Intel-
ligence programs, and Mr. ald Schroeder, Acting Counsel, OIPR. As is well known by now, the OIPR did not agree to forward the FISA application, and yet another opportunity to discover what Dr. Lee was up to was lost.

The Department of Justice should have taken the initiative to forward a FISA application on Dr. Lee to the Court on August 12, 1997. Attorney General Reno testified about this case before the Senate Judiciary Committee on September 24, 1997. The report of this investiga-
tion was released on December 21, 1999. The transcripts make it clear that the De-
partment of Justice should have agreed to go forward with a warrant because of the un-
avoidable need of government for intelligence in-
compatible with the Fourth Amendment if they are presently engaged in clandestine intelligence gathering activities for or on behalf of the PRC, and we had little to show that the two PRC scientists were the ones who passed W–88 design information to the PRC. We advised that he could not send our (the FBI) application forward for those reasons. We had not shown that subjects were the ones who passed the W–88 (design information) to the PRC, that we knew that they were already present in clandestine intel-
ligence activities."86

It is obviously necessary to have a showing of probable cause before one can use a warrant. A warrant is a constitutional intrusion upon the protected rights of the private citizen. For the warrant application to be used by them as agents of a foreign power, or an agent of a foreign power."83

Mr. Seikaly applied the standard from the typical criminal warrant to be used in a FISA warrant. 18 U.S.C. 2518, governing criminal wiretaps, allows surveillance where there is:

"Probable cause for belief that the facili-
ties from which, or the place where, the wire, oral, or electronic communications are to be intercepted, are being used or about to be used, and are to be used in connection with the commission of such offense." [emphasis added]

This criminal standard specifically re-
quires that the facilities be used in the com-
mission of such offense." FISA, however, contains no such requirement. 50 U.S.C. 1805 (a) of Title 50 of the United States Code, provides that a warrant shall be issued if there is probable cause to believe that:

"Each of the facilities or places at which the communications are to be used is, or about to be used, for a foreign power or an agent of a foreign power."

There is no requirement in this FISA lan-
guage that the facility is being used in the commission of an offense. This incorrect ap-
lication of the law was a serious mistake. The FBI, the Bhandles, the Department of Justice, the Attorney General and the Director of the FBI should not have been assigned to an attorney who did not already have a solid grounding in FISA law, FISA applications, and the FISA Court.84

Attorney General Reno demonstrated an unfamiliarity with technical requirements of Section 1002 versus Section 1804. She was questioned about the higher standard under 1802 than 1804: "It seems the statutory scheme is a lot tougher on 1802 on its face."85

Attorney General Reno could not tell if I was incorrect and communications in the FBI. Attorney General Reno indicated lack of familiarity with these provisions, saying:

"Since I did not address this, let me ask Ms. Townsend who heads the office of policy review to address it for you in this context and then I will..."86

In the record, the offer to let Ms. Townsend answer the question was rejected in the interest of getting the Attorney General's view on this important matter rather than the views of one of the directors. The lack of communication between the Attorney General and the Director of the FBI on a matter of such grave importance is unfortunate. Mr. Freeh sent John Lewis, Assistant FBI Direc-
tor for National Security to discuss this matter with the Attorney General on August 20, 1996. However, when the request for a review of the matter did not lead to the for-
warding of the FISA application to the Attorney General, the Director Freeh did not further press the issue. And Attorney General Reno con-
ceded that she did not follow up on the Wen Ho Lee matter. During the June 8 hearing, Ms. Townsend was asked to convey to you that they had once again denied this matter:"88
Attorney General Reno replied, “No, they had not.”93

As the Bellows Report concludes, “The failure to advise the Attorney General of the resolution of the matter had an unwelcome consequence: It effectively denied the FBI the true appeal it had sought.”94

The hearing also included a discussion as to whether FBI Director Freeh should have personally brought the matter again to Attorney General Reno. The Attorney General said that she did not “consider the Attorney General was not responsible for the investigation of Wen Ho Lee. From the beginning of that investigation, the FBI’s objective had been to obtain FISA coverage. It now faced the prospect of no FISA coverage, an eventuality for which it had never prepared. The other consequence, of course, is that such information, if acquired through FISA coverage was not. It is impossible to say just what the FBI would have learned through FISA surveillance. It is, after all, the point of surveillance. What is clear is that [deleted] should have been approved, not rejected. For all the problems with the FBI’s counterintelligence investigation, had they even been an adequate one, the FBI did somehow managed to stitch together an application that established probable cause. That OIPR would disagree with the Attorney General’s views on this investigation a blow from which it would not recover.”95

Had the FBI obtained the FISA search warrant, it might have had a material effect on the investigation and criminal charging of Dr. Lee. Given the serious mistakes that had been made by the FBI prior to 1997, there is no guarantee that a FISA warrant would have led to a successful conclusion to the investigation, but the failure to issue a warrant clearly had an adverse impact on the case.

To put the 1997 FISA rejection in perspective, consider that the open network to which he had access at the Taiwan Nuclear Energy Research Institute is “linked to the Internet and e-mail, a system that had been attacked several times by hackers.”96 Although we do not know of exactly how many times that was accessed, it has been reported that between October 1997 and June 1998 alone, “there were more than 300 foreign attacks on the Department of Energy unclassified systems, where Mr. Lee had downloaded the secrets of the U.S. nuclear arsenal.”97

Consider also the following from a December 23, 1999, Government filing in the criminal case against Dr. Lee:

“...In 1997 Lee downloaded directly from the classified system to a tenth portable computer tape a current nuclear weapons design code and its auxiliary libraries and utility codes.”98

This direct downloading had been made possible by Los Alamos computer managers who made Lee’s file transfers “easier in the mid-1990s by putting a tape drive on Lee’s classified computer.”99 As incomprehensible as it seems, despite the fact that Dr. Lee was the prime suspect in an ongoing espionage investigation, and despite plans to limit his access to classified information to limit any damage he might do, DOE computer personnel installed a tape drive on his computer that made it possible for him to directly download the nation’s top nuclear secrets.

An important aim of surveillance under the FISA statute is to determine whether foreign intelligence services are getting access to our classified national security information. Although we do not know, and may never know, whether the classified files he had downloaded to the unclassified system, accessible to any hacker on the Internet.

After the rejection of the FISA warrant request on August 12, it took the FBI three and one-half months to send a memo dated December 19, 1997, to the Albuquerque field office listing fifteen investigative steps that should be taken to move the investigation forward. The Albuquerque field office did not respond directly until November 10, 1998. The fifteen investigative steps were principally in response to the concerns raised by OIPR about the previous FISA request. To protect sources and methods, the specific investigative steps in the December 19, 1997 teletype cannot be disclosed, but have been summarized by the FBI as follows:

1. Conduct Additional Interviews
2. Conduct Other Investigative Techniques
(a) Review information resulting from other investigative methods;
(b) Review other investigations for lead purposes; and
(c) Implement alternative investigative methods.

One of the two leads were seriously pursued. Most importantly, the FBI did not open investigations on the other individuals named in the DOE AI until much later.

False Flag

One of the steps recommended in the December 1997 HQ investigative plan was carried out in August 1998. The results of this “False Flag” operation against Dr. Lee are partially described in a November 10, 1998 memorandum from Albuquerque to FBHQ. The memorandum is identified as a request for electronic surveillance and lays out the probable description of a series of phone calls between Dr. Lee and an individual posing as an officer of...
the Ministry of Foreign Affairs and Ministry of State Security. According to the memo, this undercover agent (UCA) introduced himself to Dr. Lee as "a representative of the 'concerned department,'" from Beijing. Dr. Lee and explained that the purpose of his visit to Santa Fe was to "meet with Wen Ho Lee to assure of Lee's well-being in the aftermath of the contempt citation by the Chinese-American scientist, Peter Lee in California."103

The Albuquerque memo describes Dr. Lee as being "far from the entire matter and apprehensive about meeting face-to-face with [the UCA]" and relates how Dr. Lee mentioned that "departmental policy at LANL is to report to his employer if he meets with a representative of a foreign government, however, it does not mean that he is forbidden to meet such a person."104 Dr. Lee stated that for discussing any matters with the representative of the PRC over the phone, but when told that there were other sensitive issues besides the Peter Lee case which must be discussed in person, Dr. Lee agreed to meet the UCA at the Hilton Hotel.105

About ten minutes after agreeing to travel to meet the UCA, Dr. Lee called back and said he had changed his mind, reiterating his concerns about registering with his superior when meeting with foreign government officials. Dr. Lee would not agree to a face-to-face meeting, the UCA said that "although he was an official from the PRC government, he was traveling under civilian status and that he could not be scrutinized by the United States government."106 The UCA then asked Dr. Lee if he had been interviewed by any U.S. authorities, including the FBI, and whether Dr. Lee had noticed anything unusual or was being treated differently by his employer or had any restrictions on his travel arrangements in their behalf. Dr. Lee case. Dr. Lee responded negatively.107

The UCA then told Dr. Lee that one of the reasons he wanted to meet was to see if there was any material to take back to the PRC. After Dr. Lee said there was not any such material, the UCA said that "since the material he brought back to China and the speech he gave were so helpful, did Lee have any plans in going to the PRC in the near future."108 Dr. Lee said that he would probably not be visiting China until after his retirement from LANL in one or two years. He did not, as one would expect, deny that he had previously sent material.

The Albuquerque case agents, with the UCA called Dr. Lee again, saying that he would be leaving Santa Fe in a few days and asking if Dr. Lee would like to have a number where he could contact the UCA in the future. Dr. Lee said he would like to have a number, and was provided a pager number and was told that it belonged to an American friend who had helped him and his associates in the past, and who could be trusted.109

Dr. Lee did not immediately report this contact to his wife or to his DOE security. When Dr. Lee was questioned by DOE counterintelligence personnel about the phone call, he was vague, and failed to mention the bigger number or the hotel.

The FBI did not properly handle the information learned from the False Flag operation. First, it took more than three months for the transcript of the exchange between Dr. Lee and the UCA to get to FBI Headquarters where it could be fully analyzed. Unfounded, but the transcript (and the FISA request based on the results of the False Flag) arrived at FBI HQ just when the DOE was asserting control over the case. Had the transcript been provided to the DOE earlier, it is possible that it deserved, the FBI would have been able to tell the Office of Intelligence Policy and Review that prior concerns about whether Dr. Lee was "currently engaged" as an agent of a foreign power had been addressed by his dealings with the undercover agent. Previous efforts to understand this might have been sidetracked if the FBI had simply worked into the renewed FISA application are the following:

That Dr. Lee agreed to meet with an individual from a foreign power, and traveling in the U.S. in civilian clothes to avoid detection by U.S. authorities. Although Dr. Lee called back and canceled the request, he revealed the name of a lab security personnel that he had agreed to meet in the first place.

That Dr. Lee accepted the contact number of an individual from a foreign power, yet failed to disclose that fact to lab security officials about the incident when asked about this contact. Dr. Lee apparently admitted more of the details of the August phone conversations when he was interviewed by FBI agents in January 1999, but his failure to acknowledge this fact when he spoke to Los Alamos officials in August 1998 continued a pattern of incomplete disclosure from Dr. Lee.

That Dr. Lee asked questions during the conversation which indicated a knowledge of PRC intelligence and scientific organizations and the operational methods used by these agencies.

None of these new items of information was sufficient, on its own, to tip the balance of probable cause against Dr. Lee. However, in the context of the information that had already been gathered by the FBI, these elements were certainly relevant to a probable cause determination and should have been considered by the FBI before it decided to immediately inform OIPR of Dr. Lee's failure to fully report the August contact, that conversation did not take place until three months after the contact was supposed to have occurred. A proper and timely interpretation of the False Flag operation would have set the investigation on a very different course in late 1998. The Bellows Report supports the judgement that the FBI's handling of the False Flag was inappropriate, and that the information gained through the False Flag would have added to a showing of probable cause necessary for a FISA warrant.

Surreptitious Communications:

The December 19, 1997 directive from FBI headquarters also revived an investigative issue that had been given an initial determination in 1995, prior to the start of the Kindred Spirit investigation. Among the 15 actions that FBI headquarters directed the Albuquerque office to take was to determine the possibility that Dr. Lee was engaging in clandestine communications, using either a satellite system or Short Range Agent Communications (SRAC). As part of the 1994-1996 investigation of Dr. Lee, the FBI had learned that Dr. Lee was reported to have installed a satellite antenna on his LANL campus and was suspected of using it to communicate surreptitiously. The case agents requested assistance in investigating the possibility that Dr. Lee was engaged in surreptitious communications, but the request was summarily dismissed by the case manager at FBI Headquarters, Supervisory Special Agent Craig Schmidt, and the matter was not further pursued for nearly three years.

After the FISA request was rejected in 1997, in part because the FBI had not been able to show probable cause against Dr. Lee, the FBI had felt since 1997 that they had sufficient probable cause to get a FISA warrant. The FBI had felt since 1997 that they had sufficient probable cause to get a FISA warrant. The 1998 investigative steps yielded new information, but the concerns OIPR had raised about the Lees being currently engaged in clandestine activity,
yet the FBI case manager summarily dismissed the new request, failing to even forward it to OIPR for consideration. The failure to take action when the dynamics of the case changed in early 1998 is just incomprehensible.

When such serious national interests were involved, it was simply unacceptable for the FBI to tarry from August 12, 1997 to December 19, 1997, to send the Albuquerque field office a memo. It was equally unacceptable for the Albuquerque field office to take from December 19, 1997 until November 10, 1998 to respond to the guidance from Headquarters, and then for the FBI not to renew the FBI's FISA warrant, based on the additional evidence. The FBI's handling of this issue is impossible to justify.

The December 23, 1998 Polygraph

When Dr. Lee returned to the United States from a three-week trip to Taiwan in December 1998, he was administered a polygraph examination on instructions from Mr. Ed Curran, Director of DOE’s Office of Counterintelligence (OCI). Although Dr. Lee was initially thought to have passed the polygraph with very high scores, his access to the X-division did not immediately suspend. The FBI gave the FBI time to conclude its investigation. When the polygraph results were examined by the FBI in late January or early February 1999, it became clear that Dr. Lee did not pass the polygraph. The X-Division was temporarily suspended to conduct the first polygraph in this case when the case was an open FBI investigation. The circumstances surrounding this December 1998 polygraph are among the most important but least understood aspects of the case.

The short answer is that: 1) DOE jumped into the case without setting a stage or creating a context, 2) the results of that polygraph prompted the FBI to nearly shut down the case in a heavy handed way during late December 1998, and 3) the attitude of the polygraph examiner toward the kindred spirit investigation from beginning to end, namely the systemic breakdown of effective communication between DOE and the FBI on matters of great importance. 137 However, when Mr. Curran was opposed to letting Dr. Lee go to Taiwan, he should have said something. As Director of DOE, the Director is clearly in charge. He did not act, so Dr. Lee went to Taiwan.

As another example of ineffective communication, I want to remind Mr. Curran of his statement that he first learned on December 15, 1998, that Director Freeh had recommended removing Mr. Lee from access more than a year before. 139 Mr. Curran assumed his position as Director of OCI in April 1998 and immediately conducted a 90-day review of the Wen-Ho Lee case. In October 1998, he was appointed Director of FBI's Hostage/ TEMS Unit and wanted to “get the case moving and to resolve the issues of the possible loss of sensitive information.” 139 The fact that the FBI had recommended that Dr. Lee’s access to classified information be pulled was apparently not shared with Mr. Curran until December 1998, when Mr. Lee went to Taiwan. 139 It should be noted, however, that Mr. Curran told the DOE IG that he learned about Director Freeh’s 1997 comments on Mr. Curran’s IG letter in October 1998, six months before he finally took action. 139 This is significant because it undermines Mr. Curran’s assertion that the reason he acted in December 1998 was because he had just learned of Director Freeh’s 1997 recommendations.

That the Director of DOE’s Office of Counterintelligence was not informed (or did not acknowledge) at the time that Dr. Lee should be pulled from access reflects poorly on the DOE and the FBI. How could anyone dismiss this clear and urgent recommendation? When the FBI recommended that Dr. Lee be removed from access, the FBI’s IG stated that “The importance of this issue cannot be overstated.” 140 When the FBI’s IG wrote to Mr. Curran in January 1999 that the FBI had recommended that Dr. Lee be removed from access because the FBI was concerned that Mr. Lee should have been pulled from access because of the FBI’s recommendation regarding a security issue. Mr. Curran did not act to remove Dr. Lee from access. Mr. Curran’s assertion that the reason he acted in December 1998 was because he had just learned of Director Freeh’s 1997 recommendations is not supported by the evidence or the facts. The fact that the FBI had recommended that Dr. Lee be removed from access and that Mr. Curran did not act to remove Dr. Lee from access reflects poorly on the DOE and the FBI.
the FBI was not going to interview Mr. Lee and bring this case to a conclusion prior to his departure to Taiwan. I made the decision, with the Secretary's approval, to remove Mr. Lee from access from DOE and to terminate his employment. I did not wish to see him return to DOE, and until the FBI could conclude their investigation through interview and polygraph. 

"Mr. Lee from Taiwan on December 23, 1998. He was interviewed and removed from access and asked to take a polygraph. The FBI was aware that if Mr. Lee refused to take a polygraph, his security clearance would have been removed and steps taken to terminate his employment; if Mr. Lee agreed to take the test and failed, his clearance would be terminated and remaining proceedings would be initiated. This activity was completely coordinated with the FBI. A memo was submitted to the Secretary of Energy from me setting forth the above scenario. Mr. Lee took the polygraph test and representatives from FBIHQ were present."

In subsequent correspondence with the subcommittee, Mr. Curran elaborated on his reasons for removing Dr. Lee's access in December 1998. Responding to follow-up questions from a September 27, 2000 subcommittee hearing, Mr. Curran cited four reasons for removing Dr. Lee from access in December 1998: (1) the fact that the FBI no longer required Lee be kept in access, (2) my discomfort at the extent of Dr. Lee's access, (3) the fact that the FBI's false flag operation had been unsuccessful, possibly alerting Lee to the investigation, and (4) the fact that Dr. Lee had been traveling in Taiwan, thus able to travel easily to Hong Kong or the People's Republic of China without our knowledge.

While Curran's account explains what happened, it does not adequately explain why these events took place. It was simply incomprehensible to me to allow Dr. Lee to travel to Taiwan, yet polygraph him and pull his access from classified information upon his return, even though he supposedly passed the polygraph. If Dr. Lee was such a threat that he needed to be polygraphed and removed from access, why was he allowed to go to Taiwan? And if he passed the polygraph after returning from Taiwan, including specific questions about espionage, why was there still a need to remove his access?

Mr. Curran's account for the series of events leading up to the December 1998 polygraph shows an investigation that was, at best, disjointed and poorly coordinated (despite Mr. Curran's assertions to the contrary). Consider, for example, that the FBI agent who took over the case on November 6, 1998, did not agree with the DOE decision to have Wackenhut give Dr. Lee a polygraph examination, and has called it "irresponsible." According to FBI protocol, Dr. Lee would have been questioned as part of a post-travel interview. However, as Mr. Curran noted, the case agents were inexplicably unprepared to conduct such an interview and the Special Agent in Charge (SAC) in Albuquerque quipped "we had put together an action plan with [Wackenhut] and Dr. Lee a polygraph and pull his access to classified information (something the FBI had recommended 14 months prior), but was not willing to interview Dr. Lee and bring this case to a conclusion prior to his departure to Taiwan. The case was a mess, and then it got worse.

The disagreement between DOE and FBI over how best to proceed in late 1998 only partially explains why the investigation lurched forward with FBI seemingly in charge of the investigation (Dr. Lee on travel to Taiwan, contrary to Mr. Curran's preference) and Mr. Curran prevailing the next (getting the Albuquerque SAC to overrule the lead case manager at headquar- ters who had put together an action plan with Wackenhut, contrary to Mr. Curran's preference). Other FBI documents provided to the subcommittee paint a more complete and markedly different picture of the events surrounding the polygraph of Dr. Lee on December 23, 1998. Unfortunately, the picture they paint is one of DOE trying desperately to protect its image from the revelations it expected to receive from the ABC Committee report, with the FBI going along, and neither agency focusing on the national security implications of their actions. It was further buttressed by statements that two security clearances and access. The former Director of LANL's Internal Security Division, Mr. Ken Schiffer, told the IG that he first heard Dr. Lee's name on December 21, 1998, in a conference call with two individuals from the Office of Counterintelligence, one of whom told him that "the Secretary wanted Mr. Lee to be fired." Mr. Richard Schlimme, the Counterintelligence Program Manager in the Albuquerque office, told the IG that Mr. Schlimme had been on annual leave on December 21, 1998, when he was called to come in to work to discuss the Wen Ho Lee case. When he arrived, Mr. Schlimme was told that "Secretary Richardson wanted immediate action, so Mr. Curran decided to interview Mr. Lee immediately." Further, according to Mr. Schlimme, "Mr. Curran wanted Mr. Lee removed from the laboratory regardless of how he did on the polygraph.

In addition to the evidence described above, the subcommittee has a sworn deposition from the case manager at FBI Headquarters, Supervisory Agent Craig Schmidtem the same FBI case manager at headquarters who had put together an action plan in December 1997 trying to get the investigation started. Mr. Curran wanted a polygraph of Dr. Lee on travel to Taiwan, and until the FBI was going to interview Dr. Lee and bring this case to a conclusion prior to his departure to Taiwan. I made the decision, with the Secretary's approval, to remove Mr. Lee from access from DOE and to terminate his employment. I did not wish to see him return to DOE, and until the FBI could conclude their investigation through interview and polygraph.

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three reasons: (1) the erroneous reading changed the course of the investigation, prompting the FBI to nearly close down its investigation at a time when the scrutiny of Dr. Lee became more intense, (2) it took an inordinate amount of time to discover that the initial reading of the polygraph was wrong, and (3) the public perception that the FBI somehow later reversed that finding is incorrect.

The consequences of the incorrect interpretation of the December 23, 1998 polygraph are the subject of the next section of this report. The remainder of this section will address the specific examination performed by Mr. John Mata on December 30, 1998. Mr. Mata, Manager of DOE's Special Agent in Charge William Lueckenhoff would later blame the polygraph program. The CBS report claimed that "three experts... the public's mind, to include the potential jury pool. As the negotiations between the defense and the government went forward, Mr. Holscher continued to press the polygraph issue, claiming that Dr. Lee had passed the only test that had been properly administered, and that the FBI was wrong to claim that Dr. Lee had failed either exam. Mr. Holscher's statements on this issue were not in the public eye as it would be expected that a defense lawyer to do, but they have created the incorrect impression that the Wackenhut examiners were right and the FBI was wrong.

Mr. Holscher and Dr. Lee's supporters got help on this score from a story by CBS reporter Sharyl Attkisson. The February 2000 news report, titled "Wen Ho Lee's Problematic Polygraph," claimed that "three experts gave the nuclear scientist passing scores but the FBI later reversed the findings." CBS investigation found that Lee's polygraph results were incorrect.

After the exam, the two FBI agents who were on hand were briefed on the results of the test. There is a December 21, 1998 memorandum for the record written by John Mata which describes how the test results were recorded.

The December 21, 1998 polygraph was wrong, and (3) the public perception that the FBI somehow later reversed that finding is incorrect.

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We asked Keifer to look at Lee's polygraph scores. He said the scores are "crystal clear." In fact, Keifer says, in all his years as a polygrapher, he had never been able to score on the non- deceptive scale. He was at a loss to find any explanation for how the FBI could deem the polygraph scores as "failing." "...and creating an uproar charged with espionage (only computer security violations), the content of the polygraph may be unimportant," he said. In fact, his scores apparently morphed from passing to failing fuels the argument of those who claim the government was looking for a scapegoat for the theft of masses of American top secret nuclear weapons information from China—and that Lee conveniently filled that role.135

The clear implication that the Wackenhut examiners were correct. Rather than take on the issue, the FBI simply told CBS "it would be 'bad' to talk about Lee's polygraph, and that the case (would) be handled in the courts."156 The FBI never got the chance to explain its interpretation of the exam results. It is not clear whether the FBI is continuing its investigation or has "closed the case." The CBS story created considerable public interest in the matter of Wen Ho Lee's polygraph still unresolved. But the CBS report gave the clear impression that Lee conveniently filled that role.157

When the case of FBI Special Agent Robert Hansen broke in February 2001, FBI Director Louis Freeh ordered, among other things, an examination of the polygraph data used by the FBI for counterintelligence purposes. The Judiciary Committee held a hearing on the utility of polygraphs in law enforcement and counterintelligence cases, and heard from a distinguished panel with witnesses offering opinions on both sides of the issue. With the matter of Wen Ho Lee's polygraph still unresolved, the panel was also asked to review the results of the December 23, 1998 polygraph and answer a series of questions that would address the same concern that CBS had raised—how can the same charts be interpreted as both passing and failing? Dr. Michael H. Capps, currently Deputy Director for Developmental Programs at the Defense Security Service and formerly head of DOD's Polygraph Institute, reviewed the polygraph data and said that he could "render no opinion regarding whether or not deception was involved."136 He was never asked to describe how he had evaluated the exam with and without the aid of the John Hopkins algorithm, which is designed to produce a probability analysis using a mathematical model to render a probability of deception. He noted that "there are what I believe to be substantial differences in the scores my evaluation produced and those of the Wackenhut examiner. . . . I cannot account for the differences between my results and those of the Wackenhut examiners."137

In a recent question about how different examiners could reach substantially different conclusions, Mr. Capps said, "One possibility that the examiners evaluating the same data to draw a similar, but not necessarily identical conclusion. This was not the case when comparing my evaluation with that of the Wackenhut examiner. . . . I cannot account for the differences."138

One possible explanation for the differing opinions on the polygraph is that the questions were improperly structured, making the entire test invalid because the control questions and the relevant questions were not sufficiently distinct from the relevant questions so as to generate a useful basis of comparison.139

Mr. Richard Keifer was also asked to evaluate the December 23, 1998 exam in light of potential mistakes and created a detailed analysis and critique of the test and reported:

"My review of the polygraph examination of Wen Ho Lee determined the results to be inconclusive. . . . It is my opinion this examination was not up, conducted and reported in a way that the polygraph examiner clearly and effectively explained to her several times that the results of the exam were "inconclusive". The FBI then took issue with both the relevant questions and the control questions.163 This finding is consistent with what I was told by both CBS and FBI examiners who noted that Dr. Lee appeared to be reacting to all the questions, control and relevant. The structure of the questions used in the test is important because a polygraph is designed to measure differences between a subject's responses to control questions, which should generate a different reaction, and the relevant questions where a substantial response is meaningful. Control questions that produce a reaction have the effect of minimizing the differences in the reactions to control questions and relevant questions, thereby rendering the test less useful.

Mr. Keifer also commented on his CBS appearance: "I was quoted out of context and I felt it was deliberate. I had numerous telephonic conversations with Attorney General John Ashcroft, Attorney General John Ashcroft, and open X-Division computer accounts had been suspended. At 9:36 p.m., Mr. Lee made four attempts to enter the secure area of X-Division through a stairwell. At 9:39 p.m., he tried again through the south elevator.150 At 3:20 a.m. on Christmas Eve, Dr. Lee again tried to gain access to the X-Division. Had the FBI maintained proper surveillance, they would have known that Dr. Lee was making desperate attempts to get into the X-Division. Surely that would have been a clue that further investigation was necessary. Had the case been handled properly, FBI or DOE personnel could have done what Dr. Lee eventually did—just walk into the X-Division and pick up the tapes. Instead of destroying them, as Dr. Lee says he did, government officials could have secured these tapes containing the crown jewels of America's nuclear secrets. In a December 24 meeting, Dr. Lee was told "There was no indication that T-Division to T-Division for thirty days to allow for the FBI to complete their inquiry."151 If there had ever been any doubt in the minds of the FBI in connection with the FBI investigation, this comment from DOE removed that doubt. His conduct over the next
few days shows clearly that he was worried about the government’s sudden interest in him and the fact that his access to the X-Division had been removed. All told, Dr. Lee tried passing polygraphs almost twenty times between the December 23 polygraph and the February 10 exam. Had the FBI conducted the polygraph at the end of December, it might have wondered why Dr. Lee wanted to get back into the X-Division so desperately, and they might have gone there to look. It should not all of the blame for the FBI’s lack of interest in Dr. Lee’s conduct after the polygraph can be placed on the incorrect interpretation of the polygraph results. The FBI made the possible mistake that the FBI thought that Dr. Lee had passed the polygraph, there is no excuse for completely dropping an investigation solely on the basis of a passed polygraph, especially when DOE and the case agents were told that during the pre-polygraph interview Dr. Lee had admitted foreign contact that he had not previously reported. The FBI should have continued the investigation on the basis of that revelation, regardless of the polygraph exam. A review of the transcript from the March 7, 1999 interview of Dr. Lee shows that the FBI focused very heavily on that unreported contact. If it was worth investigating in March, it should have been worth investigating the previous December.

DOE’s answer as to why it failed to monitor Dr. Lee’s computer, even on December 23, is that the polygraph is both baffling and informative. DOE’s Ed Curran said that “since the FBI was conducting the investigation of Dr. Lee, it was not in the position of monitoring necessary.” All available evidence indicates that the impetus for the polygraph clearly came from within DOE, and that the FBI agreed to this at the insistence of DOE, yet DOE washed its hands of any responsibility for determining whether the polygraph would be a response to Dr. Lee. Consider also that the catalog of Dr. Lee’s attempts to get back into the X-Division was culled from information under DOE’s control, information that the FBI did not have access to unless the DOE gave it to them. Under these circumstances, it is not surprising that Dr. Lee’s attempts to get back into the X-Division almost immediately after his access was pulled went undetected until much later. The FBI says that it did not monitor Dr. Lee’s computer until it re-enter the X-Division until March 13, 2000. The almost complete breakdown in the surveillance of Dr. Lee had severe consequences. Lee later learned that one hour of reactivation (of his computer account), he immediately deleted three files, including one which was named after the graduate student who had worked for him in 1997. In late January, he began erasing the classified information from the secure area of the computer. After he was interviewed by the FBI on January 17, Dr. Lee “began a sequence of massive file deletions . . .” He even called the help desk at the Los Alamos computer center to get instructions for deleting programs, he was interviewed by the FBI polygraphed again on February 10, within two hours of the time he was told he had failed the polygraph, and even moreerals. All told, Dr. Lee deleted files on January 20th, February 9th, 10th, 11th, 12th, and 17th. When he called the help desk on January 22nd, he was told that he had deleted three files, all of which he knew that the “delay” function of the computer he was using would keep deleted files in the directory for some period of time. He asked for deleted files, all of which he knew that the delay function of the computer he was using would keep deleted files in the directory for some period of time. He asked for deleted files, all of which he knew was impossible. Thus, the report that Dr. Lee had passed the December 23 polygraph gave Dr. Lee precious time to delete and secret information. The significance of Dr. Lee’s file deletions and the unreasonable delays in carrying out the investigation that should have detected this unauthorized and undetected authorized deletion activity is compounded. As FBI Agent Robert Messmer has testified, the FBI came very close, “within literally days, of having lost that material.” This has led the probing of whether or not the FBI thought that Dr. Lee downloaded classified files. If the material had been overwritten after it had been deleted by Dr. Lee, would have kept that fact from this investigation.” In this context, the repeated delays, the lack of coordination between the FBI and DOE, and the continuing activity of the FBI and the Department of Justice, are much more serious. February 10, 1999 to March 8, 1999 On February 10, 1999, Wen Ho Lee was again given a polygraph examination, this time by the FBI. During this second test, which Lee failed, he was asked, “Have you ever given any of [a particular type of classified computer code related to nuclear weapons testing] to any unauthorized person?” and “Have you ever passed W-88 information to any unauthorized person?” It should be noted that the test mentioned that the PRC was using certain computational codes, which were later identified as something Lee had access to. Moreover, the computer code information had been developed independently of the DOE Administrative Inquiry which was subsequently questioned by FBI and DOE officials.

After this second failed polygraph, there should have been no doubt that Dr. Lee was aware of the need to engage in an espionage investigation, and it is inconceivable that neither the FBI nor DOE personnel took the rudimentary steps of checking to see if he was engaged in such activity. Again, this is not hindsight. The classified information to which Dr. Lee had access, and which he was asked about in the polygraph, was located on the Lee Alamos computer system. The failure of DOE and FBI officials to promptly find out what was happening with Dr. Lee’s computer after he was deceptive on the code-related polygraph question is inexplicable. As noted above, this failure afforded Dr. Lee yet another opportunity to delete classified data from two tapes (he no longer had access to the one that had been installed in his X-Division computer since he had been moved from that division in December 1998). Nearly three weeks after the polygraph failed, and after he was given permission to search Lee’s office and his office computer, whereupon they began to detect evidence of his unauthorized and unlawful computer activities. Even so, the FBI did not immediately move to request a search warrant. The three week delay, from February 10 until the first week of March, is inexplicable. The long hiatus in moving the case forward seems to have been broken primarily by the

impending release of a story on the W-88 case by the New York Times, after which the case was once again moved from the national security track onto the political track. Upon hearing the story, DOE’s Chief, General Counsel, and other DOE officials asked that it be delayed for several weeks, “saying they were preparing themselves to deal with the FBI.” Justice Department then indicated that the FBI was not still not ready, in March 1999, to interview Dr. Lee. The same argument had been made in December when the polygraph Dr. Lee, so there is absolutely no reason that the necessary preparations could not have been made in the interim. Yet it is fitting that Dr. Lee’s identity, but the FBI said they worried that he might recognize himself from details in the article. As if he was not already aware that the FBI was investigating him after having been polygraphed and having his access to classified information suspended since December, having been interviewed by the FBI in January, having been asked to take another polygraph in February.

The FBI interviewed Dr. Lee on March 5, and DREW YORK Times has published its story the next day, “China Stole Nuclear secrets for Bombs, U.S. Aides Say.” Prompted to move by the breaking story, the FBI interviewed Dr. Lee on March 7. It was during this interview that one of the case agents, at the suggestion of Albuquerque SAC Kitchen, asked Dr. Lee if he had heard of the Julius and Ethel Rosenberg, the couple who had been executed for providing nuclear secrets to the Soviet Union. “I have no idea to the Rosenberg case,” Dr. Lee answered. As FBI Agent Robert Messemer has pointed out in a transcript of the interview: “Do you know who the Rosenbergs are?” “Yes,” said Dr. Lee. “Yes, I heard them mention.” Dr. Lee said. “The Rosenbergs are the only people that ever cooperated with the federal government in an espionage case,” she said. “You know what happened to them? They electrocuted them, Wen Ho.” Frame later acknowledged that this reference to the Rosenbergs was inappropriate, but he denied that the FBI ever attempted to coerce a confession from Dr. Lee.

One day after the FBI’s confrontational interview, Dr. Lee was dismissed from Los Alamos. Former LANL Energy Science Intelligence chief Robert Vrooman, has suggested that the leaking of Dr. Lee’s name to the press had an adverse impact not only on Dr. Lee but also on the integrity of the investigation into how the Chinese obtained U.S. nuclear secrets, but the investigation was already in deep trouble before Dr. Lee’s name became public.

Reopening the W-88 Investigation

Before turning to the criminal case against Dr. Lee, it is appropriate to make a comment on the status of the investigation into the loss of the W-88 information, the matter at the heart of the DOE’s AI and the FBI’s investigation from 1996 to 1999. The September 1999 decision by the FBI and the DOJ to expand the investigation of suspected Chinese nuclear espionage is puzzling, primarily because it should have happened long ago.

In an October 1, 1999 letter, Attorney General Reno and FBI Director Freeh explained the rationale for reopening the investigation. “Our decision to take this action in regard to the investigation into the compromise of U.S. nuclear technology is the result of two recent developments. First, the investigation into suspicions raised by the FBI Albuquerque field office that began to develop in
November, 1998, regarding deficiencies in the DOE Administrative Inquiry. Second, after questions were raised by Senate Governmental Affairs Committee staff, we started to re-examine the issues drawn in the documents drawn in the DOE Administrative Inquiry.182

This letter is significant on several fronts. First, it represents the beginning of a top level assault within DOJ and FBI on the AI as an explanation for why the W-88 investigation had been bungled. The reference to concerns involving Albuquerque office in November 1998 is misleading all—of the documents coming out of Albuquerque in 1998 were getting FISA coverage on Dr. Lee. The documents did contain knowledge that somewhere in the neighborhood of 250 personnel per year had access to the AI, which was more than had been previously believed, but the case agent nevertheless pressed for a FISA. It is simply not accurate to portray the November 1998 documents as raising questions about the AI as a basis for investigating Dr. Lee.

Subsequent documents from Albuquerque did raise questions about the worst in this regard is the January 22, 1999 memorandum which essentially clears Dr. Lee. It says:

A list of the pertinent questions asked in the [December 23, 1998] polygraph exam showed that Lee did not pass classified information to a foreign intelligence service. The polygraph exam showed that he had passed the examination of the questions relating to the examination were made available to FBI AQ by DOE on 01/22/1999.

In a section titled “SAC ANALYSIS” David Kitchen wrote that “based on FBI AQ’s investigation it does not appear that Lee is responsible for the loss of the W-88 information.” At that point, FBI-AQ had done remarkably little investigation. The lead case agent had requested a FISA in November 1998, but had been overruled. By December, the DOE jumped into the investigation in response to the Committee hearings and gave Dr. Lee a polygraph. Based on nothing more than a supposedly passed polygraph—the results of which Albuquerque received on the same day it was writing the memo and could not have written on its own—Dr. Lee was cleared of any responsibility for the loss of the W-88 information.183

This is a classic case of too little too late, and it raises questions as to whether the FBI was really trying to get to the bottom of the domestic espionage investigation or to shut down the investigation. This is nothing short of outrageous.

Was it mere coincidence that in his “Dr. Lee’s not guilty memo” Kitchen took aim at the AI which contained the very allegations that were the subject of testimony before the Cox Committee? The January 22, 1999 memo does not even address the allegations, from 1994, that Dr. Lee had helped the Chinese scientists with codes and software, yet Mr. Kitchen is prepared to shut down the investigation. Any comments from Mr. Kitchen regarding flaws in the Administrative Inquiry must be viewed in the context of the Albuquerque division’s bungling of the Kindred Spirit investigation.

Another significant result of the decision to reopen the W-88 investigation, and to do so based on the supposedly faulty analysis in the AI, has been to put FBI Assistant Director Neil Gallagher on the spot based on his testimony to Congress. In a November 10, 1999 letter on the question of why the investigation was reopened, he acknowledged that when discussing the DOE’s Administrative Inquiry (AI) during his June 9, 1999, testimony before the Senate Governmental Affairs Committee,184 he stated that “he had full credibility in the report,” had “found nothing in DOE’s AI, nor the conclusions drawn from it to be erroneous,” and stated there was a “compelling case made in the AI to warrant focusing on Los Alamos.”185

As a result of this other inquiry, however, Mr. Gallagher now has reason to question the conclusions of the AI. He cites an August 20, 1999, interview by FBI officials of one of the scientists who participated in the technical portion of the AI, in which the scientist “stated that he had expressed a dissenting opinion with respect to the technical aspects of the report.” It points out that the statement of this scientist “is in direct conflict with the AI submitted to the FBI because the AI does not reflect any disension by the ‘DOE Nuclear’ scientists.”

A General Accounting Office investigation of Mr. Gallagher’s comments regarding the AI later concluded that his testimony had been inaccurate and misleading because he had ample opportunity to know and should have known that documents created by the Albuquerque office of the FBI raised questions about the FBI in late 1998 and early 1999.186

In his November 1999 letter, Mr. Gallagher could have referred to a draft of the September 7, 1999, document prepared by the Albuquerque division, “Changed: FBI–DOE National Laboratory Assessment.” Had he done so, he would have stated:

“Albuquerque is of the firm opinion that the AI should have been used only for investigative assistance during the initial portion of the AI, and that any information that is more in-depth and comprehensive analysis of the relevant issues/facts should have been continued through the course of the investigation.”187

A subsequent draft of the same document lists half a dozen reasons why the AI was flawed. The document says that the espionage investigation was flawed by a lack of a network of sources, the travel analysis was incomplete, the strategic opinions were preliminary, there had been a disagreement over the extent of the W-88 information compromise, the Lees had been doing things at the behest of the Government, and finally, “... the AI was extremely confusing and self contradictory in reporting its conclusions ....”188

This is a classic case of too little too late, and it raises questions as to whether the FBI was really trying to get to the bottom of the domestic espionage investigation or to shut down the investigation. This is nothing short of outrageous.

What I believe remains unanswered is the question: What was the government’s motive for releasing the plea agreement? In relevant part, the statement said:

“The government’s decision to reach the plea agreement was not based on any evidence that the missing tapes were in fact destroyed, and repeated requests to Dr. Lee for the missing tapes were clandestinely made and removed from Los Alamos but no evidence or assistance that resolved the missing tape dilemma.”196

“The obligation that rests on the government is first and foremost to determine where the classified nuclear weapons information went and if it was given to others or destroyed. This simple agreement, in the end, provides the opportunity of getting this resolution where otherwise none may exist.”197

But the sudden reversal of the government’s position flabbergasted Judge Parker. During the hearing to finalize the plea agreement, he commented from the bench:

“I would like to know why the government argued so vehemently that Dr. Lee’s release would mean that there was no danger to the government when at this time he, under the agreement, will be released without any restrictions.”198

At this point the hearing, the judge continued:

“What I believe remains unanswered is the question: What was the government’s motive for releasing the plea agreement under extraordinary onerous conditions of confinement until today, when the Executive...
Branch agrees that you may be set free essentially unrestricted? This makes no sense to me.”188

The judge was not alone in being puzzled by the handling of the criminal phase of the case. It is difficult to reconcile the lack of forceful action between the time the government discovered, in June 1999, that the tapes were created, with its December 1999 claims that the only way to safeguard the secrets on the tapes was to hold Dr. Lee virtually incommunicado. As will be discussed later in this report, the information on the tapes was extremely sensitive, but it does not necessarily follow that the pretrial confinement conditions were the only way to protect that information. If it was the government’s judgement that protecting the information required extraordinary restrictions on Dr. Lee, then why not act as soon as the existence of the tapes was known? Moreover, if the government was willing, in September 2000, to accept Dr. Lee’s sworn statement as to the disposition of the tapes (to be verified by polygraph examination), why could it not have accepted a very similar offer from Mr. Holscher on December 1999, the time of Dr. Lee’s arrest? The remainder of this report addresses the government’s handling of: (1) the investigation of March–December 1999, (2) the pretrial confinement of Dr. Lee, and (3) the case against Dr. Lee. The subcommittee’s investigation supports the following conclusions: these matters of information on the tapes was highly sensitive and, if anything, the government should have acted sooner than it did to find out what happened to them, (2) the government overreacted in demanding such onerous conditions of confinement prior to trial, and (3) the plea agreement was an acceptable outcome of the tapes (to be verified by polygraph examination), why could it not have accepted a very similar offer from Mr. Holscher on December 1999, the time of Dr. Lee’s arrest? The remainder of this report addresses the government’s handling of: (1) the investigation of March–December 1999, (2) the pretrial confinement of Dr. Lee, and (3) the case against Dr. Lee. The subcommittee’s investigation supports the following conclusions: these matters of

One day after Dr. Lee was fired, the Albuquerque Division of the FBI (FBI-AQ) met with the U.S. Attorney for the District of New Mexico, Mr. John J. Kelly. The following is a lawyer’s recollection of that conversation. Mr. Holscher, wrote to the government offering to surrender Dr. Lee’s passport and asking whether Dr. Lee was a target or a subject of investigation. In his letter, Mr. Holscher also advised the government that his client intended to travel to Los Angeles for several days. On March 11, the FBI learned that another LANL employee had been asked by Dr. Lee to retrieve a box of documents from his X- Division director. After a telephone conversation between Mr. Kelly and Mr. Holscher on March 15, Mr. Holscher wrote to Robert Gorence demanding that 28 CFR 50.2(b)(2) prohibits DOJ because “the Atomic Energy act as soon as the existence of the tapes was known?” Moreover, if the government was willing, in September 2000, to accept Dr. Lee’s sworn statement as to the disposition of the tapes (to be verified by polygraph examination), why could it not have accepted a very similar offer from Mr. Holscher on December 1999, the time of Dr. Lee’s arrest? The remainder of this report addresses the government’s handling of: (1) the investigation of March–December 1999, (2) the pretrial confinement of Dr. Lee, and (3) the case against Dr. Lee. The subcommittee’s investigation supports the following conclusions: these matters of information on the tapes was highly sensitive and, if...
December 20, 2001
CONGRESSIONAL RECORD — SENATE S13809

Mr. Holscher wrote on June 9, complaining that the government had not yet advised him what it wanted to discuss with Lee and had not sought to schedule a meeting. Six days later, the FBI informed Lee that the government was considering serious charges, but ruled out espionage charges under 18 USC 794 (the most serious espionage charge), and sought for June 15. In the same letter, Mr. Kelly said that he had postponed a previously scheduled meeting so the government could complete its investigation. He furthered that "I did so not to inconvenience your client, but rather to insure that the interview would take place in the conclusion of the investigation at a time when I would be able to provide meaningful information about potential charges and, in turn, your client would be more readily to provide a complete explanation for his potentially criminal conduct. As I stated in our telephone conversation last night, that time has now come. You should know that I will be making a charging decision in this matter before the end of June and that the offense conduct under consideration involves various actions by your client over the last decade that collectively have compromised some of our nation’s most highly sensitive and closely guarded nuclear secrets."

At a meeting in Washington between the USAO and the Criminal Division representatives, Dr. Lee’s counsel asserted that he had only downloaded unclassified data and not classified information from the LANL to a diskette and then placed the diskette on to tapes. (When later confronted with evidence that Dr. Lee had, in fact, downloaded classified data onto portable tapes, counsel claimed that if Dr. Lee had done so, any such tapes had been destroyed.) The meeting was followed by a written status report to the DOD and the FBI the following day.

In the interim, on June 15, the FBI learned that Dr. Lee had asked a colleague to retrieve a box of materials that he had left in his X-Division office when he had been transferred to the T-Division. The FBI was told that the colleague had retrieved the box for Dr. Lee, but had taken the materials to LANL security, which had questions regarding some of the contents of the box.232 The FBI chronology does not mention when the colleague had retrieved the box or what LANL security had done about the contents. The absence of details raises the inference that the now-missing tapes could have been in the box, and LANL security may have passed them on to someone without knowing who they were on them. The FBI has not answered this question.

During the first week of July 1999, Dr. Lee’s lawyers made written presentations to the Albuquerque USAO and the Criminal Division in Washington, each of which was designed to dissuade the government from taking action against Dr. Lee. On July 15, a LANL scientist provided a report on the creation of Tape N, which was down loaded to tape in 1997. It was also during July that the government learned that one of the six tapes which had been recovered from Dr. Lee’s T-Division office contained a classified file, and that two others contained deleted classified files. LANL computer officials advised the government that one tape had been cleansed of classified data in February 1999, on the presupposition that the computer workstation belonging to a T-Division colleague of Dr. Lee.

Three days after a meeting in Washington between the USAO and the Criminal Division, Mr. Holscher sent a letter to the government explaining that Dr. Lee had not violated 18 USC 794 (the most serious espionage charge), and sought for June 21. The FBI was told that the colleague had retrieved the box for Dr. Lee’s T-Division colleague. The FBI was told that the colleague had retrieved the box for Dr. Lee, but had taken the materials to LANL security, which had questions regarding some of the contents of the box.232 The FBI chronology does not mention when the colleague had retrieved the box or what LANL security had done about the contents. The absence of details raises the inference that the now-missing tapes could have been in the box, and LANL security may have passed them on to someone without knowing who they were on them. The FBI has not answered this question.

On August 16, Criminal Division Chief of Staff Rossman wrote to counsel for Dr. Lee advising that the government had not yet made a decision whether to charge Dr. Lee, and asking for additional information (which had been discussed during the July meeting) by August 30.

Following a supplemental written presentation by Dr. Lee’s counsel on August 30, Mr. Kelly wrote to Mr. Holscher on September 3 asking for information about the location and custody of the box at the time of their creation until the present. On September 8, representatives of the Criminal Division, USAO, LANL and DOE stated that Dr. Lee had not violated 18 USC 794 (the most serious espionage charge), and that the data downloaded by Lee would be a serious blow to national security. In a letter to Mr. Holscher offered assurance that prosecutors were prepared to drop the case immediately if the judge were to grant a motion, sure to come from the government, to dismiss the indictment and advised Mr. Holscher to look at the latter sections of 18 USC 793. Although Mr. Holscher faxed a letter at 8:24 a.m. (Pacific Time) on December 10, offering to dismiss the indictment if the FBI did not interfere with the prosecution, it was necessary to delay subcommittee hearings, Director Freeh said.

"In my view, the potential that your hearings may inter alia interfere with the prosecution is substantial. Subcommittee hearings at this time risk impacting upon our ability to successfully prosecute Mr. Lee by creating issues that may not presently exist. Moreover, it is critical for our national security that we have the opportunity to make a full and careful summary of our case to the press, the international community and those in the White House and Congress so that we can from Wen Ho Lee in a carefully controllable setting. Given the gravity of the allegations and charges, and the potential opportunity to create new evidentiary possibilities, I respectfully ask that you not go forward at this time. I hope you will agree that to do otherwise poses a substantial risk not only to the national interest, but to our ultimate ability to discover the full extent of the damage done."

Mr. Holscher wrote again on August 2, offering to make additional factual submissions, which prompted a response from Mr. Kelly on August 4, saying the government had not sought to make a decision about Dr. Lee’s release but wanted a complete explanation from Dr. Lee himself. At the same time, Mr. Kelly sent a letter to Eugene Habiger, Director of the FBI’s Office of Emergency Operations, seeking to include in a proposed indictment of Dr. Lee information about Dr. Lee’s downloading activity.

After an August 10 telephone conversation between counsel for Dr. Lee and Richard Rossman, Chief of Staff of the Criminal Division, Mr. Holscher wrote a letter on August 11 stating that he did not wish to commit the government to any further additional interviews and offering further arguments why Dr. Lee had not violated 18 USC 794.

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Although Mr. Holscher faxed a letter at 8:24 a.m. (Pacific Time) on December 10, offering to dismiss the indictment if the FBI did not interfere with the prosecution, it was necessary to delay subcommittee hearings, Director Freeh said. In my view, the potential that your hearings may inter alia interfere with the prosecution is substantial. Subcommittee hearings at this time risk impacting upon our ability to successfully prosecute Mr. Lee by creating issues that may not presently exist. Moreover, it is critical for our national security that we have the opportunity to make a full and careful summary of our case to the press, the international community and those in the White House and Congress so that we can from Wen Ho Lee in a carefully controllable setting. Given the gravity of the allegations and charges, and the potential opportunity to create new evidentiary possibilities, I respectfully ask that you not go forward at this time. I hope you will agree that to do otherwise poses a substantial risk not only to the national interest, but to our ultimate ability to discover the full extent of the damage done."
When Director Freeh met with Senator Torricelli and me on December 14, he made the same arguments. The subcommittee agreed to withhold hearings until the case was resolved on December 13, 2000, with the acceptance of the plea agreement.

With the uniplexible exception of never seeking nor obtaining a release order, the chronology presented here shows a thorough and methodical investigation. The discovery that Dr. Lee had created his own portable nuclear weapons data library must, in large measure, be credited to the extraordinary level of effort and skill on the part of the investigators from the FBI and the DOE. In September 1999 Freeh testified that the investigation had required the “‘interview of over 1,000 witnesses, review of 20,000 pages of documents in English and Chinese, and the forensic examination of more than 1,000 computer files . . .’” Any assessment of the investigation must acknowledge the vast amount of work involved in discovering Dr. Lee’s illegal computer activity after he tried so diligently to erase any traces of what he had done. In this regard, the government personnel should be commended.

There are, however, two areas for concern related to the conduct of the March–December 1999 investigation. The first is the delay from the time the existence of the tapes was known, which occurred at the latest in June, and the time Dr. Lee was indicted in December. The chronology provided by the Department of Justice shows continuing activity on the part of the government, and multiple contacts with Dr. Lee’s attorneys. Information about the existence of the tapes, but nothing commensurate with its subsequent declarations in court that the only way to keep the information from falling into the wrong hands, where it could change the global strategic balance, was to hold Dr. Lee in very strict pretrial confinement.

In responding to a question about this delay, Director Freeh testified, “This was an extremely complex investigation and prosecutorial process. It could not have been brought in, my view, fairly and accurately before June.” 221

The second great concern is that the FBI did not seek electronic surveillance of Dr. Lee during this period.222 In view of the government’s decision not to request such surveillance, in effect, upset the global strategic balance merely by saying something as seemingly innocuous as “Uncle Wen says hello,” it is difficult to comprehend why the government did not seize electronic surveillance in an effort to discover the whereabouts of the missing tapes. In the December 1999 detention hearings, the U.S. Attorney, John Kelly, suggested that if Dr. Lee still had the tapes, he could send a signal to a foreign intelligence service to extract him. If he wasn’t in custody, then the government was dealing with a situation in which an individual not in custody is going to be snatched and taken out of the country. 223 As early as April 30, 1999, the FBI had been told by a LANL scientist that if the files Dr. Lee downloaded were given to a foreign power, they would have the “whole farm,” the “crown jewels” of the U.S. program which had been obtained through decades of effort by the U.S. 224

If the government felt his communications were such a potential threat, why was there never any concern with the possibility about what he was communicating during the March–December 1999 period? This tape severely undercuts the government’s later arguments that federal officials who had access to a projected confinement were only to protect the downloaded information.

The Pretrial Confinement of Dr. Lee

After his arrest on December 10, 1999, and a detention hearing before U.S. Magistrate Judge Don Svet on December 13, 1999, Dr. Lee was placed in pretrial confinement in the Santa Fe County Correctional Facility. The conditions of his incarceration, including the Special Administrative Measures (SAM) taken to prevent him from possibly committing suicide, obtaining the tapes or the material thereon, have received a great deal of attention from Dr. Lee’s attorneys, the press, and eventually, Congress. In September 1999, the government held Dr. Lee under such strict conditions raises a number of important points. Defendants are presumptively entitled to pretrial release except in certain limited situations. 18 USC 3142(e). Because none of the ordinary conditions for pretrial confinement—for example, when a violent criminal is captured after a killing spree—applied to Dr. Lee, Judge Parker explained in his order that “Only after a hearing and a finding that ‘no condition or combination of conditions will reasonably assure the appearance’ of the defendant and the safety of the community, can a judge order a defendant’s pretrial detention. 18 USC 3142(e). A finding against the person, and the safety of the community, will reasonably assure the appearance” of the defendant and the safety of the community, 18 USC 3142(e).” 225

In reaching a decision on pretrial detention, the court must balance the government’s interest in ensuring that the defendant does not flee, against the person, and the safety of the community, and multiple contacts with Dr. Lee’s attorneys, the press, and eventually, Congress. In September 1999, the government held Dr. Lee under such strict conditions raises a number of important points. Defendants are presumptively entitled to pretrial release except in certain limited situations. 18 USC 3142(e). Because none of the ordinary conditions for pretrial confinement—for example, when a violent criminal is captured after a killing spree—applied to Dr. Lee, Judge Parker explained in his order that “Only after a hearing and a finding that “no condition or combination of conditions will reasonably assure the appearance” of the defendant and the safety of the community, can a judge order a defendant’s pretrial detention. 18 USC 3142(e). A finding against the person, and the safety of the community, will reasonably assure the appearance” of the defendant and the safety of the community, 18 USC 3142(e).” 225

At a series of detention hearings from December 13 through December 29, before two different magistrates, the government presented a stark picture of Dr. Lee’s conduct. A December 23, 1999 filing by Mr. Gorena summarize the government’s position: “Lee stole America’s nuclear secrets sufficient to build a functional thermonuclear weapon. Lee abeconded with that information on computer tapes, seven of which are still missing. Those missing tapes, in the hands of an unauthorized possessor, pose a mortal danger to every American. The government does not know what Dr. Lee did with the classified material he created them. Despite previous denials, Lee now admits that he created the tapes—tapes which the government will establish contain an entire set of American nuclear secrets capable of building a nuclear weapon.” 226

Lee’s intent to injure, which was also an element of the tapes was known, which occurred at the latest in June, and the time Dr. Lee was indicted in December. The chronology provided by the Department of Justice shows continuing activity on the part of the government, and multiple contacts with Dr. Lee’s attorneys. Information about the existence of the tapes, but nothing commensurate with its subsequent declarations in court that the only way to keep the information from falling into the wrong hands, where it could change the global strategic balance, was to hold Dr. Lee in very strict pretrial confinement. In responding to a question about this delay, Director Freeh testified, “This was an extremely complex investigation and prosecutorial process. It could not have been brought in, my view, fairly and accurately before June.”

The government’s decision to hold Dr. Lee in very strict pretrial confinement was only to protect the国家安全 computing environment. These facts evidence an intent to injure the United States by depriving it of exclusive control of its most sensitive nuclear secrets. 227 The government also argued that the only way to safeguard the information on the tapes was the government’s decision to hold Dr. Lee in detention, with special restrictions on his communications. As described in the government’s motion on December 23, these measures included segregating him from other prisoners; limiting his visitors to immediate family members and his attorneys, having an FBI agent monitor all family visitations, denying him access to a telephone to call his attorneys, and mail screening. 228

After the required hearings, Judge Parker issued an order on December 16, 1999, in which he concluded that “at this time there is no condition or combination of conditions of pretrial release that will reasonably assure the appearance of Dr. Lee as required and the safety of any other person, the community, and the nation.” 230 He then addressed the nature of the alleged crimes, the defendant, Judge Parker made points on both sides, noting that Dr. Lee had misled a T-Division employee by claiming to want to download a resume to tape. 232 In addressing the weight of the evidence against Dr. Lee, Judge Parker noted that the government had presented direct evidence of the downloads, which was the relevant conduct at issue. With regard to the intent to injure the United States also can be inferred by the admission of the charged offenses, he noted that “although the Government did not present any direct evidence regarding Dr. Lee’s intent to injure the United States, it presented circumstantial evidence of Dr. Lee’s intent to violate these provisions of the Atomic Energy Act and the Espionage Act.” 233 With regard to the characteristics of the defendant, Judge Parker made points on both sides, noting that Dr. Lee had lied to LANL employees and to law enforcement agents and has consciously deceived them about the classified material he put on the tapes and about contacts with foreign scientists and officials. 234 On the other hand, the judge noted Dr. Lee’s longstanding ties to the community and the damage to the community from Dr. Lee’s deceptive behavior regarding the issues raised in this case, his past conduct appears to have been lawful and without reproof.” 235 And, finally, the judge concluded that the government had presented “credible evidence showing that the possession of information by others could result in espionage, and under what circumstances they were destroyed, and the potentially catastrophic...
harm that could result from Dr. Lee being able, while on pretrial release, to communicate with unauthorized persons about the location of the tapes or their contents if they were removed by only Dr. Lee himself. Dr. Lee's motion for pretrial release can be reconsidered in a significantly different light.\footnote{248}

The legal authority to which Mr. Holscher refers is Title 28 of the Code of Federal Regulations, section 501.2, provides that upon direction of the Attorney General, special administrative measures may be implemented that are reasonably necessary to prevent disclosure of classified information, upon written certification by the head of a member agency of the United States intelligence community that the unauthorized disclosure of classified information would pose a threat to the national security and that there is a danger that the defendant will disclose such information. Energy Secretary Bill Richardson sent a letter to the Attorney General on December 27, 1999, in which he said: "In my judgment, such a certification is warranted to enable the Department of Justice to take whatever steps are reasonably available to it to preclude Mr. Lee, during pretrial confinement, any unauthorized opportunity to communicate, directly or through other means, the extremely sensitive nuclear weapons data that the indictment alleged was essentially diverted to his own possession from Los Alamos National Laboratory (LANL). I make this certification at the request of the U.S. Attorney for the District of New Mexico, John Kelly, and upon the recommendations and evaluations of the Director of the Federal Bureau of Investigation and DOE's Director of Security and Emergency Operations, Eugene Habiger."\footnote{249}

By January 6, the Department of Justice had reviewed the administrative segregation procedures at the Santa Fe County Correctional Facility and determined with some additional measures, the standard segregation policy would adequately confine Dr. Lee. In a letter to Warden Lawrence Barreras, the local U.S. Marshal, John Sanchez described ten additional measures that were necessary:

1. Mr. Lee will be allowed to speak Mandarin with his family, but with two FBI agents listening in.
2. Mr. Lee will not have access to exercise. According to the Santa Fe County Jail rules, Dr. Lee will be limited to one hour of exercise per day, as are all administrative segregation prisoners.\footnote{250} Dr. Lee has long adopted to live on a non red meat diet after his colon cancer surgery several years ago.

The government, however, portrayed Dr. Lee's conditions of confinement as a matter of necessity to protect the classified information he had downloaded to portable tapes. In a series of memoranda written by Lawrence Barreras, Senior Warden of the Santa Fe County Correctional Facility, on December 10 and 14, 1999, and January 4, 2000, the terms of Dr. Lee's confinement were outlined in detail. Specifically, Dr. Lee's confinement consisted of 24 hour supervision by a rotation of officers to prevent access to his attorneys and immediate family members (his wife, daughter and son) in English only, non-contact visits from his immediate family members limited to one hour per week, no personal phone calls, and that he remain secured in his cell 24 hours a day.\footnote{251} Further, Dr. Lee was to remain in full restraint from the outset of his confinement, which was to be out of his cell being moved from one location to another.\footnote{252} As part of the negotiations, Dr. Lee's lawyers protested his conditions of confinement almost from the beginning. In a December 21, 1999 letter to Mr. Kelly and Mr. Gorence, lead defense counsel, Dr. Lee's counsel said: "Apparently at the request of the Department of Justice and the FBI, Dr. Lee's jailers have barred his family from visiting him for more than one hour a week. In addition, the agents have demanded that my client and his wife speak only English and do so in the presence of two FBI agents. Dr. Lee's motion for pretrial release was an application for release. If, for instance, Dr. Lee submits a written request for pretrial release can be reconsidered in a significantly different light.\footnote{248} Dr. Lee's conditions of confinement were as previously described. It should be noted, however, that from December 10, 1999 until the date the Attorney General signed the order on January 13, 1999, no specific condition of confinement imposed on Dr. Lee would have been without proper authority. If federal regulations require certifications from agency heads, it would be unreasonable only to be presumed that restrictions such as those imposed on Dr. Lee would not be properly authorized until all the certifications were in place. It is troubling that the Attorney General was not better prepared to make the necessary certifications in a timely fashion.

As the end of the initial 120 days approach, the Attorney General received a new letter from Secretary Richardson on May 4, in which he expressed his support for continued the SAM. However, he mentioned concern about Dr. Lee's access to exercise every day. Finally, I understand that, in response to a request by Dr. Lee's counsel, the Department of Justice has arranged for a translator to be present when he speaks with his family in order to speak Chinese. I further understand that arrangements have been made to permit him to visit with his family on weekends, to have access to Los Alamos National Lab with his lawyers under appropriate safeguards so that he can prepare his defense, and to have access to a radio and reading material of his choice, as well as a reasonable period of exercise every day. Finally, I understand that the conditions of his confinement are in no respect more restrictive than those of others in administrative segregation and detention facility, where he is confined specifically to protect against further compromise of classified information. Based on this information, I maintain that the civil rights are being adequately protected.\footnote{254}

At about the same time the FBI SAC in Albuquerque, David Kitchin, wrote to the new U.S. Attorney in New Mexico, Norman Bay, and expressed his unequivocal support for maintaining the SAM in place. Agent Kitchin's view expressed by his "firm confidence that any loosening of the SAM would enable Dr. Lee to communicate with an agent of a foreign power regarding the disposition or usage of classified information contained in the seven missing tapes."\footnote{255} In July, the new lead prosecutor on the case, George Stamboulidis, arranged to have the SAM removed during his scheduled recreation time,\footnote{256} but this did not occur without some difficulty.\footnote{257}
An August 1, 2000 letter from Warden Barreras to Mr. Stamboulidis describes the final state of Dr. Lee’s confinement:

“In response to your letter dated July 30th, 2000, I have informed Mr. Lee that his request for a telecommunication device was denied because he is being treated very well.”

Realizing that the hearings had not provided any results on the confinement issue, the DOJ later provided several hundred pages of relevant documents. Much of the discussion above has been given in prior testimony. The Department also sent a letter, dated January 20, 2001, which provided additional detail on the matter. Attorney General General Robert Ray explained in the letter in which Dr. Lee had been treated flowed “directly from a policy that sets bright line rules that apply to all prisoners under defined circumstances. These bright line rules are, in the Department’s view, better than an alternative that would require detention facility personnel to make ad hoc decisions in each individual prisoner’s case. A rule allowing such discretion would invite both favoritism and abuse.”

Mr. Ranen went on to explain that, because there is no federal deportation statute, Dr. Lee had been housed at the Santa Fe County Detention Facility, under its administrative segregation policies, with the additional conditions of having his mail opened and monitored communications. According to Mr. Ranen:

“While housed in the Santa Fe County Detention Facility, Dr. Lee was subject to all of that facility’s other regulations for all prisoners in administrative segregation in addition to the ban on unmonitored communications. One of those requirements is that prisoners in administrative segregation must be in “full restraints” (handcuffs, waist chains, and leg irons) whenever they are outside the facility, including during exercise periods. Dr. Lee was not in restraints while in his cell. In July 2000, after the issues was raised by Dr. Lee’s attorneys, the restraints policy was modified uniquely for Dr. Lee so that, unlike others in administrative segregation could exercise without restraints.”

Mr. Ranen further explained that Dr. Lee was transported for all court appearances and meetings with his attorneys by the U.S. Marshals, under standard procedures, which included transport in a military plane, and at all times except when Dr. Lee was in a holding area cell administered by the Marshal Service and when he was meeting with counsel. By the end of 2000, the leg irons remained on, but Mr. Ranen said that Dr. Lee’s attorneys had never objected to that procedure.

After reviewing the documents and testimony on the conditions of Dr. Lee’s pretrial confinement, it is clear that the reasonableness of the government’s actions in the case, including the question of whether or not it was really necessary to restrict his ability to communicate. The government was convinced that the only way to protect the national security was to prevent Dr. Lee from communicating. Having taken that position, the remainder of the government’s actions were simply to further the objective of limiting Dr. Lee’s ability to communicate. Although some of the government’s responses were not as prompt as one might like—for example, taking more than a month to assure that the initial SAM guidelines signed by the Attorney General—the government seems to have been generally responsive to requests from Dr. Lee’s attorneys.

That is not to say that the government’s actions were appropriate, however, because the government has not made a showing as to why the government is acting under such strict terms of confinement in the first place. If he had not communicated the whereabouts of the tapes to a third party in the period prior to his arrest, what made the government believe he would do so from jail? None of the documents, testimony or any other information that the sub-committee provides a compelling answer to this question. While the government may have reasons for certain actions, those reasons have not been made public. Dr. Lee’s renewed motion for pretrial release on August 24, 2001. In his remarks at the plea hearing, Judge Parker expressed his sentiments, telling Dr. Lee that “since by the government’s argument that frees you today without conditions, it becomes clear that the Executive Branch now concedes, or should concede, that it was not necessary to confine you last December or at any time before your trial.”

The Case Against Dr. Lee

Had the government not reached a plea agreement with Dr. Lee, the case was scheduled to be heard in late November 2000. When the government settled, many questioned the appropriateness of the plea agreement because it seemed to be in such stark contrast to the charges that were brought against Dr. Lee. Although the government would likely have won a conviction because many elements of the charged conduct were not disputed, Dr. Lee could have argued that he had made the tapes containing vast quantities of classified nuclear weapons data this would not have been an easy case. The government faced a number of obstacles, including:

1. Challenges to the government’s claims about the importance of the material on the tapes. Dr. Lee’s lawyers also noted that the information in question was the “crown jewels” of our nuclear secrets that could, in the wrong hands, change the global strategic balance.

2. The defense offered depositions from Dr. Harold Agnew, former Director of LANL, and Dr. Walter Goad, a Fellow Emeritus at LANL, both of whom took issue with the government’s characterization of the material on the tapes. Dr. Lee’s lawyers also noted that the government had not admitted that the information in question was classified at the highest level—Top Secret—and had, in fact, been placed in a special category called “Protect as Restricted Data” or PARD when Dr. Lee downloaded it.

When Judge Parker held three days of hearings in August 2000 to consider Dr. Lee’s renewed motion for pretrial release, he got testimony from Dr. John Richter that the information on the tapes was 99% unclassified. The government was also forced to acknowledge that the information in question was classified as Secret Restricted Data (SRD) rather than Top Secret Restricted Data (TSRD), and could therefore be sent through certified or registered mail. It was demonstrated in the following excerpt from the hearing on August 17:

"Mr. Cling: SENR, unlike TSDR, can be, for example, double wrapped and sent by registered mail from one classified location to another, can it not?"
Dr. Robinson: That is true today, yes.

Mr. Cline: And TSRD can not be sent by mail? 

Dr. Robinson: That is correct.

Mr. Cline: And they are the information that we are talking about here, which has been described as the crown jewels, could be double wrapped and sent by registered mail from Washington to New Mexico, correct?

Dr. Robinson: Correct. 268

The defense team also noted that the material was SRD as opposed to TSRD, and that the material was marked as PARD when it was downloaded, whereas the tapes were classified as SRD. The definition of PARD, taken from the U.S. Department of Energy Office of Security Glossary of Terms, is as follows: A handling method for controlled numerical data or related information which is not readily recognized as classified or uncategorized because of the high volume of output and low density of potentially classified data. 270

As described in the judge’s order for Dr. Lee’s pretrial release, the effect of the expert opinions offered by Drs. Agnew, Goad and Richter, the defense’s showing that the material was SRD as opposed to TSRD, and that the material was marked as PARD when it was downloaded was to “show that the information to which the less sensitive than previously described to CIPA.”

Judge Parker also raised a question as to whether the missing tapes contained “all the information needed to build a functional thermonuclear weapon.” He went on to say, “In sum, I am confronted with radically divergent opinions expressed by several distinguished United States nuclear weapons scientists who are on opposite sides of the issue of the importance of the information Dr. Lee took.” The judge’s findings on the sensitivity of the material on the tapes were a principal factor in his decision to order Dr. Lee’s pretrial release, which he did on August 24, 2000.

When the government settled the case with a plea agreement less than three weeks later, it gave the impression that it was backing away from its claims about the importance of the material. This had the unfortunate effect of public perceptions that the government was persecuting, rather than prosecuting Dr. Lee. Like the judge, the subcommittee can only rely on the testimony of experts whom it believes, that the government’s witnesses made the stronger arguments in this regard.

The most concise description of the information on the tapes is that it “contains the design code that the American arsenal would have to use in order to design a weapon.” It thus seems that the government’s witnesses made the stronger arguments in this regard.

Although nuclear weapons source codes contain the information involved in creating a thermonuclear explosion. The source codes are written to design specific portions of a nuclear weapon—either the primary or the secondary.

One of Dr. Lee’s attorneys, Mr. John Cline, testified in support of Dr. Lee’s position at the August 2000 hearing before the judge presiding over the case. The judge was only ruling on the matter of whether or not the material in question and the government’s proposed substitutions lacked, the government’s error was not in claiming that the material was important, but in claiming that the only way to protect it was to hold Dr. Lee under harsh conditions.

The Classified Information Procedures Act (CIPA) issues

CIPA establishes a framework for handling trials involving classified information, with the objective of protecting both national security information and the rights of the defendant. One of the key concepts in CIPA is the provision permitting substitutions for classified information from the government having to expose that information at trial. Rather than show the actual material at trial, the government is permitted to offer a document that conveys the same information in unclassified form. The judge presiding over the case reviewed the material in question and the government’s proposed substitutions. The judge found that the substitutions are an adequate representation of the material in question, the case goes forward. If the judge finds the government’s substitutions lacking, the government can make an interlocutory appeal of the judge’s ruling, meaning that the appeal is heard before the government rather than after as is the usual fashion. If the government loses a CIPA ruling, it can also simply drop the case.

Although the prosecution of Dr. Lee ended before the CIPA issues were fully tested in court, the defense clearly intended to implement a classic graymail tactic of forcing the government to disqualify tapes, arguing that secret information had to be revealed in open court to guarantee their client a fair trial. According to U.S. Attorney Norman Bay:  

“In late May, we met with defense counsel in this case. . . . And the defense lawyer said that he would never take a plea to any count in the indictment—that is, he being Dr. Lee—and that if the Government wasn’t willing to accept, the defense was going to put the United States on a, quote, ‘long, slow death march.’ I would say let’s start walking.”

One of Dr. Lee’s attorneys, Mr. John Cline, was asked about this. He told the judge that using classified information in the trial: would be necessary for
proving four central defense arguments: that most of the downloaded material was already in the public domain; that some of the computer codes contained flaws that made them useless; that it found no sworn evidence of Dr. Lee’s work; and that they were difficult to use without user manuals, which were not on the tapes.

The defense found a sympathetic ear with Judge Parker on these issues. In an order filed August 1, 2000, the judge gave the government leave to provide a machine-readable language for specified classified information. He agreed with Dr. Lee (and opposed the government) as to the relevance of particular information to the defense. For example, Judge Parker said that: “Although the parties dispute the existence or magnitude of any ‘flaws’ or imperfections in the input decks, the government nonetheless finds that evidence of those alleged flaws or imperfections is relevant to the Defendant’s intent to secure an advantage to a foreign nation or to injure the United States. Evidence of these alleged flaws and imperfections is also relevant for use in the Defendant’s criminal-examination of witness testimony. ‘Satisfied the stringent requirements of Government witnesses’ testimony on the issue of the sensitive nature of these codes.”

The Court delivered another blow to the Government when he ruled that: “Evidence making a comparison of the input decks to a nuclear weapons blueprint is relevant to the Defendant’s intent to secure an advantage to a foreign nation or to injure the United States. Evidence of these alleged flaws and imperfections is also relevant for use in the Defendant’s criminal-examination of witness testimony. ‘Satisfied the stringent requirements of Government witnesses’ testimony on the issue of the sensitive nature of these codes.”

Consonant with these determinations, the judge ordered the government to propose subsets in the various codes were related to Dr. Lee’s work or to injure the United States. Evidence of these alleged flaws and imperfections is also relevant for use in the Defendant’s criminal-examination of witness testimony. ‘Satisfied the stringent requirements of Government witnesses’ testimony on the issue of the sensitive nature of these codes.”

Allegations of Selective Prosecution/Racial Profiling

Among the more sensational allegations of government misconduct in this case are charges that Dr. Lee was selected for investigation and prosecution based on his ethnicity. The terms “selective prosecution” and “racial profiling” have been used to describe how the government allegedly decided to focus on Dr. Lee. The subcommittee’s review of these allegations shows that the evidence simply does not support charges that Dr. Lee’s ethnic heritage was a decisive factor in the government’s actions during any phase of this case.

In July 2000, Mr. Trulock’s defense team filed a motion “for discovery of materials relevant to establishing that the government has engaged in unconstitutional selective prosecution.” For this discovery request, the defense team claimed that Dr. Lee had “concrete proof that the government improperly targeted him for criminal prosecution because he is ethnic Chinese.”

The government had argued that the defense’s memorandum cited four examples of proof of such targeting:

“A sworn declaration from a LANL counterintelligence official who participated in the investigation of Dr. Lee that Dr. Lee was improperly targeted for prosecution because he was ‘ethically Chinese.’”

“Videotaped statements of the FBI Deputy Director who supervised counterintelligence investigations until last year admitting that the FBI was targeting Dr. Lee and other ethnic Chinese for criminal counterintelligence investigations.”

“The April 2001 Los Alamos National Laboratory’s (LANL) Office of the U.S. Attorney’s Office used to obtain the warrant to search Dr. Lee’s home, in which the FBI affidavit incorrectly claimed that Dr. Lee was more likely to work for the People’s Republic of China (PRC) because he was ‘overseas ethnic Chinese.’”

“A posting to the Los Alamos Employees Forum by a LANL employee who assisted in counterintelligence investigations and personally observed that the DOE engaged in racial profiling of Asian-Americans at Los Alamos during these investigations.”

The memorandum went on to explain that even if Dr. Lee did not have the direct evidence of bias, he had “satisfied the stringent requirements of United States v. Armstrong, 517 U.S. 456 (1996), which held that . . . a defendant is nevertheless entitled to discovery relief if he can present some evidence that similarly situated people have not been prosecuted and that his investigation and prosecution were caused by improper racial motivations.”

At the plea hearing in September 2000, Judge Parker noted from the bench that the government had made a deal with Dr. Lee only a short time before it would have been required to produce to the judge a substantial volume of material on the selective prosecution issue,” raising the inference that the government’s agreement to avoid its discovery obligations on the selective prosecution issue, a Department of Energy review of ethnic bias within the department concluded that there was room for improvement on ethnic sensitivity, but none of the survey’s results supported the allegations that Dr. Lee had been targeted because of his ethnicity. An April 2001 review by DOE Inspector General Gregory Friedman was even more direct, concluding that “information reviewed by the Office of Inspector General did not support allegations regarding unfair treatment based on national origin in the security processes reviewed.”

Because these charges have not been rebutted, the public is left with the impression that Dr. Lee’s allegations were correct, and that the government acted out of racial or ethnic prejudice. Any such impression is injurious to the public’s trust in the institutions which are charged with enforcing the nation’s laws and must be properly addressed.”

In pleading the case that Dr. Lee was targeted for criminal investigation because he is ethnic Chinese, Dr. Lee’s lawyers alleged that “Mr. Trulock’s role in the development of the AI, which was written by Dan Bruno and an FBI Special Agent who was assigned to the DOE for the purpose of helping to conduct the AI. Although Mr. Trulock was an aggressive advocate in the 1995–1996 period of the AI, the government that the PFI had been designed to target and is ethnic Chinese.”

Second, Mr. Vrooman raised questions in the late 1990s about Dr. Lee’s contacts with DOE Energy Department officials as a potential suspect in the W–88 case. He also formerly subscribed to the theory that the Chinese nuclear weapons program had successfully targeted the U.S. labs for espionage, he had only a limited role in the investigation, and that he was original among professionals who were linked to the FBI for years. They had always protected people’s civil rights and did the case
well and we thought they would quickly come to the same conclusion we had."300

Mr. Vrooman also said that he met weekly with FBI agents on the case and routinely expressed his view that Lee was the right man.301 Given that Mr. Vrooman retired from Los Alamos in December 1998,302 it remains clear as to how he was sufficiently informed on the case in December of that year to make judgements of this sort.

And it should be noted that Mr. Vrooman was one of the three individuals disciplined for his role in failing to remove Dr. Lee from access after the Director of the FBI recommended twice in late 1997 that Dr. Lee's clearance be removed.303 The subsequent discovery that Dr. Lee had been engaged in massive illegal downloading reflects poorly on Mr. Vrooman's conduct as the lab's counterintelligence chief and gives him a strong motive to minimize Dr. Lee's conduct and to allow government discrimination. Any assessment of Mr. Vrooman's opinion of the government's handling of the case against Dr. Lee must be made with these facts in mind.

Furthermore, when pressed for examples of supposed bias on the part of the government, Mr. Vrooman fell short. At an October 3, 2000 hearing before the Judiciary Committee of the Senate, Senator Grassley pressed Mr. Vrooman to cite examples of bias by the FBI against Dr. Lee. Mr. Vrooman responded that he did not have any examples.

Senator Grassy: Okay. Could you point to any documentation that would back up the point that was just made?

Mr. Vrooman: I don't believe there are any documents.

Senator Grassley: Or the points that you are making about ethnicity being of prime concern.

Mr. Vrooman: I do not believe there are any documents.

In fact, there are documents which describe Dr. Lee's motives, but they run counter to Mr. Vrooman's view. In the November 10, 1998 memorandum also describes a meeting at Los Alamos in early 1994 during which it became apparent that Dr. Lee had a conflict of interest with the FBI.304 The memorandum also contains the following statement:

"... PRC intelligence operations virtually always target overseas ethnic Chinese with access to intelligence information sought by the PRC. Travel to China is an integral element of the Chinese intelligence collection trademark, particularly when it involves overseas ethnic Chinese. FBI analysis of previous Chinese counterintelligence investigations indicates that the PRC uses travel to China as a means to assess closely and evaluate potential intelligence sources and target, and more generally, to establish and reinforce cultural and ethnic bonds with China, and as a safe haven in which to recruit, task, and debrief intelligence sources. This does not allow that Dr. Lee is likely to have engaged in espionage because he is ethnic Chinese, only that he is likely to have been targeted by the PRC for intelligence services based on that basis. All the defense memorandum shows is that if there is any ethnic profiling done, it is done by the PRC. Since the PRC had no role in the decision to investigate or prosecute Dr. Lee, any bias on their part would be irrelevant.

It should be noted that Dr. Lee's request for a hearing in 1995 was denied by the Department of Justice. The request was denied on the basis of an incorrect claim that no one else had ever been prosecuted under the Atomic Energy Act, and an incorrect claim that the Department of Justice had never prosecuted anyone under the espionage statutes without evidence that classified material had been transferred to a third party. These claims were shown to be incorrect in the government's response to Dr. Lee's discovery request.

The Relationship Between the Lees and the Government

Shortly after Dr. Lee was fired from LANL, he retained Mark Holscher as his counsel. On May 6, 1999, Mr. Holscher released a statement which cleared Dr. Lee of any role in the decision to investigate or prosecute Dr. Lee, and any bias on their part would be irrelevant.

To say that the United States government is cognizant of the fact that the PRC prefers to target individuals for espionage because they are ethnic Chinese, only that he is likely to have been targeted by the PRC for intelligence services based on that basis. All the defense memorandum shows is that if there is any ethnic profiling done, it is done by the PRC. Since the PRC had no role in the decision to investigate or prosecute Dr. Lee, any bias on their part would be irrelevant.

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To say that the United States government is cognizant of the fact that the PRC prefers to target individuals for espionage because they are ethnic Chinese, only that he is likely to have been targeted by the PRC for intelligence services based on that basis. All the defense memorandum shows is that if there is any ethnic profiling done, it is done by the PRC. Since the PRC had no role in the decision to investigate or prosecute Dr. Lee, any bias on their part would be irrelevant.

It should be noted that Dr. Lee's request for a hearing in 1995 was denied by the Department of Justice. The request was denied on the basis of an incorrect claim that no one else had ever been prosecuted under the Atomic Energy Act, and an incorrect claim that the Department of Justice had never prosecuted anyone under the espionage statutes without evidence that classified material had been transferred to a third party. These claims were shown to be incorrect in the government's response to Dr. Lee's discovery request.

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Mainland China. These false press reports do a disservice both to Dr. Lee and the Los Alamos Laboratory.

"The press reports also fail to include the fact that the events cited occurred amid international and domestic conferences in several countries throughout Western Europe and other parts of the world. The false insinuations that Dr. Lee went to Mainland China in late 1986 with improper purpose are unfair. Not only did Dr. Lee go to Mainland China to present a technical paper, his wife was in attendance and both were engaged in proper activities. Further, the FBI and/or the CIA has no bearing on Lee's criminal intent."

Dr. Lee's cooperation with the FBI and/or the CIA has no bearing on Lee's criminal intent. Mrs. Lee agreed to the FBI's request that she assist as a volunteer without pay in the Los Alamos Nuclear Security Laboratory to provide Chinese scientists with full knowledge and approval of the Federal Bureau of Investigation.

"There have been inaccurate press reports regarding Dr. and Mrs. Lee's cooperation with the government. Mrs. Lee agreed to the FBI's request that she assist as a volunteer without pay in the Los Alamos Nuclear Security Laboratory. She was not engaged in improper activities in Mainland China while her and her wife were there. At no time during or after the pre-trial negotiations did Dr. Lee ever provide any classified information whatsoever to any representative of Mainland China, nor has he ever given any classified information to any unauthorized persons. As was anticipated and approved by the U.S. government, Dr. Lee and his wife socialized with Chinese scientists. It was fully understood by the Department of Energy and the Los Alamos Laboratory that the conferences included social events with the participants."

5. The fact that "the FBI's lead case agent's misstatement about Dr. Lee telling the government that it had produced all documents related to the Salisbury affair, which occurred on the way towards proceeding to an Intelligence Agency (DIA), and the Department of Energy (DOE), and (2) certain FBI memo- randum notes regarding the government's case against the Defendant." After reviewing this information, the judge ruled that it contained information relevant to the defense in several categories, that is, of exculpatory information:

1. (redacted);
2. The Defendant's cooperation with and provision of information to Government agencies;
3. The Government agencies' assessments of cooperation by and reliability of Sylvia Lee and the Defendant;
4. The Defendant's actions that may be perceived to be inconsistent with an intent to secure an advantage for a foreign nation; and
5. The Government agencies' conclusions about the Defendant's motivation.

The relationship between the government and the Lees would not likely have been a major part of any trial, but it certainly had the potential to embarrass the government. The laws on intelligence oversight set strict procedures for establishing a reporting relationship or an asset relationship with an American citizen or other American. For example, that Mrs. Lee provided information to both the FBI and the CIA, including repeated contacts in the mid-1980s where a CIA agent was present and paid for the hotel room where the meetings took place. If the government had failed to conform to any of the laws or regulations in these matters, he would expect the defense to bring them up at trial.

The Plea Agreement

After Judge Parker ruled that Dr. Lee had to be released pending trial, the landscape shifted. Dr. Lee explained that the government reached the plea agreement with Mrs. Lee before the plea agreement had been previously described. When the judge accepted the plea agreement, Dr. Lee explained, after hours of deliberation that he had undergone three weeks of intense de-briefing, subject himself to a polygraph on questions related to the case, and remain available to cooperate with the FBI for a period of one year.

During the plea hearing, Judge Parker asked the government to explain why the government considered the agreement to be in the best interest of the nation. The government's lead prosecutor, Mr. Stamboulidis, answered that the plea agreement had been devised to "clearly and precisely what happened to the classified material and data" on the missing tapes, which he said had been the government's "transcending concern." He also explained that the cooperation agreement would allow the government to verify Dr. Lee's statements, and that Dr. Lee would be at great risk if he failed to fully cooperate or to be truthful. And, finally, Mr. Stamboulidis said, "this disposition avoids the very real prospect that Dr. Lee would soon be released in any event under conditions that we pointed out to the judge were inadequate to prevent Dr. Lee's communications with others."

4. The potential that the trial would become a battle of the experts with regard to the importance of the material on the tapes; and
5. The fact that "the FBI's lead case agent's misstatement about Dr. Lee telling the government that it had produced all documents related to the Salisbury affair, which occurred on the way towards proceeding to the Intelligence Agency (DIA), and the Department of Energy (DOE), and (2) certain FBI memorandum notes regarding the government's case against the Defendant." After reviewing this information, the judge ruled that it contained information relevant to the defense in several categories, that is, of exculpatory information:

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After noting that he and the Attorney General were in total agreement with the decision on the plea deal, Director Freeh outlined five other factors which figured into the government's decision which are summarized below:

1. Judge Parker's strong suggestion that the case was appropriate for mediation rather than trial;
2. Judge Parker's rulings in favor of the defendant in initial proceedings under CIPA, which made it appear that Dr. Lee might win the case and attempt to use the judge's reasoning left little room to expect that the government would prevail;
3. Judge Parker's August ruling (although stayed by the Ninth Circuit) that created the "very real prospect that Dr. Lee would soon be released in any event under conditions that we pointed out to the judge were inadequate to prevent Dr. Lee's communications with others."

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5. The fact that "the FBI's lead case agent's misstatement about Dr. Lee telling the government that it had produced all documents related to the Salisbury affair, which occurred on the way towards proceeding to the Intelligence Agency (DIA), and the Department of Energy (DOE), and (2) certain FBI memorandum notes regarding the government's case against the Defendant." After reviewing this information, the judge ruled that it contained information relevant to the defense in several categories, that is, of exculpatory information:

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careful review, it becomes apparent that the government was right to reach a plea agreement with Dr. Lee, whose actions did constitute a serious threat to the national security, but was wrong to hold him virtually in pretrial confinement for more than nine months.

ENDNOTES


2. Although the request that was rejected by the Department of Justice's Office of Intelligence Policy and Review did not ask for computer surveillance, both the FBI and the DoJ acknowledge that this would have become part of any approved surveillance plan.


5. Robbins, 1.


8. Risen and Gerth, 1.

9. Risen and Gerth, 1. It should be noted that the New York Times, generally, and Risen and Gerth specifically, came under fierce attack for their original article, which was said to have vastly overstated the case against Dr. Lee. Shortly after Dr. Lee was freed in September 2000, the NYT published a statement finding fault with its coverage of the case, and promising a thorough review of the methods by which it published the article in February 2001. See Matthew Purdy, "The Making of a Suspect: The Case of Wen Ho Lee," New York Times, February 4, 2001: 1, and Matthew Purdy and James Sterngold, "The Prosecution Unravels: The Case of Wen Ho Lee," New York Times, February 5, 2001: 1.


16. Senate Governmental Affairs Committee Chairman Fred Thompson (R-TN) and Ranking Minority Member Joseph Lieberman (D-CT), statement, "Department of Energy, National Laboratory Security," at the 1999 FISA hearing. See John Angell's December 20, 2000 letter to Senator Arlen Specter following a September 27, 2000, hearing of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts.

17. The term "Restricted Data" means all data concerning: (1) the design, manufacture or utilization of atomic weapons: (2) the production of special nuclear material in the process of energy, FBI, and Department of Justice Hanford site; (3) or utilization of atomic weapons: (2) the production of special nuclear material; or (3) the production of energy. 42 U.S.C. § 2014(y).

18. The indictment alleged violations of the following sections of the U.S. Code: 42 USC 2276, 42 USC 2275, 18 USC 793(c), and 18 USC 793(e).

19. The term "Restricted Data" means all data concerning: (1) the design, manufacture or utilization of atomic weapons: (2) the production of special nuclear material in the process of energy, 42 U.S.C. § 2014(y).


28. Transcript of Proceedings, Motion Hearing, December 27, 1999: 49. [Hereafter Motion Hearing]

29. This information was drawn from Dr. Lee's web site at http://wenholee.org/whoo.htm.


32. USA, "Response," 10. See also, United States Senate, Committee on the Judiciary, Redacted Transcript of Closed Hearing with Attorney General Janet Reno Regarding the FISA Process in the Wen Ho Lee Case, June 8, 1999: 15. [Hereafter, Redacted Transcript]

33. Redacted Transcript, 15.

34. Redacted Transcript, 15.


37. For a discussion of this issue, see Motion Hearing, 147–157.

38. Motion Hearing, 152–153.

39. DOE Assistant Secretary for Congressional and Intergovernmental Affairs John C. Kittinger, letter to Senator Wesley Clark, December 20, 2000, responding to written questions submitted by Senator Arlen Specter following a September 27, 2000, hearing of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts.


42. Redacted Transcript, 109.

43. Redacted Transcript, 109.

44. Redacted Transcript, 109.


51. Motion Hearing, 147–157.

52. DOE Assistant Secretary for Congressional and Intergovernmental Affairs John C. Kittinger, letter to Senator Wesley Clark, December 20, 2000, responding to written questions submitted by Senator Arlen Specter following a September 27, 2000, hearing of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts.


54. Even if DOE computer personnel and counterintelligence were unaware that Dr. Lee was under investigation by the FBI, and thus no one would have learned of this in 1994, it would not have been inappropriate for DOE to share records of systems like NADIR with the FBI. This has the benefit of allowing the FBI to find out if any individuals are being flagged by security and monitoring systems, without alerting computer personnel to the investigation.


58. For example, a September 14, 1998 FBI 302 form of an interview of a scientist says that in September 1995 the KSAG met and "there was no disagreement that. Restricted Data information had been acquired by the Chinese. There was over how valuable the information was."
59. DOE Administrative Inquiry, 38.
60. DOE Administrative Inquiry, 36.
61. DOE Administrative Inquiry, 36.
62. See FBI 302 dated September 2, 1999, from an interview of the FBI agent who was detailed to the AL.
63. FBI teletype from FBIHQ to FBI-AQ dated August 20, 1999, 3.
64. FBI 302 dated 9/18/96 (from an interview on 9/18/96 of a scientist, 2.
67. United States House of Representatives, Report of the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China, June 1, 83-84. [Hereinafter, Cox Report] A walk-in is an individual who voluntarily offers to conduct espionage.
70. X-division Open LAN Rules of Use, Executed by Dr. Wen Ho Lee on April, 1995.
71. United States Senate, Senate Select Committee on Intelligence, testimony of FBI Director Louis J. Freeh at a "Closed Hearing," May 19, 1999: 34.
72. Thompson and Lieberman Statement.
75. This list has been extracted from the August 5, 1999, Statement by Senate Governmental Affairs Committee Chairman Fred Thompson and Ranking Minority Member Joseph Lieberman, Department of Energy, FBI, and Department of Justice of Espionage into the Department's Membership of Design Information on the W-88 Warhead, 14-17.
76. Hydrodynamics is a science that is relevant to the development of nuclear weapons designs.
77. See Redacted Transcript, 35 and 88.
78. Bellows Report, 482.
79. Redacted Transcript, 318-119.
80. Redacted Transcript, 52. In a March 6, 2000 letter from Assistant Attorney General Robert Rabin to Senator Hatch, the Department of Justice takes issue with this statement and quotes Senator Kyl's testimony on the subject: "So it would be your view that [the language quoted in the draft report] is a summary that probably overstates the Justice Department's requirements for the FBI? The Attorney General responded: "That is correct." See the June 8, 1999 transcript.
81. Redacted Transcript, 52.
82. Bellows Report, 482.
83. Unclassified except of Mr. Seikaly's testimony before the Senate Select Committee on Intelligence, May 1999.
84. Bellows Report, 549.
85. Redacted Transcript, 49.
86. Redacted Transcript, 49.
87. Redacted Transcript, 24-25.
88. Redacted Transcript, 39.
89. Redacted Transcript, 39.
90. Bellows Report, 549.
91. Redacted Transcript, 40.
92. Redacted Transcript, 36.
93. Redacted Transcript, 36.
94. Redacted Transcript, 56.
95. Redacted Transcript, 117.
96. Bellows Report, 541.
97. Motion to Dismiss. See also Pete Carey, "Los Alamos Suspect May Have Done His Job: Rerouting Files Common at Lab," Florida Times-Union, June 20, 1999, G-8.
100. Hoffman.
111. PFIAB, 34.
112. See the undated, unsigned memorandum provided to the subcommittee by the FBI Office of Congressional Affairs in December 1999.
113. See the undated, unsigned memorandum provided to the subcommittee by the FBI Office of Congressional Affairs in December 1999.
114. See the undated, unsigned memorandum provided to the subcommittee by the FBI Office of Congressional Affairs in December 1999.
115. FBI EC from Albuquerque to FBHQ, dated December 8, 1999: 1.
116. See the letter of DOE Assistant Secretary for Intelligence and Counterintelligence (PDD) Examination of Wen Ho Lee, for December 20, 2000, enclosed a declassified segment of a 1999 Report by the IG. This information comes from page 115 of the full report.
120. The At the December 14, 1999 meeting in which Director Freeh asked the subcommittee to suspend its oversight of the Wen Ho Lee case, Mr. Curran was asked about a copy of a letter he had received from FBI Assistant Director Neil Gallagher, which described the memo in question as a "blind memo," not intended to capture actual witness statements.
122. The letter to December 20 2000 from John C. Angell, Assistant Secretary of Congress and Intergovernmental Affairs, Department of Energy to Senator Charles Grassley, which included responses from Mr. Curran to 22 questions from Senator Specter. Wackenhut is a private company that has a contract with DOE to perform security related polygraphy.
128. 27 September 2000 hearing: 32.
131. DOE IG Gregory H. Friedman, letter to Senator Arlen Specter of December 20, 2000, enclosing a declassified segment of a 1999 Report by the IG. This information comes from page 115 of the full report.
133. DOE IG Gregory H. Friedman, letter to Senator Arlen Specter of October 2, 2000, enclosing a declassified segment of a 1999 Report by the IG. This information comes from page 115 of the full report.
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136. Deposition of Supervisory Special Agent Craig Schmidt by Mr. Eric George of the Senate Committee on the Judiciary staff, 29 July 1999: 91.
told on December 14, 1999 of an FBI document which said that the FBI had not initially been able to get access to the charts, per instructions from Ed Curran.


he might somehow communicate the existence of the tapes to a third party, it should have requested a wiretap. It may be that the wiretap was requested and received, but the absence of any wiretap request would strongly undermine the government's claim that restricting his communications was necessary to protect the tapes.

200. As previously noted, all the information in this section is drawn from a chronology prepared by the Department of Justice and forwarded to the Senate Judiciary Committee, December 2001.


208. For a discussion of the debate between FBI and DOJ after Lee’s computer was searched, see Thompson and Lieberman Statement, 27–29.


211. In view of DOJ’s assertion that it never had any sort of wiretap on Dr. Lee, this letter is in response to the previous investigation of the other scientist to whom Dr. Lee spoke by telephone in December 1982.


220. No subpoenas were issued pursuant to these resolutions because the investigation into the Wen Ho Lee case was suspended in December at the request of Director Freeh and the Department of Justice. The resolutions were intended as temporary measures to ensure that the subcommittee could continue its work during the congressional recess. The resolutions expired the following January, several other individual subpoenas on matters under investigation by the subcommittee were, in fact, debated and voted on. The resolution that expired by the subcommittee was defeated in the full committee.


226. There are a number of other issues that raise questions as to whether the government had all the information it had available during the course of its investigation. These questions were identified in a June 27, 2001 letter from senators Patrick Leahy and Arlen Specter to Attorney General General Ashcroft. With the exception of conferring that Dr. Lee has told investigators that the tapes were still in his office as of December 1998, the FBI chronology of Wen Ho Lee, continues to refuse to answer these questions on the ground that the case is still open.


228. In response to a question from staff on July 5, 2001, Sheryll Walker of DOJ’s Office of the Director of Law Enforcement, stated that the FBI had never been the target of electronic surveillance.


245. Taken from the “Overview” section of the website, http://wenholee.org/
MEMORANDUM IN SUPPORT OF MOTION FOR DISCOVERY OF MATERIALS RELATED TO SELECTIVE PROSECUTION, United States v. Wen Ho Lee, June 25, 2000: 1.
(Hereafter Selective Prosecution Memorandum)

Selective Prosecution Memorandum, 2.
Selective Prosecution Memorandum, 2–3.

Plea Hearing, September 13, 2000: 50.

DOE press release, “Richardson Releaves Task Force Against Racial Profiling Report and Announces 8 Immediate Actions,” January 19, 2001. Richardson said that the Task Force had made several general observations that some employees believed that counterintelligence efforts were targeting employees of Chinese ethnicity, but offered no direct proof of any such prow.


Selective Prosecution Memorandum, 5.
Selective Prosecution Memorandum, 5.


When questioned in an October 3, 2000 hearing about an August 1995 FBI document quoting Mr. Vrooman as saying that “a ‘smoking gun’ had been found,” Mr. Vrooman testified that he did not know what the memo referred to. After the hearing, Mr. Vrooman refreshed his recollection and wrote to me that the ‘smoking gun’ quote referred to the analytical team headed by Mr. Michael Henderson, otherwise known as the Kindred Spirit Analytical Group.

300. United States Senate, Hearing before the Senate Judiciary Subcommittee on Department of Justice Oversight, “Continuation of Oversight on the Wen Ho Lee Case,” October 3, 2000: 50.


308. FISA Request, November 10, 1998: 5.

On October 7th and 8th, 1997, Dr. Peter Hoong-Yee Lee confessed to the FBI that he had engaged in espionage against the United States. He obviously stayed in touch with the lab and may have consulted on certain security issues, but his contact with the case would have been less than during his tenure at the lab.

See Department of Energy Press Release, “Richardson Announces Results of Inquiries Related to Espionage Investigation,” August 12, 1999. See also, Memorandum Concerning the Use, Relevance, and Admissibility of the Information Listed in Dr. Wen Ho Lee’s First Notice of Discovery of Materials Related to Selective Prosecution Procedures Act.


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had provided classified nuclear weapons design and testing information to scientists of the People's Republic of China on two occasions in 1985 and had given classified antishubmarine warfare design information to the Chinese in 1997. The 1985 revelations, which occurred during discussions with, and lectures to, PRC scientists in Beijing hotel rooms, involved classified information, during discussions with and lectures to the PRC scientists, designed to simulate nuclear detonations in a process called Inertial Confinement Fusion, or ICF. According to a 17 February 1998 "Impact Statement" by experts from the Department of Energy, "the ICF data provided by Dr. Lee was of significance ... to the PRC scientists in their nuclear weapons development program. . . . For that reason, this analysis indicates that Dr. Lee's activities have directly and significantly enhanced the PRC nuclear weapons program to the detriment of U.S. national security." The "Impact Statement" further notes that "the ICF Program, when developed in conjunction with an already existing nuclear program, could assist in the design of more sophisticated nuclear weapons."3

Dr. Lee's 1997 disclosures came in two lectures to PRC scientists, again in China, where he discussed his work on the joint U.S./U.K. project, the objective of the project, which has been carried out over several years at the cost of more than $100 million, is to study the behavior of radars to detect submerged submarines. After viewing videotapes of Dr. Lee's confession, Dr. Richard Twogood, former Technical Program Leader for the ROI project, stated that Dr. Lee's disclosures contained classified information at the SECRET level which went right to the heart of the most significant technical achievement of the U.S./U.K. project, which was to provide significant material assistance to the PRC nuclear weapons program, until February 1998, well after the plea agreement was concluded.

The reluctance of the Department of Defense, the Navy in particular, to support the prosecution of Dr. Lee for his anti-submarine warfare revelations had an adverse impact on the case. The ambiguity of the 14 November 1997 memorandum authored by Mr. J.G. Schuster, head of the Navy's Science and Technology Branch, seriously undermined DoJ efforts to prosecute Dr. Lee. The memorandum was limited to a single incident long ago, but upon which we were unable to achieve a conviction. Rather than wait until we could work out acceptable language on other proposals, the Subcommittee did the same on 20 July 2000. As the Judiciary Committee reported the measure favorably on 23 May 2000 and the Intelligence Committee did the same on 20 July 2000. As the Judiciary Committee reported the measure favorably on 23 May 2000 and the Intelligence Committee did the same on 20 July 2000. As the Judiciary Committee reported the measure favorably on 23 May 2000 and the Intelligence Committee did the same on 20 July 2000. As the Judiciary Committee reported the measure favorably on 23 May 2000 and the Intelligence Committee did the same on 20 July 2000. As the Judiciary Committee reported the measure favorably on 23 May 2000 and the Intelligence Committee did the same on 20 July 2000.

The Department of Justice's ability to seek a tougher plea agreement or to prosecute Dr. Lee under section 794 was hampered by the need to provide the court and the classification level of, and the damage to national security from, Dr. Lee's nuclear weapons design revelations prior to offering him a plea agreement.

DoJ failed to inform the court that Dr. Lee repeatedly confessed to disclosing classified information to the PRC in 1997, allowing the defense and the court to believe nothing that Dr. Lee said was true. Following the conviction and sentencing of the only time Dr. Lee intentionally passed classified information was more than 13 years prior.

DoJ did not have the DoE's "Impact Statement," which stated that Dr. Lee had provided significant material assistance to the PRC nuclear weapons program, until February 1998, well after the plea agreement was concluded.

The reluctance of the Department of Defense, and the Navy in particular, to support the prosecution of Dr. Lee for his anti-submarine warfare revelations had an adverse impact on the case. The ambiguity of the 14 November 1997 memorandum authored by Mr. J.G. Schuster, head of the Navy's Science and Technology Branch, seriously undermined DoJ efforts to prosecute Dr. Lee. The memorandum was based on incomplete information, without knowing the details of what Dr. Lee confessed to disclosing to PRC scientists.

DoJ professionals believed Dr. Lee could not be prosecuted for the 1997 revelations, and the explanation that the information Dr. Lee revealed was already in the public domain was contradicted by two classified memoranda from Lawrence Livermore National Laboratory which show that the disclosures extended beyond what was publicly available.

DoJ's failure to prosecute on the 1997 disclosures, or at least to add them as a separate count to the plea agreement, created a material adverse effect on the disposition of the case. Coupling the 1997 disclosures with the 1985 revelations would have demonstrated that Dr. Lee's classified disclosures were not limited to a single incident long ago, but were ongoing. Obtaining a conviction on the 1997 disclosures would not have been a foregone conclusion—proving the matter rested on disclosing certain information that the FBI and the prosecutor wanted very much to protect, and the Navy was reluctant to assist in the prosecution because these were not in its interest to irate the mountable obstacles. At a minimum, an effort should have been made to add a separate count to the plea agreement to address these disclosures.

DoJ communications were focused on the critical question of what authority the trial prosecutor had with regard to a charge under Section 794. DoJ officials advised that the Internal Security Section would have reconsidered a prosecution under Section 794 if the trial prosecutor sought a prosecution at the time of conviction there was no assurance that Dr. Lee did not have a espionage suspect while working on the joint U.S./U.K. Radar Ocean Imaging project was not disclosed. The proceedings in the Office of the Assistant Secretary of Defense/Command, Control, Communications and Intelligence (OAND/SCI) were reviewed under the Foreign Intelligence Surveillance Act was terminated at a critical juncture in September 1997, just when the FBI was stepping up its efforts to protect the utility of its electronic surveillance in the Peter Lee case, with the result that several opportunities for misunderstandings would have been greatly increased. Specifically, the Subcommittee's investigation revealed that Dr. Lee's anti-submarine warfare revelations were classified at the CONFIDENTIAL level, which, by definition, would damage U.S. national security. According to the Cox Committee Report, "this research, if successfully completed, could enable the (Chinese military) to threaten previously invulnerable U.S. submarines."4

Dr. Lee's confessed crimes caused serious harm to U.S. national security, yet he was offered a plea bargain which resulted in a sentence of only seven years in prison, a $20,000 fine, and a $30,000 community service. The magnitude of the plea agreement which called for cooperation and truthfulness, the interests of the United States were not well served by this outcome.

During the 106th Congress, I chaired a special subcommittee of the Senate Judiciary Committee for the purposes of conducting oversight of the Department of Justice and the handling of this case and several other matters. The Subcommittee's review of the Dr. Peter Lee case identified a number of shortcomings in existing procedures for handling espionage investigations and prosecutions, particularly in cases where highly technical classified information is revealed verbally rather than in writing. The Subcommittee's investigation revealed that Dr. Lee had been discovered in July, thereby decreasing the utility of that particular device, the FBI Field Office felt strongly enough about the need for continued surveillance to make a very strong request to FBI Headquarters in August, but not strongly enough to require the warrant. In the result, the FBI never obtained a warrant. The reluctance of the Department of Justice and other Executive Branch offices—the agencies that Dr. Lee was charged to assist him in the prosecution—and the prosecutor wanted very much to prosecute—were serious enough to require remedial steps. The Counterintelligence Reform Act of 2000 (S.2889), which became law on 27 December 1998, Title VI of Public Law 106-530, contained a provision that will address many of the shortcomings in the way the DoJ handled this case. This provision, Section 607, amended the Classified Information Procedures Act (CIPA) to require that the Assistant Attorney General for the Criminal Division and the appropriate United States attorneys provide foreign intelligence officials from the victim agency in cases involving classified information. The section further required that these briefings occur as soon as practicable after the Department of Justice and the United States attorney concerned determined that a prosecution could result and at such other times thereafter as are necessary to keep the affected agency fully and currently informed of the status of the prosecution.

The Subcommittee's investigation revealed other problems that have not yet been addressed through legislation, primarily because it was not possible to reach a consensus on how best to address them. The Counterintelligence Reform Act of 2000, as passed by the Judiciary Committee and the Senate Select Committee on Intelligence without a single vote in opposition. The Judiciary Committee reported the measure favorably on 23 May 2000 and the Intelligence Committee did the same on 20 July 2000. As the Committee's chief sponsor, I intend to work toward a consensus measure to ensure that the important reforms we had identified during oversight of this case and the Dr. Wen Ho Lee case are incorporated into the legislation. Rather than wait until we could work out acceptable language on other proposals arising from the Peter Lee case, I felt it was more important to accomplish what could be done in the time available and address the more difficult matters later. I also withheld publication of this report during the last Congress so as not to intrude into the presidential election. Now that the election is over and the 107th Congress is well under way, it is appropriate to release this report. I will work to address the other problems identified by our oversight, but upon which we were unable to achieve consensus.

Conclusively, I am introducing legislation to require victim agencies—the agencies whose classified information is lost—to
produce a written “damage statement” which specifies the level of classification of the material alleged to have been revealed, and justifies the classification level by describing harm to national security from such revelations. The legislation further requires the prosecution team to consider the “damage statement” before any final decision to seek a plea bargain. The case should be taken to trial or a plea bargain should be offered. I also strongly believe, but will not attempt to mandate through legislation, that the team responsible for authoring these written instructions should be shared with the investigating agency or agencies and the victim agency so they can provide input for input before any final decisions are made.

The findings and recommendations included in this report are based on a review of unclassified documents and testimony from the FBI, the Department of Defense and its subcomponents, the Department of Justice and information submitted to the court during the sentencing hearing. The Subcommittee conducted three open hearings, three closed hearings, and numerous staff interviews, which were based on more than 600 individuals who played key roles in the conduct of the case. The information presented here is derived from unclassified documents and testimony upon unclassified extracts from classified documents.

SUMMARY OF DR. PETER H. LEE’S ESPIONAGE ACTIVITIES

Dr. Peter Lee is a naturalized U.S. citizen who worked for TRW Inc., a contractor of the Lawrence Livermore National Laboratory, from 1973 to 1976, Dr. Lee worked at Lawrence Livermore from 1976 to 1984, and at Los Alamos National Laboratory from 1984 to 1991. He returned to TRW from 1991 until December 1997, when he was dismissed in the wake of his plea agreement for passing classified information to foreign nationals.

According to his October 1997 confession to the FBI, Dr. Lee traveled to China from 22 December to 5 January 1985 (when he was employed by Los Alamos National Laboratory). On 9 January 1985, Dr. Lee met with Chen Nengkuan, a PRC scientist employed by the China Academy of Engineering Physics (CAEP), in a hotel room in Beijing. On 9 January 1985, Dr. Lee met with Chen Nengkuan, a PRC scientist employed by the China Academy of Engineering Physics (CAEP), in a hotel room in Beijing.

On 13 January 1985, Dr. Lee met with Chen Nengkuan again and discussed the damage to his neutron detector that he had learned of from secret U.S. information. On 14 January 1985, Dr. Lee traveled to another city, using the graphs that the Chinese had saved from his first lecture and had brought to the second lecture for his use.

Upon his return from the PRC, Dr. Lee filled out a TRW Post-Travel Questionnaire in which he denied that there were any requests from Foreign Nationals for technical information, that there were any attempts to persuade him to reveal or discuss classified information.

On 5 August and 14 August 1997, Peter Lee was interviewed by FBI agents at a Santa Barbara, California, hotel. Dr. Lee admitted that he had lied on his travel form about the purpose of his trip to China in May, and that he had lied about receiving requests for technical information. However, he continued to insist that he had paid for the trip to the PRC with his own money.

After the two FBI interviews, Dr. Lee contacted a Chinese official named Gou Hong by e-mail on 25 August 1997, and requested that Gou Hong provide information indicating that Lee had paid for the trip to the PRC, that the receipts contain the names of Lee and his wife in English, and that they show that Lee had paid cash for the trip. On 3 September 1997, Dr. Lee provided the FBI with copies of hotel and airline receipts for the trip to China. Dr. Lee also stated that he had paid for the trip in cash. Based on a review of e-mail transmissions and telephone conversations between Lee and Gou, however, the FBI concluded that the charges were false.

On 7 October 1997, Dr. Lee was interviewed and polygraphed by the FBI. The polygraph examiner believed that Lee showed deception when he answered “no” to the following questions: (A) Have you ever deliberately been involved in espionage against the United States? (B) Have you ever provided classified information to persons unauthorized to receive it? (C) Have you deliberately withheld any contacts with any non-U.S. intelligence service from the FBI? After the second polygraph polygraph examiner, who interviewed Lee on these questions, Dr. Lee made a videotaped confession in which he admitted “having passed classified national defense information to the PRC twice in 1985, and giving false information, on his post-travel questionnaire in 1985.”

During this interview, Dr. Lee also repeatedly confessed that he intentionally revealed classified information during his 1997 anti-submarine lectures in China. Dr. Lee stated that he believed at that time the United States was “no longer a first-rate power” and that the judge was not adequately informed of these admissions at sentencing.

On 9 December 1997, Dr. Lee pleaded guilty to a two count information that he violated: (1) 18 USC 793(d)—Attempt to communicate national defense information to a person not entitled to receive it; and (2) 18 USC 1001—False statement to a government agency.

According to the press release from the office of U.S. Attorney Nora Manella, Dr. Lee’s guilty plea to the espionage charge, that he knew the information was classified, and that by transmitting the information he intended to help the Chinese. The offenses to which Lee pleaded guilty could have resulted in a maximum sentence of 15 years in federal prison and a fine of $250,000. Under the terms of the agreement, the government asked for a “short period of incarceration,” a formulation that was negotiated by the trial attorney and approved by Mr. John Dion in the Internal Security Section, but was not approved by Principal Deputy Assistant Attorney General Keeney, the DOJ official with final authority, who advised the Subcommittee that he had not had a chance to review the plea agreement. The Subcommittee had known that it would request only a short period of incarceration as an opening position.

On 16 December 1998, Dr. Lee was sentenced by U.S. District Court Judge Terry Hatter to one year in a community corrections facility, three years of probation, 3,000 hours of community service, and a $20,000 fine. The sentence was based upon a sealed plea agreement from 8 December 1997. The plea agreement and other key documents in the case were released to the Subcommittee in late 1999.

Every DOJ official interviewed by the Subcommittee expected Dr. Lee to receive jail time, during which they planned to seek his further cooperation. When he received no jail time, all leverage was lost by the government.

Analysis of the Nuclear Weapons Design Revelations

The importance of Dr. Lee’s 1985 disclosures is highlighted by the 17 February 1998 Senate Special Investigating Committee of the Department of Energy which concludes that: “the [Inertial Confinement Fusion] data provided by Dr. Lee was of significant material significance or importance to the nuclear weapons development program. . . . For that reason, this analysis indicates that Dr. Lee’s activities have directly enhanced the PRC nuclear weapons program to the detriment of U.S. national security.”

The “Impact Statement” further notes that “the ICF Program, when developed in conjunction with an already existing nuclear weapon program, could assist in the design of more sophisticated nuclear weapons.”

During this same interview, Dr. Lee also repeatedly confessed that he intentionally revealed classified information during his 1997 anti-submarine lectures in China.
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CONGRESSIONAL RECORD — SENATE
December 20, 2001

being discovered. Let me emphasize this: the information Lee admitted disclosing in 1985 had been declassified.43

This analysis may be correct as far as it goes, but it ignores other factors and issues that should have been considered. Dr. Lee’s confession, though carefully crafted to limit his exposure to prison years, was not all of what the FBI already knew about his espionage activities. The FBI knew well before they confronted Dr. Lee that he had likely been compromising anti-submarine information since the early 1980s,41 and that in the early 1980s Dr. Lee had allegedly given the Chinese classified information that greatly assisted their nuclear weapons program.42 One scientist the FBI consulted in trying to evaluate the extent of Dr. Lee’s revelations said, “It seems likely that Peter Lee and his co-conspirators were involved in a joint project, classified or unclassified, he was involved with at Livermore, [Los Alamos National Laboratory], and TRW.”43

At a later stage of the proceeding, Dr. Lee admitted that he had given the PRC scientists additional information which had not been declassified. Had the Internal Security Section been aware of that development, the facts, it might not have declined prosecution under 794 on grounds of subsequent declassification. The Government would have been able to prove that Dr. Lee’s confession did not prove that he had done more than he confessed to. As the prosecuting attorney noted during his 5 April 2000 appearance before the Subcommittee, the “many of the many cases I had investigated” with a cooperating defendant or a defendant who pled guilty who was debarred, I never had the kind of information to corroborate what I said as I did in this case.”44

The ISIS line attorney’s statement regarding the “questionable significance of the information declassified” in 1985 is flatly contradicted by the DoE “Impact Statement” of 17 February 1998 which states that Dr. Lee did serious harm to U.S. national security. Had the ISIS line attorney waited for the experts to evaluate the case, he would have known that a 794 charge should be given much greater consideration than it got.

During testimony before the Subcommittee, the ISIS line attorney who handled the case stated that it would have been improper to place a damage assessment which, in his experience, normally takes more than a year. In fact, however, there were two assessments available within less than 90 days of the start of plea negotiations. The effort to make determinations—during the latitude to make determinations—during the sentencing hearing when he conceded to only a “short period of incarceration” to secure Dr. Lee’s agreement.60 Principal Deputy Assistant Attorney General Mr. Dion that “although the section 794 case for his nuclear weapons espionage statutes, for his nuclear weapons espionage. In view of these facts it was surprizing that the ISIS attorney advanced the argument: “Dr. Lee could claim that he made the disclosures to encourage China not to conduct nuclear weapons tests in the field, and he would likely be supported by internal security. He had also authorized him to: “seek a plea of guilty by Lee to a violation of 18 USC Section 793(d) for his 1985 disclosures of classified information.”53 The prosecutor, who was emphatic in his testimony that his instructions were to accept a plea under 793 and 1001, or nothing,59 obtained a plea on both counts, but had to concede to only a “short period of incarceration” to secure Dr. Lee’s agreement.60

The Government had spent six years and considerable amounts of money investigating Dr. Lee’s espionage activities. The failure to obtain such an analysis prior to sentencing a plea already anticipated the classified information in the Department of Energy’s “Impact Statement.” The Government had spent six years and considerable amounts of money investigating Dr. Lee’s espionage activities. The failure to obtain such an analysis prior to sentencing a plea already anticipated the classified information in the Department of Energy’s “Impact Statement.”

Dr. Thomas Cook’s “Declaration of Technical Damage to United States National Security Assessed in Support of United States v. Peter Hoong-Yee Lee” was available in February 1998, as was the Department of Energy’s “Impact Statement.” The Government had spent six years and considerable amounts of money investigating Dr. Lee’s espionage activities. The failure to obtain such an analysis prior to sentencing a plea already anticipated the classified information in the Department of Energy’s “Impact Statement.”
and then not getting that cooperation. Dr. Lee did not live up to his obligation to be truthful. The “Position with Respect to Sentencing Factors” that the Government submitted acknowledged that defendant had still not been completely forthcoming about the nature, quality and extent of his improper contacts with scientists. Dr. Lee’s lack of cooperation was further highlighted in the February 1998 DoE “Impact Statement” where it was noted that:

“We do not believe that Dr. Lee has been fully cooperative in identifying or describing other classified information he may have compromised or that Dr. Lee was deterred to compromising selected classified information in the hope his other, more damaging activities would not be discovered or fully probed.”

On 26 February 1998, Dr. Lee failed an FBI-administered polygraph where he was asked whether he had compromised the DoE’s classified information. In this polygraph examination regarding passing classified information,65 when interviewed by DoE scientists in March 1998, Dr. Lee again failed to cooperate fully. As Dr. Thomas, the physicist,66 explained during his testimony before the Subcommittee on 29 March 2000, when asked questions about what he had done.67 “Dr. Lee denied any knowledge or any interest in classified programs and publications. He was, however, the author and/or the technical editor of some of these programs and publications which he denied to be of any classified nature.68 In view of these repeated lies and lack of cooperation, there should be no doubt that Dr. Lee did not comply with the terms of the plea agreement, and the Government could have successfully sought to breach it.

When asked by Senator Specter why he did not breach the plea agreement in view of this lack of cooperation, the prosecuting attorne

Mr. Dion: That’s correct, sir. . . . Senator Specter: . . . Mr. Dion, when you say no decision had been made and I inter

Mr. Dion: We definitely would have recon

In the face of the prosecuting attorney’s testimony that he was authorized to proceed with the plea agreement once the plea bargain broke down, it seems clear that he was correct on what authority was communicated to him.

The prosecuting attorney testified that the only one who did not have a clear understanding of the basis to proceed with the plea agreement was the admissions of Mr. Dion.

The plea agreement did not pass, as one might expect, from the Internal Security Section to the Department of Justice. The JSS line attorney handling the case testified that he never spoke to anyone in DoD about the plea negotiations. As a result of this failure to communicate, the various officials within the Department of Justice were acting without a clear understanding of the actual decisions that had been made. It is obvious that had the information benefitted from more direct supervision by high level Justice Department officials, which was the case when the investigation within the Department of Justice and between DoJ and the Department of Defense. Attorney General Reno was provided with three “Urgent Reports” informing her of (1) Peter Lee’s admission on October 7, 1997, (2) his entry of a guilty plea on December 9, 1997, and (3) the court’s imposition of sentence on December 9, 1997, as required by law. She also signed the document authorizing the use of FISA-de\n
Mr. Dion: I don’t recall specifically if we discussed that or not. We did discuss that no final decision had been made on Section 794 and that he should proceed with plea negoti

by the Internal Security Section at Main

The Secretary of Defense was told the same thing. On 26 November 1997, Colonel Dan Baur prepared a memorandum for the Secretary of Defense and the Deputy Sec

Mr. Dion: That’s correct, sir. . . . Senator Specter: . . . Mr. Dion, when you say no decision had been made and I inter

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Mr. Dion: That’s correct, sir. . . . Senator Specter: . . . Mr. Dion, when you say no decision had been made and I inter
U.S. Attorney handling the case in Los Angeles contacted a representative of the Defense Criminal Investigative Service. He was referred to Dr. Donna Kulla in the Intelligence and Special Operations Support Group. She dealt with the Radar Ocean Imaging (ROI) project on which Peter Lee worked. Dr. Kulla informed the prosecuting attorney that Dr. Lee revealed a classified CONFIDENTIAL. By 3 November 1997, the Department of Defense had compiled an extensive list of publicly available information on the topic of submarine warfare and why it might be important for the Navy to take virtually any position: the signal analysis techniques are unclassified; they could be classified SECRET, the material that Dr. Lee revealed to the Chinese was publicly available. In mid-October, the FBI also contacted Dr. Richard Twogood of Lawrence Livermore National Laboratory (LLNL), and asked for his opinion on the level of classification of Dr. Lee’s revelations. Dr. Twogood was the Deputy Director for Electronics Engineering at LLNL, and from 1988 until 1996 had been the Program Leader for the Imaging and Detection Program at LLNL. The Joint U.S./U.K. Radar Ocean Imaging Program, for which Dr. Twogood was the Technical Program Leader from 1990 through 1995, was the single largest component of LLNL’s Imaging and Detection Program, and it was the one where Dr. Peter Lee worked and where he would have had access at the DoD SECRET level to the important discoveries in the development of methods to detect submarine signatures with remote sensing radars. Dr. Twogood is an authorized derivative classifier that he can make appropriate judgements about classification based on guidance written by others. Although the Navy had primary jurisdiction over the warfighting information that Dr. Lee revealed to the Chinese, Dr. Twogood had personally written some of the classification guidance being used in the Joint U.S./U.K. program, and was therefore familiar with the information. When he reviewed the videotaped confession recorded on 29 March 2000, Dr. Twogood informed the FBI that Dr. Lee himself admitted that he had passed CONFIDENTIAL information. Furthermore, Dr. Twogood informed the FBI that the information was at least CONFIDENTIAL and likely DoD SECRET. More importantly, in Dr. Twogood’s view, Dr. Lee’s disclosures went right to the heart of the most significant technical achievement of the U.S./U.K. program up until 1995. The prosecuting attorney was concerned that Dr. Twogood’s position could be said to have undermined the propriety of the classification CONFIDENTIAL when first asked, to the later position that the information was SECRET. The prosecutor also was aware that the defense would be able to argue that the information being passed by Dr. Lee would take a different view about the level of classification due to the similarity of some of the information to what was already in the public domain. These are legitimate concerns, but are not outside the realm of what prosecutors contend with in all espionage cases. They are, by no means, sufficient to justify not going forward with the prosecution. On 28 October 1997, the ISS attorney handled a meeting with DoD officials for the purpose of determining whether there was publicly available information that could undermine an espionage prosecution for the 1997 compromise. At the meeting, the DoJ attorney provided DoD officials with the draft Cordova affidavit, and made them aware that the confession had been videotaped, but he did not provide copies of the tapes and no DoD officials asked for them. When asked about why he had not provided copies of the tapes to DoD personnel, Mr. Schuster conceded that “Because at that point, at the initial meeting, the purpose was not to get a final classification determination or even a preliminary classification determination. It was only to find out one of two things: what publicly available information might be out there that could potentially compromise a Section 794 prosecution on the 1997 compromise, and what could we say about the program generally, as we have here in the present.” As Mr. Schuster stated. Given that the CONFIDENTIAL classification cannot be explicitly supported by the classification guidelines and that material similar to that briefed by the subject has been published and publicly available; bringing the issue to a public forum could cause more damage to national security than the original disclosure. Based on the above, it is recommended that the information Dr. Lee revealed to the Chinese in 1997 should be considered classified CONFIDENTIAL.
It seems apparent that obtaining false documents from a Chinese official would have warranted a separate count under 18 USC 1001, and would have shown that Dr. Lee’s written DoJ and DoD cooperation from the Chinese, and a more aggressive approach by senior DoJ officials, Dr. Lee should have been charged or required to plead to at least two counts: for the 1986 hohraim revelations, (2) a 794 charge for the 1997 anti-submarine warfare revelations, (3) a false statements charge under 18 USC 1001 in Dr. Lee’s espionage and attempted cover-up would have been made known. As it happened, the full range of Dr. Lee’s felonious conduct was not in the Court’s knowledge. It should be noted that Judge Hatter could have requested additional information to gain a better understanding of the case, but he did not. Important written instructions were done by Dr. Lee’s significant material assistance to the PRC nuclear weapons program could have been made clear to the Court.

**FISA Issues**

The loss of electronic surveillance on Dr. Lee occurred at a critical juncture that may have undermined the Government’s ability to collect important counter-intelligence information. When the Foreign Intelligence Surveillance Act (FISA) court order expired on 3 September 1997, it was not renewed. The FBI stated during testimony on 29 March 2000 that the FISA had not been renewed for several reasons, including concerns within the DoJ’s Office of Intelligence Policy and Review (OIPR) that the information on Dr. Lee was “too stale.” However, OIPR disagrees with the FBI’s characterization of what happened. As to what actually happened with the FISA request, it is only possible to conclude that the FBI assumed the request was still in play by making a formal written request. The Counterintelligence Reform Act, which became law at the end of the 106th Congress, will prevent attorneys who are responsible for the loss of FISA coverage by providing a mechanism for the Director of the FBI to raise the matter directly with the Attorney General. DOD was required to reply in writing. In this way, senior officials in both the FBI and the Department of Justice can be held accountable for their judgements on important espionage cases.

**Additional issues**

In addition to the disclosures of classified information for which Dr. Lee was charged, the Government knew that: (1) Dr. Lee asked for and received false travel documents from the Chinese, which he presented to the FBI on 3 September 1997; (2) that his travel expenses paid for by the Chinese; (3) that he enlisted the assistance of Chinese officials associated with the CSEP in his attempt to deceive the FBI, and (4) that he had videotaped his conversion during his 1997 trip to China.” The only charge arising from the events of 1997, however, was Lee’s false statements. The Department of Justice on his Post-Travel Questionnaire submitted to TRW.
4. Transcript of Proceedings (first draft), hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 29 March 2000: 52–53.
6. According to Section 1.3 of Executive Order 12056 (April 17, 1995, which superseded Executive Order 12056 of April 6, 1982), information is to be classified as ‘CONFIDENTIAL’ if its unauthorized disclosure ‘could reasonably be expected to cause damage to the national security’.
8. J. G. Keener, Principal Deputy Assistant Attorney General, Criminal Division, Department of Justice, prepared statement submitted to the Senate Judiciary Subcommittee on Administrative Oversight and the Courts Concerning the Peter Lee Espionage Case,’ 12 April 2000: 6.
12. Bruce Lake, e-mail to Dobie McCartney of January 28, 2000. Lists the following as dates of Peter Lee was employed by TRW: Original hire date: 06/18/73 to 11/06/79 Rehire date: 12/08/97 Retired eff.: 12/30/97. See also House of Representatives, Report of the United States House of Representatives Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China, May 25, 1999, Vol. 1, 87–88. [Hereinafter, Cox Committee Report]
25. See Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 29 March 2000: 39.
32. INFORMATION, [18 USC 793 (d); At- tempt to Communicate Defense Information to A Person Not Entitled To Receive It; 18 USC 1001: False Statement to Government Agency], undated, 1–3 [DoJ Bates numbers 000086–000087]
34. Transcript of Proceedings (first draft), ‘Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 90.
37. See, for example, Assistant Secretary for Research and Development, Office of Defense Programs, Department of Energy; Notra Trulock III, Senior Intelligence Officer, Department of Energy; Joseph S. Mahaney, Director, Office of Energy Intelligence; and Joseph S. Mahaney, Director, Office of Energy Intelligence, and Joseph S. Mahaney, Director, Office of Energy Affairs, ‘Impact Statement’, 17 February 1998: 2. [DoJ Bates number 00116]
39. Transcript of Proceedings (first draft), ‘Senate Judiciary Subcommittee on Admin-
regarding the Dr. Peter Lee Case, 12 April 2000: 36.
58. Transcript of Proceedings (first draft), “Senate Judiciary Subcommittee on Administration Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 86.
60. Transcript of Proceedings (first draft), “Senate Judiciary Subcommittee on Administration Oversight and the Courts Hearings regarding the Dr. Peter Lee Case, 12 April 2000: 59.
61. John C. Keeney, Principal Deputy Assistant Attorney General, Criminal Division, Department of Justice, prepared statement submitted to the Senate Judiciary Subcommittee on Administrative Oversight and the Courts Concerning the Peter Lee Espionage Case,” 12 April 2000: 6.
62. John C. Keeney, Principal Deputy Assistant Attorney General, Criminal Division, Department of Justice, prepared statement submitted to the Senate Judiciary Subcommittee on Administrative Oversight and the Courts Concerning the Peter Lee Espionage Case,” 12 April 2000: 6.
68. Prosecuting Attorney, Transcript of Interview with Senator Arlen Specter in Los Angeles, CA, 15 February 2000: 76.
71. SSA, National Security Law Unit, “Royal Tourist,” e-mail to FBHQ Supervisory Special Agent, 23 November 1997: 1.
79. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 29 March 2000: 51.
80. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 12 April 2000: 31.
82. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 12 April 2000: 58.
83. Transcript of Proceedings (first draft), Hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts regarding the Dr. Peter Lee Case, 12 April 2000: 58–59.
84. Transcript of Proceedings (first draft), “Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 29 March 2000: 34.
85. Transcript of Proceedings (first draft), “Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 34.
86. Transcript of Proceedings (first draft), “Senate Judiciary Subcommittee on Administrative Oversight and the Courts Hearing regarding the Dr. Peter Lee Case, 12 April 2000: 34.
94. Mr. SPECTER. Mr. President, I ask unanimous consent that two letters from the Justice Department be printed in the RECORD. There being no objection, the letters were ordered to be printed in the RECORD, as follows:
95. DEAR SENATOR SPECTER: We have no objection on national security grounds to publication of your final report on the Wen Ho Lee investigation. We have not reviewed the report for the accuracy of the facts or conclusions reflected therein.
Sincerely,
96. Mr. SPECTER. Mr. President, how much time do I have remaining?
97. The PRESIDING OFFICER. One minute.
98. Mr. SPECTER. As promised, I yield back the remainder of my time.
99. VOTE ON CONFERENCE REPORT ACCOMPANYING H.R. 3061
100. The PRESIDING OFFICER. All time having expired, the question occurs on agreeing to the conference report to accompany H.R. 3061.
101. Mr. SPECTER. Mr. President, I ask for the yeas and nays.
102. The PRESIDING OFFICER. Is there a sufficient second?
103. There appears to be.
The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Nevada (Mr. ENSIGN) are necessarily absent.

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 7, as follows:

[Rollcall Vote No. 378 Leg.]

YEAS—90

Allen    Domenici    Lott
Baucus    Dorgan    Lugar
Bayh    Durbin    McConnell
Bennett    Edwards    Mikulski
Biden    Feingold    Miller
Bingaman    Feinstein    Murkowski
Bond    Frist    Murray
Boxer    Graham    Nelson (FL)
Breaux    Graham    Nelson (NE)
Brownback    Grassley    Reed
Bunning    Gregg    Reid
Burns    Hagel    Roberts
Byrd    Harkin    Rockefeller
Campbell    Hatch    Santorum
Cantwell    Hollings    Sarbanes
Carnahan    Hatchinson    Schumer
Carper    Hatchworth    Sessions
Chafee    Inhofe    Shelby
Clendillard    Inouye    Smith (OR)
Clinton    Jeffords    Stwore
Cochrane    Johnson    Specter
Collins    Kennedy    Stabenow
Conrad    Kerry    Stevens
Corzine    Kohl    Thomas
Craig    Kyl    Thompson
Crapo    Landrieu    Thurmond
Dasseh    Leahy    Torricelli
Dayton    Levin    Warner
DeWine    Lieberman    Wollstone
Dodd    Lincoln    Wyden

NAYS—7

Allard    McCain    Voinovich
Feingold    Nickles    Shelby
Fitzgerald

NOT VOTING—3

Akaka    Ensign    Helms

The conference report was agreed to.

Mr. DURBIN. Madam President, I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Madam President, I yield to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I congratulate all those who worked on this bill.

I have already extended my congratulations to my distinguished colleagues, Senator HARKIN. I also thank Senator BYRD and Senator STEVENS. We have a very devoted staff. I would like to thank them. For the majority: Ellen Murray who is the majority clerk and an extraordinary worker; Jim Sourwine, Mark Laisch, Erik Patemi, Lisa Bernhard, Adrienne Hallett, Adam Glick, and Carole Geagley. I did not know the majority had so many more than we do. On the minority staff, Bettilou Taylor—Senator Taylor—Mary Dietrich, Sudip Parikh, and Emma Ashburn.

This was an extraordinary bill, very complicated, $123 billion, lots of requests, lots of pages, lots of proofreading, and we are glad it is finished.

I yield the floor.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DASCHLE. I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar Nos. 618 and 617; that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations be printed in the Record, the President be immediately notified of the Senate’s action, and the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I ask the leader, what nominations?

Mr. DASCHLE. I advise the Senator from Iowa that these nominees are for the First Vice President of the Export-Import Bank and for a member of the Board of Directors of the Export-Import Bank.

Mr. HARKIN. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

The nominations were considered and confirmed, and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the Record, with no intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1088) was read the third time and passed.

PROVIDING FOR SINE DIE ADJOURNMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES

Mr. DASCHLE. Madam President, I now call up H. Con. Res. 295, the adjournment resolution. I ask that the Senate vote on adoption of the concurrent resolution, with no intervening action or debate.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 295) providing for the sine die adjournment of the first session of the One Hundred Seventh Congress.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the concurrent resolution.

The clerk will call the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), and the Senator from Nevada (Mr. ENSIGN), and the Senator from Kansas (Mr. ROBERTS) are necessarily absent.

The PRESIDING OFFICER (Mr. MILLER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 40, as follows:

[Rollcall Vote No. 379 Leg.]

YEAS — 56

Baucus    Edwards    Lincoln
Bennett    Feingold    McCain
Biden    Feinstein    Mikulski
Bingaman    Fitzgerald    Miller
Boxer    Graham    Markowski
Bunning    Graham    Murray
Byrd    Hagel    Nelson (FL)
Carnahan    Harkin    Nelson (NE)
Cantwell    Hollings    Reed
Carper    Inouye    Reid
Conrad    Jeffords    Rockefeller
Corzine    Johnson    Sarbanes
Dasseh    Kerry    Shelby
Dayton    Koch    Stabenow
DeWine    Landrieu    Stevens
Dodd    Leahy    Torricelli
Dorgan    Levin    Wallstone
Durbin    Lieberman    Wyden

LANDRIEU. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the Record, with no intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1088) was read the third time and passed.

INVESTOR AND CAPITAL MARKETS FEE RELIEF ACT

Mr. DASCHLE. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 74, H.R. 1088.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1088) to amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DASCHLE. I ask unanimous consent that the bill be read a third time and
The concurrent resolution (H. Con. Res. 295) was agreed to, as follows:

H. CON. RES. 295

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, December 20, 2001, or Friday, December 21, 2001, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate adjourns at the close of business on December 20, 2001, or Friday, December 21, 2001, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

S. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notified the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

Mr. DASCHLE. Mr. President, I move to reconsider the vote.

Mr. DURBIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BREAUX. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ECONOMIC STIMULUS PACKAGE

Mr. BREAUX. Mr. President and colleagues, while we are waiting some other colleagues to return to this Chamber to negotiate, I would like to make just a short comment on the economic stimulus package.

I would imagine that right now the political pundits of Washington, and really the political pundits all around the country, are already sharpening their pencils, and the editorial writers are already banging away on their typewriters, as well as the political consultants and all the special-interest groups are preparing, already, their attack ads to blame someone for the failure of this Congress to complete and pass an economic stimulus package.

Over the next several days, and possibly even over the next several weeks, we are going to hear some say: Well, it is TOM DASCHLE’S fault that we do not have an economic stimulus package because he did not bring the package to the Senate floor. We will also hear that, no, it is the Republican leader’s fault because they only supported a package that helped the rich special interests. Or perhaps we will hear that, no, it is the fault of the President of the United States for not providing the leadership to bring both sides together.

The blame game has now begun. I have noticed the papers already this morning.

The Wall Street Journal said: The White House and congressional leaders fail to reach a compromise and now turn their efforts instead to casting blame for its failure.

The front page of the Washington Post this morning said: Yesterday, as both sides began engaging in a furious legislative end game designed to assign blame to the other party for failure.

The front page of the New York Times said the same thing, in essence. They said: The Bush administration, along with others, turned instead to partisan finger pointing over who was to blame for the impasse.

So, my colleagues and folks around the country, the blame game has already begun.

But one thing is very certain, and that is Americans cannot go to the grocery store and buy bread and buy milk with blame. It is not how we feed the people we represent.

But one thing is very certain, and that is Americans cannot go to the grocery store and buy bread and buy milk with blame. It is not how we feed the people we represent.
provide today. Government is a gradual thing, and that is not bad. It is what American Government does best. We evolve. We cannot be stagnant.

More and more Americans look at Washington and wonder why it does not work as it should. Why do grown men and women fight and argue when solutions need to be reached? Especially is this true as a feeling among younger voters.

Let me conclude by pointing out that in the height of the Presidential election squabble in Florida, the Gallup organization asked Americans at that time, in a national poll, about their political affiliation. Shockingly, for some Americans, the poll came back and said that 42 percent of Americans identified themselves as Independents. That was more than who identified themselves as either Democrats or Republicans.

There is a message there: Americans do not want blame as a theme song for their approach. They want results. They want results that help them, and they do not particularly care who produces it.

I hope we can all learn from this experience. The greatest challenges we can hope to address are not the work of one government but the greater good. We can only do that by working together in order to achieve it.

I yield the floor.

Mr. MILLER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. DASCHLE addressed the Chair.

Mr. DASCHLE, pro tempore, presiding, the President pro tempore.

Mr. DASCHLE. Mr. President, I appreciate very much the Senator from Georgia allowing me to make a unanimous consent request.

UNANIMOUS CONSENT AGREEMENT—H.R. 3383 CONFERENCE REPORT

Mr. DASCHLE. Mr. President, we have been negotiating with a number of our colleagues regarding the Defense appropriations conference report. I would like to present around a unanimous consent request with an expectation that it may need further clarification.

I ask unanimous consent that the Senator from Arizona, Mr. McCAIN, be recognized; that the Senator from West Virginia, the chairman of the Appropriations Committee, be recognized; that the two subcommittee chairs, the Senator from Alaska and the Senator from Hawaii, also be recognized; and that the Senator from Michigan be recognized; that upon the recognition of those Senators and their remarks in regard to the Defense appropriations conference report, the Senate vote immediately on its final passage.

The ACTING PRESIDENT pro tempore. Is there objection?

Mrs. HUTCHISON. Reserving the right to object, I just ask the question. Will the subcommittee chairs be designating time from their time?

Mr. DASCHLE. The answer is yes. It is not necessarily in that order, I would clarify, Mr. President.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. DASCHLE. I thank all of my colleagues.

DEPARTMENT OF DEFENSE Appropriations Act, 2002—Conference Report

The PRESIDING OFFICER (Mr. DODD). The clerk will report the conference report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3383) making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, and for other purposes, having met, have agreed that the Senate re-examine the disagreement from its disagreement to the amendment of the Senate, agree to the same with an amendment, and the Senate agree to the same, signed by all conferees on the part of the two Houses.

(The conference report is printed in the House proceedings of the RECORD of December 19, 2001.)

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I am pleased to rise today to offer my unqualified support for the conference agreement that was just reported. I am pleased to present the recommendations to the Senate today as division A of this measure. The recommendations contain the result of lengthy negotiations between the House and Senate managers and countless hours of work by our staffs acting on behalf of all Members.

The agreement provides $377.2 billion, the same as the House and Senate levels, consistent with our 302(b) allocations.

In order to accommodate Members of the Senate, may I request that I be given the opportunity to now set aside my statement and yield to the Senator from Arizona for his statement. Upon his conclusion, I will resume my statement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Chair recognizes the Senator from Arizona.

Mr. MCCAIN. Mr. President, I am not ready to give my statement yet. I am still having my people come over with information. As a matter of fact, we haven’t even gotten through the entire bill yet. I will be ready shortly.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, I join the distinguished chairman of the defense subcommittee, Senator Inouye, in presenting the fiscal year 2002 Department of Defense conference report to the Senate.

This bill enjoys my total support, and I urge all my colleagues to support this conference report, and the funds provided herein that are vital to our national security.

In addition to the base funding for the current fiscal year, this bill also includes the allocation of $20 billion in emergency supplemental funding provided by Congress immediately after the September 11 attack.

These funds fulfill the commitment made by Congress to respond to the needs of the victims of the September 11 attack. I commend the Governor of New York, the Mayor of New York City, and the two Senators from New York, for their stalwart work to ensure these funds meet the needs of their constituents.

The enhanced funding provided in Division B of this bill for homeland defense will also have a significant effect on the security of this nation.

It is appropriate that the homeland defense funding be included in this bill—in the war against terrorism, there are no boundaries.

The money in this bill to secure our borders, our airports, our ports, to protect against bioterrorism and to assist first responders will send a strong signal to our citizens, and our potential adversaries, of our determination to win this war on terrorism on every front.

Turning more specifically to the underlying defense bill in Division A, there are two major issues I wish to address today: missile defense and the tanker leasing initiative.

The Senate version of the bill provided the full $8.3 billion requested by Secretary Rumsfeld for missile defense programs. The House version provided approximately $7.8 billion.

During our conference, we were informed of two major program changes in missile defense.

The Undersecretary of Defense for Acquisition, on behalf of Secretary Rumsfeld, reported that the department would terminate the Navy area defense system, and the SBIRs-low satellite program.

Funding for these two programs, totaling more than $700 million, was realigned to other defense priorities within and outside missile defense.

For example, of the Navy area program funds, $100 million was reserved for termination liabilities for the program and $75 million was transferred to the airborne laser program.

From the SBIRs-low termination, $250 million is reserved for satellite sensor technology development—which could all be used for further work under the existing SBIRs-low contracts, if the department so chooses.

Addressing the significance of protecting our deployed forces, the conference agreement provides an additional $60 million over the budget request to accelerate the Patriot PAC-3 missile.

In his statement, the chairman of the subcommittee articulated his support for the air refueling tanker initiative, and I appreciate his kind words on my role in that effort.

Contrary to some reports, this provision was not a last minute industry bailout, hidden from public view. In fact, this responds to military need,
News and unforeseen economic circumstances—and opportunities.

The effort to lease these aircraft reflects an extensive review of the Air Force’s needs, and the crisis it faces in the air refueling fleet.

The law states that the cost to the Air Force for the lease cannot exceed 90 percent of the fair market value of the aircraft. That means the Secretary cannot sign a contract if the lease cost would exceed that threshold.

The House has made it clear to the Congress all the details of any proposed contract in advance of signing any agreement. We will get to look at this contract before the deal is set.

Mr. President, nothing in the leasing authority provided in this bill is directive—the decision will be solely with the Secretary of the Air Force.

We have had extensive discussions about this initiative with the Secretary, with the former Commander of the Transportation Command, Gen. Robertson, and other DOD officials. All have endorsed this approach.

The language in this bill is the product of extensive discussions with CBO and OMB. No objection has been raised.

Secretary Rumsfeld’s letter on the bill did not oppose this initiative, nor did the Department’s detailed appeals to the Appropriations Conference. Since taking office, Secretary Rumsfeld has sought to chart a course to manage the Pentagon consistent with the best practices in the private sector.

This initiative seeks to do just that—give the Secretary all the tools we can to meet the Department’s modernization needs, within the tight budget constraints he will face.

The airlines lease aircraft, private businesses lease aircraft, our ally Great Britain currently leases U.S. built C-17 aircraft.

In addition, Great Britain has issued a solicitation to lease air refueling tankers, and the Boeing 767 is the lead candidate.

We did not decide to choose the 767. The Air Force told us this is the right aircraft for the mission.

Gen. Jumper, the Air Force Chief, envisioning a campaign for Force to a common wide body platform for a range of missions—he determined the 767 is the best platform.

Interestingly, two of our closest allies—Italy and Japan—have already signed contracts to purchase 767 tankers on a commercial basis.

Some have suggested that this provision should have opened the door to competition with Airbus.

The problem is that Airbus does not have a tanker on the world market. More telling, two of the Airbus founding partners—Britain and Italy—have both opted for the American-built tanker for their military.

Personally, I have complete confidence we can extend this authority to the Secretary of the Air Force, and he will only use it if he believes it is absolutely in the best interest of the Air Force.

I want to close by thanking again our Chairman, Senator INOUYE, for his leadership in moving this bill through committee, the floor and conference in only 15 days—an incredible achievement.

Also, our partners in the House, Chairman LEWIS and Mr. MURTHA, and the full committee chairman, Congressman BILL YOUNG and ranking member, DAVE OBEE, deserve tremendous credit for managing their bill in the House, and working out this packaging in conference.

Mr. President, I yield to the Senator from Texas, Mrs. HUTCHISON.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I thank Senator STEVENS and Senator INOUYE for the hard work they did on this bill. Since this bill was left to be the last appropriations bill passed this year, it had many difficulties. During this time, our Armed Forces were prosecuting a war on last year’s budget. That is very serious and it is unacceptable. We must pass this bill today. It is a good bill.

The armed services need the extra help that is in this bill. It provides $26 billion more in spending for the Department of Defense than was appropriated last year. That gives us the equipment and support we need to be in Afghanistan and throughout the world, as we are today. It also reduces the military/civilian paygap with funding a pay raise of 5 percent across the board and up to 10 percent for targeted ranks with low-retention rates.

Thank goodness we are trying to address people who are leaving the armed services because we just can’t compete with the private sector. Also, I want to mention the TRICARE For Life; $3.9 billion in this bill. In a very small unit; it was the TRICARE For Life. This is something I worked on for a long time to make sure that those who have served in our military, who have done what we asked them to do for our country, will never be left without full medical care. That is something they deserve, it is something we promised, and it is a promise we must keep.

I am very pleased that, finally, Desert Storm veterans are getting the notice they deserve for the symptoms that one in seven of them have shown after returning to our country after serving in Desert Storm. One in seven of the people who served in the Desert Storm operation came back with symptoms and different stages of debilitation that they did not have when they went to serve our country.

But for years, the Department of Defense and the Department of Veterans Affairs have denied any kind of causal connection between these symptoms and their service. It just wasn’t plausible.

I happened to learn about some research that was being done at the University of Texas, Southwestern Medical School, that did find a causal connection in a very small unit; it was the first research that really showed the causal connection between actual brain damage and service in the Gulf war.

This last week, I am proud to say, the Secretary of Veterans Affairs, Secretary Principi, released a study indicating that Gulf war vets are twice as

December 20, 2001

CONGRESSIONAL RECORD — SENATE

S13833
likely to get ALS; that is, Lou Gehrig’s disease. To his credit, Secretary Principi immediately widened the gulf war presumption to cover victims of Lou Gehrig’s disease. I have also extended for 5 years—and the President has signed the bill—the presumption that the people with these symptoms would still be able to get the benefits to which they are entitled, even though it hasn’t been settled exactly what Disease is.

So the bill before us today does have $5 million to continue the research that shows that causal connection. That will not only help keep our promise to the people who served in Desert Storm but it will also help us understand those whom we are sending today into places where there could be chemical warfare and what we might do to give them the best protection against that chemical warfare. It will also help us to understand those who might be affected by chemical warfare in the future. This is something I worked on in the bill, and I appreciate so much Senator INOUYE and Senator STEVENS supporting this particular cause. I think that veterans have been ignored for too long. It is time we treated them the way they deserve to be treated, and that is to give them the medical care and the research to find the cause of the debilitating disease that we see in so many of the people.

Finally, I am very pleased that the bill provides for missile defense. Clearly, we now have a cause to go forward on missile defense. I have always thought it was better to err on the side of doing more for defense, even if we weren’t sure what the threats were. Now we know there are people throughout the world who will attack Americans in America. We are Americans, and we must defend against that. That is what the missile defense system will prepare our country to do.

This bill provides for that. I close by saying there may be small things in this bill that people don’t like. I am sure there are some things in this bill that some people would not support. But the big things are done right. It would be inexcusable for us not to fully fund the war, while we have troops on the ground fighting for the very freedom that we have in this country and that we enjoy in this country.

As we are leaving Congress to go home for the holidays with our families, I want to express my appreciation to those who are in the caves in Afghanistan, in Uzbekistan and Pakistan, and who are on missions in Saudi Arabia and Kuwait, who are ready to go at the call of our country, if need be. We want to remember that. I think the most important way we can say thank you to those people is to fully fund their training, their equipment, and the support they deserve as they are going forward in the name of freedom and representing our country in the best possible way.

I thank Senator INOUYE for being the great leader that he is and Senator STEVENS for working in a bipartisan way to assure our troops that we appreciate them and we are going to give them everything they need to do the job they are doing. I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. On behalf of Senator STEVENS and I, I express our gratitude to the Senator from Texas for her kind remarks.

UNANIMOUS CONSENT AGREEMENT—S. 1214

Mr. INOUYE. Mr. President, I ask unanimous consent that when the Senate considers Calendar No. 161, S. 1214, the port security bill, the only amendment in order be the Hollings-McCain-Graham substitute amendment, which is at the desk; that there be a time limitation for debate of 17 minutes to be divided as follows: 5 minutes each for Senators HOLLINGS, McCAIN, and MURKOWSKI; and 2 minutes for Senator HUTCHISON; that upon the use or yielding back of time, the substitute amendment be agreed to, the bill, as amended, be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I rise to applaud a provision in the supplemental portion of the Defense appropriations conference report. This conference report includes a bill authored by myself and Senator KYL that will help honor the victims of the September 11 attacks. It is called the Unity in the Spirit of America Act, or the USA Act.

We all witnessed a great national tragedy 3 months ago. While the deaths and damage occurred in New York, Washington, and in the fields of Pennsylvania, a piece of all of us died that day. Many people came up to me in Michigan after the attacks and asked: What can I do? I have given blood, I have donated to relief efforts, but I want to do more.

We all shared in the horror and now every wants to be part of the healing, but how? Then a constituent of mine, Bob Van Oosterhout, wrote me an idea: Why not have the Federal Government devise a program that will encourage communities throughout the Nation to create something that will forever memorialize one of the victims lost in the attack, one by one. Together these local memorials to honor individuals would dot our Nation and collectively honor all of those who were lost in the attacks. What could be simpler? What could be more profound?

From that idea came the Unity in the Spirit of America Act. Here is how it works:

Communities—they can be as small as a neighborhood block or nonprofit organizations, houses of worship, businesses or local governments—are encouraged to choose some kind of project that will unite and help their communities. It is a way they can give back to their communities.

Applications and the assigning of names for each project will be handled by the Points of Light Foundation. Basically, we will see a project in a local community dedicated to one of the victims of September 11. The Points of Light Foundation will set up a Web site, applications, and procedures for this. This is privately funded. It is an opportunity for our neighbors, coworkers, and communities across the United States to decide what will be a living legacy to those who died by helping each other.

The Points of Light Foundation will track each project’s progress on their Web site. The only rule is that qualified projects should be started by September 11, 2002. Then on that day, as we all over America gather to grieve over the first anniversary of the attack that enraged the world, we will be able to look over thousands and thousands of selfless acts that made our country better.

In our sadness, we can create thousands of points of light across our Nation and show the world that our resolve was not fleeting and our memories are not short. This act will see the unity in the spirit of America.

I have many Members to thank for making the USA Act happen. First and foremost, I thank my chief cosponsor, Senator JOE KYL, for his commitment and hard work. I thank the chairman and ranking member of the Appropriations Subcommittee on Defense, Senators INOUYE and STEVENS, for their support. I also express my gratitude to Senators MIKULSKI and BOND for their guidance in moving this legislation through the process. Finally, I thank all the cosponsors, who include our Senators from New York and Virginia.

I am very pleased we have come together on our last day in a bipartisan way to put forward this important living legacy to the victims of September 11.

Mr. President, I now yield to my colleague and friend who has been my partner in the USA Act, and that is Senator JOE KYL.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I thank the Senator from Michigan for her leadership in this effort. It has been a pleasure to work with her on this legislation. It demonstrates a couple of things: First, that all Americans care about the victims of the tragedy of September 11. Second, that the U.S. Government can be a facilitator but does not have to be the financier of good works on behalf of the people of the country.

At the conclusion of my remarks, I will ask to print in the RECORD a letter
Mr. DOMENICI. Mr. President, I ask the distinguished Senator from Michigan if I may be a sponsor of the amendment. It is a very exciting amendment that we should be considering today.

Mr. STABENOW. It will be my honor, Mr. President, to add the distinguished Senator's amendment.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, pursuant to the agreement, will the Chair recognize the Senator from Arizona?

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I do not yet seek recognition.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, since no one is seeking time, I ask unanimous consent that the Senator from New Mexico be allowed to speak for 5 minutes on the economic stimulus package.

The PRESIDING OFFICER. Is there objection?

Mr. REID. What is the pending business? What is the request?

The PRESIDING OFFICER. The Senator from Nebraska has asked to speak for up to 5 minutes on the economic stimulus package.

Mr. REID. I reserve the right to object and ask the Senator to amend his request so that the Senator from Georgia, Mr. Mr. Moseley-Braun, the Senator from Nebraska, Mr. Nelson, have 5 minutes to speak on the economic stimulus package.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. How much time?

Mr. REID. Two Senators, 5 minutes each: Senators Nelson and Miller.

Mr. DOMENICI. I have no objection. The PRESIDING OFFICER. Without objection, it is so ordered.

ECONOMIC STIMULUS PACKAGE

Mr. DOMENICI. Mr. President, I rise to express my sincere disappointment with our seeming inability to consider a stimulus package; that is, a job-creating piece of legislation, for our people. Millions of Americans have lost their jobs over the last year. My fellow New Mexicans, as do all Americans, want and deserve action on this slowing economy.

Let me be very clear. While some would like a different stimulus package than the one the House passed in the early morning hours today, there are alternatives that were considered in this first session.

The House-passed bill will provide needed tax relief to millions of working Americans. It will provide tax relief to those individuals who make more than $20,000 and those who file joint returns making more than $46,000. These are not rich people. These are hard-working Americans.

Along with providing tax relief, the economic stimulus package will help encourage business investment, with 30 percent depreciation and extending businesses net operating losses carry back for two years, and increasing expensing provis-

ions for small businesses, the House-passed bill provides nearly $60 billion in tax relief to encourage growth in this weakened economy.

Further, addressing many of the concerns raised on the other side of the aisle, the House-passed bill is a significant improvement over an earlier bill in the area of providing needed help to the unemployed and dislocated workers.

The House-passed bill provides significant support for those who for reasons they do not control, find themselves without employment this holiday season—all totaled nearly $32 billion would be provided in the form of direct payments to low-income workers, extended unemployment benefits and health insurance assistance.

The House-passed bill provides cash payments for those who filed a tax return in 2000 but did not receive a rebate check earlier this year. These payments will be $300 for individuals and $600 for married couples.

The House-passed bill provides 13 weeks of extended unemployment insurance going back to those displaced from work from the beginning of this recession last March, and including $8 billion in National Emergency Grants and Emergency Medicaid funding to the states, over $21 billion would be assist individuals and families with their health care costs immediately.

The House-passed bill is not perfect. But it is a major improvement over an earlier version, largely because of the input of a group of Senators know as the Centrists here and because of President Bush’s willingness to work with them in crafting this package.

I hope that we do not let “one man rule” prevent us from even having a vote on this bill.

We need to pass something. But if we don’t assure you I will be the first to be here in January asking that we consider the “payroll tax holiday” proposal.

I will take the remaining few minutes and talk to my fellow Senators. Whatever the case and whoever could not reach accord, I believe we have to tell our fellow Americans we did not do them right in the waning days of this session. While Christmas is upon us and good will is everywhere, it is quite obvious the House and Senate, even with the President nudging and participating, did not and will not produce a stimulus package that will get America going again.

I wish we would have considered something in the Senate. I believe there was time for us to consider amendments and even vote on a stimulus package. I think that could have been worked out, and we could have passed something. I regret we have not.

I say to the leadership in the Senate, this would have done better.

While I have great respect and, in some cases, admiration for our leadership, I believe in this case one-man rule prevailed, the Democratic majority
leader prevailed. He has what I would call a one-man rule because he can keep us from debating and considering the House-passed measure. He can do that all by himself. That is a very big undertaking by any one Senator, to say we are not going to do a stimulus package. That is one-man rule. That is a very big exercise of power.

While the Democratic majority leader has a very difficult job in the waning moments because of different ideas and different proposals and obviously some politics, I think we should have done better and he should have done better.

I close by saying I proposed, along with about 10 Senators, an idea for a holiday from the Social Security taxes imposed on both employee and employer, to do that for I month. Nobody suggested to me that is not a very good stimulus, to put before the American people a month that is picked in the near future to put $42 billion into the hands of working man and woman and every employer across this land in a rather instant payment to them, or nonpayment to the Government, of Social Security withholding.

I believe if we start over with good will, a nonpartisan way, on what we return because I do not believe the economy will improve and we will be back at this—I urge we consider it at a high enough level to let the country focus on this idea.

There is a lot of talk about the negative aspects of it, and most of them are untrue. If we have a chance to get this issue before a committee, or debate it in the Senate, we would have a great starting point to which we could add the social welfare aspects of the unemployment benefits, of some health care coverage, and all the other issues we are talking about. We would have as a basis a single powerful issue that would be building jobs and causing America to take a look and say we know how to do something very positive.

So I do not give up. If we are doing nothing, I assume this idea will come back and I assume, when we start thinking about it and analyze it well, it will be high on the agenda. I say to all of my friends in the Senate, they worked very hard. I congratulate them. They worked either as a centrist member of the committee or member of the leadership, put in a lot of time, a lot of effort. I am hopeful even in the last moment it will work and somehow it will come out of the forest and be sitting there for us to look at.

If not, then I urge when we come back and consider how we stimulate, that we put this holiday back on the table with all the other things we have been considering.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I appreciate the opportunity to address the Chamber today and speak on a very important issue we have all been concerned about and we all have had comments about, continue to have thoughts about, and will continue to have them into the future. I speak of the stimulus package.

It is unfortunate we missed the opportunity that we conclude a package of the type the centrists put together based on what was supported by so many different individuals and groups. Unfortunately, the blame has been placed on a party and on a position where we are talking about would have, could have, should have. We will have an opportunity as time goes by over this holiday break to continue to talk and continue to look for solutions.

In January, insurance and liability insurance. It is about having insurance for the protection one needs.

Mr. NELSON of Nebraska. In addition to being concerned about the future of the package, there is an aspect of stimulus that is involved in another proposal that hopefully will be brought up today, and that is the terrorism insurance issue. It is not about insurers, it is about insureds. It is about the ability to be able to insure one’s property, one’s house, one’s home, one’s apartment, one’s automobile. If one is a business owner, it is about insuring their storefront or their business. It is about having workers compensation and liability insurance. It is about having insurance for the protection one needs.

There is a very important timeframe we must in fact look at, and that is January 1 of this coming year. I am hopeful we will be able to settle today on a bill and be able to pass something and send it on for reconciliation in conference, so we can match or in some way make it close enough to the House version that a reconciliation of the two is possible, because if we fail to do that, there is a possibility, and perhaps even a strong likelihood, that on January 1 of this coming year 70 percent of the reinsurance that is currently available to direct writers will be affected. It may not provide for terrorism in the future.

I know for many people it seems sort of esoteric. It seems sort of complex and perhaps eyes-glazed-over thinking about insurance and perhaps whether there will be protection for terrorism or not, but it is a very real issue, a very real and present concern we must in fact have. It is not about simply insuring skyscrapers. It is about all kinds of businesses. It is about apartment buildings, storefronts, and people’s own personal residences, as well as their automobiles. It is about whether or not money will be available for lending or whether or not it will continue to be available for construction.

If we are concerned, as I think we are, about a worsening economy and at what point we will be able to see the economy turn around and be stimulated so it can be a robust economy, one of the things we must in fact be concerned about is anything that tips the scales against the economy we hope to rebuild. In fact, failure to take action can make it worse by not taking the appropriate action to undergird and support it.

If we are unable to come together and make sure insurance continues to be affordable, as certainly is available, but certainly available to the public, if we fail to take that opportunity, then we might expect construction will be impeded, if not stopped, and that we may in fact see housing starts and other building starts stopped.

Unemployment can be affected. We could end up with more people unemployed, and the economic downturn could be accelerated. I say these things not to provide a scare tactic but simply to stress as to how important it is we solve this problem of availability of terrorism insurance in the near term so we can work for a longer term solution.

What has been offered to date is, in fact, a short-term solution, a backup, a compromise to work in the immediate term, the short term, with broad-based support. I hope we will take this up and move forward.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Georgia.

Mr. MILLER. Madam President, I, too, will have a few remarks on the economic stimulus bill. I think a decision has to be made to have a straight up-or-down vote on it and let the majority of this Senate prevail, regardless of the make-up of the majority, is a mistake. I know it is a loss for the country and the folks who need our help and need it immediately.

Why do we always have to act as if we are in a football game where one side, one team, has to win and the other team has to lose? Why can’t we go with bipartisan winners, along with the American people?

Myself, when it gets down to the block, I am kind of a half-a-loaf man. Whether it is 75 percent, 65 percent, or 50 percent, when you get right down to it, that is always better than zero percent. You can eat half a loaf. Having no loaf at all may make a political point, but in the end somebody goes hungry.

This is not the House bill. I could never have supported that bill. I could never have voted for that bill. I believe a compromise package does not include everything either side wanted. Instead, it represents a reasonable compromise.

Some say speeding up the reduction of the tax rates from 27 percent to 25 percent is just helping the wealthy. Nothing could be further from the truth. The folks who benefit from this are folks who earn as little as $27,000 a year, going up to $67,000 a year. For married couples, this rate reduction will help those families between $47,000 to $120,000 a year. Those are not the wealthy or the rich. Those are middle-income Americans. Many are our
friends and organized labor. This bill also includes a $300 rebate for those who did not get anything from the earlier tax cut.

On the health insurance area, we recognize the need to help the unemployed by providing health insurance premiums for them. This is a very significant change. This is a dramatic change and should be welcomed by both Republicans and Democrats alike.

I support the best way to give laid-off workers access to health care is to provide a 75-percent subsidy for COBRA premiums, as well as access to State Medicaid Programs. Others disagreed and preferred a broader tax credit for health insurance premiums. This package falls somewhere in between, providing a 60-percent advanceable, refundable tax credit for all health insurance.

It is not a whole loaf for anyone, but it represents a practical solution, and it is the best way to do what we all want; that is, to help the workers and help them before it is too late.

The package also includes help for State governments, something our Governor and the legislators desperately need right now. It provides almost $5 billion in payments to State Medicaid Programs. This does not represent everything States or many of us wanted. I was hoping to get a fix for the upper payment limit but, again, it is a half loaf.

As it is, we have no loaf. We have no loaf at all. We do not even have a slice. Who was it who said, Let them eat cake?

I yield the floor.

The PRESIDING OFFICER (Mr. MIL- LER). The Senator from Arizona.

DEFENSE APPROPRIATIONS

Mr. MCCAIN. Madam President, I rise, once again, to address the issues of waste in our appropriations measures; in this case, the bill funding the Department of Defense for fiscal year 2002.

In provisions too numerous to mention in detail, this bill, time and again, chooses to fund porkbarrel projects with little, if any, relationship to national defense. In this case, this bill funding the appropriations bill, thereby shorting highway funds in the Transportation Appropriations Committee—Federal Highway Administration, proposed operations, $10 million was requested by the administration. Federal Highway Administration, $228 million; Federal Highway Administration, $29 million; its capital grants to the National Railroad Passen- DORAL TRAFFIC COMMISSION, $20 million; FAA grants and aid for airports, $175 million; Woodrow Wilson Bridge project, $29 million.

Why did we have to do that? Because they took the money out of the highway funds in the Transportation Appropriations Committee, thereby shorting the Woodrow Wilson Bridge, so they had to add another $30 million to make up for the shortfall. Unfortunately, that was about $60 million that they took, and every other State in America—by the way, not represented by a member of the Appropriations Committee—had highway funds taken away from them.

Provision relating to Alaska in the Transportation Equity Act for the 21st century—it will be interesting to see the impact that has on the rest of America. We have the U.S. 61 Woodville widening project in Mississippi, $300,000; Interstate Maintenance Program for the city of Trenton, $4 million; international sports competition, $15.8 million, emergency planning assistance for 2002 Winter Olympics.

I have to talk for a minute before I get into the major issue, and that is the Boeing lease, and discuss the Olympic issue. It is now up to well over $1.5 billion that the taxpayers have paid.

I refer my colleagues to an article that was in Sports Illustrated magazine, December 10, 2001. The title of it is, “Snow Job.”

I will not read the whole article. It is very instructive to my colleagues in particular and to our citizens about what has happened in the Utah Olympics.

Thanks to Utah politicians and the 2002 politicians, a blizzard of federal money—a $1.5 billion in taxpayer dollars that Congress is pouring into Utah is 1/2 times the amount spent by lawmakers to support all seven Olympic Games held in the U.S. since 1904—combined. In inflation-adjusted dollars.

Enrichment of private interests. For the first time, private enterprises—primarily ski resorts and real estate developments—stand to derive significant benefits from Games-driven congressional giveaways.

Most government entities tapped for cash. With that skill, given it of a hockey team on a power play, Utah’s five-member congressional delegation has used the Olympics to drain money from an unprecedented number of federal agencies and offices—some three dozen in all, from the Office of National Drug Control Policy to the Agriculture Department.

Most U.S. tax dollars per athlete, Federal spending for the Salt Lake City City Games will average $625,000 for each of the 2,400 athletes who will compete. (Not a penny of it will go to the athletes). That’s a 990% increase from the $57,000 average for the 1996 Olympics. It’s a staggering 5,582% jump from the $1,100 average for the 1984 Summer Games in Los Angeles.

Parking lots are costing you $30 million. Some $12 million of that is paying for two 80-acre fields to be graded and paved for use as two temporary lots, then returned to meadows after the flame is extinguished.

Housing for the media and new sewers are each costing you $2 million.

Repaired highways, taken from the aviation trust fund, payment to air carriers, $50 million.

Buses, many brought in from other states, to carry spectators to venues are costing you $30 million.

Federal government arranges for him to have a weather-forecasting system being set up in northeast Salt Lake City—by the way, some $2 million—so they can get the proper forecast for air, water and waste management are costing you $4 million.

With all that skill, grace and precision of a resort developer wants a road built, the federal government provides the money. That’s enriching some already wealthy businessmen.

Is this a great country or what? A millionaire resort owner covets a choice piece of public land. No problem. The federal government arranges for him to have it for $300,000. It’s not all profit nicely if the local highway network is vastly improved. Of course. The federal government provides the money.

How can you get one, you ask? Easy. Just help your hometown land the Olympics. Then, when no one’s looking persuade the federal government to pay for a good chunk of it. Once it becomes a Games, including a project to which the magic word Olympics can be attached.

Total federal handouts. The $1.5 billion in taxpayer dollars that Congress is pouring into Utah is 1/2 times the amount spent by lawmakers to support all seven Olympic Games held in the U.S. since 1904—combined. In inflation-adjusted dollars.

Recycling and composting are costing you $1 million, and public education programs for air, water and waste management are costing you another $1 million.

A weather-forecasting system being set up for SLOC is costing you $1 million. The money is going to the University of Utah to enrich its Meteorology Department to provide data that will supplement forecasts provided to SLOC by the National Weather Service.

New trees planted in Salt Lake City and other communities “improved”, as the funding legislation put it, by the Olympics are...
costing you $500,000. Said Utah Senator Robert Bennett, who arranged for the money. “We do the Olympics because it gets us together doing things like planting trees.”

“We do the Olympics because it gets us together, doing things like planting trees.”

Wow.

I want to repeat, I am all for whatever expenditure for security for the Salt Lake City Olympics. As a percentage of this $1.5 billion—and there is more in this appropriations bill—has nothing to do with security. It has to do with road building. It has to do with land swaps, worthless land for valuable land, which has to do with wealthy developers; it has to do with the enrichment of billionaires; and it really is quite a story. I hope every American will read that story that is in Sports Illustrated dated September 30 entitled “Snow Job.”

As I pointed out before, our nation is at war, a war that has united Americans behind a common goal—to find the enemies who terrorized the United States on September 11 and bring them to justice. In pursuit of this goal, our service men and women are serving long hours, under extremely difficult conditions, far away from their families. Many other Americans also have been affected by this war and its economic impact, whether they have lost their jobs, their homes, or have had to drastically cut expenses this holiday season. The weapons we have given them, for all their impressive effects, are, on the whole, neither in quantity nor quality, the best that our government can provide.

For instance, stockpiles of the precision guided munitions that we have relied on so heavily to bring air power to bear areelliott—“difficult.” Often moving targets, with the least collateral damage possible, are dangerously depleted after only 10 weeks of war in Afghanistan. This is just one area of critical importance to our success in this war that underscores just how carefully we should be allocating scarce resources to our national defense.

Yet, despite the realities of war, and the responsibilities they impose, Congress as much the President, the Senate Appropriations Committee has not seen fit to change in any degree its usual blatant use of defense dollars for projects that may or may not serve some worthy purpose, but that certainly impair our national defense by depriving legitimate defense needs of adequate funding.

Even in the middle of a war, a war of monumental consequences and with no end in sight, the Appropriations Committee, Mr. President, still is intent on using the Department of Defense as an agency for dispensing corporate welfare. It is a terrible shame that in a time of maximum emergency, the U.S. Senate would persist in spending money requested and authorized by our Armed Forces to satisfy the needs or the desires of interests that are unrelated to defense needs.
Mr. MCCAIN. Mr. President, I want to read a letter that I received recently. This letter is from the Americans for Tax Reform, Council for Citizens Against Government Waste, Congressional Accountability Project, Ronnie Dugger, Ralph Nader, National Taxpayers Union, Project on Government Oversight, Public Citizen, and Taxpayers for Common Sense.

All of these organizations are on the right and the left of the political spectrum.

They wrote the following letter:


DEAR SENATOR: Even as veteran observers of the Congressional appropriations process, we are shocked and outraged, by the provision in the Defense Appropriations bill that would have the Air Force lease Boeing 767s at a price dramatically higher than the cost of direct purchase. We are writing to urge you to take to the floor to speak and vote against this specific siphoning of taxpayer money to the Boeing company.

Let me try to illuminate my colleagues on an article of December 12 in the New York Times entitled “Boeing's War Footing: Lobbyists Are Its Army, Pentagon Its Battleground.”

I will not read the entire article.

It says:

Staggered by the loss of the largest military contract in its history, the aerospace company has sharply intensified its efforts in Congress and the Pentagon to win an array of other big-ticket military contracts.

From the moment of the September 11 attacks, and one of its leading military contractors, who has been hit hard,” said Representative Norm Dicks, a Washington State Democrat who has led the charge for Boeing on Capitol Hill. “We can really help them.”

The push underscores a broader trend for Boeing, company officials and analysts say. The company, with most of its production in the Seattle area, has suffered a sharp downturn in commercial aircraft business, which last year generated two-thirds of its $51.3 billion in sales. Boeing is expected to announce this week that production of its 717 commercial airliners will be cut by half, to as little as 15 per month, by early next year.

The letter goes on to say:

There is no conceivable rationale for such a waste of taxpayer resources. If some in Congress believe Boeing needs to be subsidized, then they should propose direct subsidies to the company, and let Congress fully debate and vote on the issue before the American people, taking comprehensive public comment.

This is not a partisan issue. It is a basic test of whether Congress views itself as fundamentally accountable to the public interest, beyond substantive.

There will obviously be a Defense Appropriations bill passed for the coming fiscal year. But it must be one that includes such a provision of corporate welfare. We urge you to speak and vote against the bill; and to force consideration of a revised bill, stripped of this grotesquery.

Sincerely,

RALPH NADER,
GROVER NORQUIST,
President, Americans for Tax Reform.

I have never seen Ralph Nader and Grover Norquist on the same letter in all the years I have been in this town.

The letter is also signed by the following:

THOMAS A. SCHATTZ,
Chief, Government Accountability Project.

RONNIE DUGGER,
President, Project on Government Oversight.

JOAN CLAYBROOK,
President, Public Citizen.

PETE SEPP,
President, Taxpayers for Common Sense.

JOE THEISSEN,
Executive Director, Taxpayers for Common Sense.

GARY RUSKIN,
Director, Congressional Accountability Project.

DANIELLE BRIAN,
Executive Director, Project on Government Oversight.

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GARY RUSKIN,
Director, Congressional Accountability Project.
a military industry analysis at Goldman Sachs.

The 767 plan is just one of several major Pentagon programs that Boeing is prodding Congress to provide assurance to expand or accelerate. The company is the lead contractor on more than a dozen major contracts accounting for well over $10 billion in the 2003 Pentagon budget. Besides the KC-135 tanker, the F/A-18 Hornet jet for the Navy, the V-22 Osprey tiltrotor aircraft for the Marine Corps, the AH-64 Apache Longbow helicopter for the Army and the airborne laser for the Pentagon’s Ballistic Missile Defense Organization.

In addition, Boeing has been trying for years to sell a civilian version of its array of new businesses, including unoccupied aircraft, battlefield and cockpit communications, surveillance technology and precision-guided munitions. The war on terrorism only underscored the Pentagon’s need for more of those systems, Boeing and its allies assert.

"What we’re about to see was the reason for the merger with McDonnell Douglas in the first place," said Gerald E. Daniels, president of Boeing’s military aircraft and missiles business. "With the high and variable nature of the commercial business, building a strong military and space units serves to tamp down those gigantic swings."

In an effort to drum up support for the merger with McDonnell Douglas, Boeing delivered 620 commercial aircraft, for revenue of $33.5 billion. By next year, analysts estimate, deliveries will be only 367, with revenue down to $26 billion.

The collapse in the commercial market resulted, of course, from the suicide hijacking attack of Sept. 11. Air travel plummeted and airlines canceled dozens of jet orders, prompting Boeing to announce plans to lay off 30,000 workers over the next two years. Just when it seemed Boeing’s fortunes could not be worse, in October the Pentagon awarded a $230 billion contract for the Joint Strike Fighter to Boeing’s larger rival, Lockheed Martin. The stealthy jet is expected to become the mainstay fighter for the Navy, Air Force and Marine Corps in the next two decades, raising doubts about Boeing’s future in the tactical fighter business.

Those events sent Boeing reeling. But like battleships on the retreat, company executives swiftly moved to recover their losses in a time-tested Washington way: wooing Congress and the Pentagon to support other priorities.

Few companies can rival Boeing’s influence in the capital. Its Washington office, headed by Rudy F. de Leon, the deputy secretary of defense in the final year of the Clinton administration, employs 34 in-house and more than 50 outside lobbyists.

One of the Boeing lobbyists’ first moves after Sept. 11 was to brief the Air Force to reconsider the 767 lease deal, which had stalled months before. Though the Air Force has said it plans to replace its 40-year-old KC-135 tanker in the next decade or so, it has preferred to spend its money on elite fighter jets like the F-22. But the war in Afghanistan has kept dozens of KC-135’s in the air almost constantly, putting pressure on the Air Force to accelerate its replacement program. James Roche, the secretary of the Air Force, and Ken J. Jumper, the Air Force chief of staff, signed onto the lease-purchase idea because it would spread the cost out into the future as well as speed up production.

Boeing next had to break down resistance to lease arrangements in Congress. According to one internal Pentagon study, a lease-purchase bid would cost 15 percent more than simply buying the planes. Moreover, federal rules discourage such deals by requiring that most of the entire contract cost be paid in the first year. To get around that, Boeing proposed having the Air Force simply lease the aircraft without a purchase option. The cost of adapting them for refueling and surveillance, or of ultimately buying them, as the Air Force is expected to do. The strategy succeeded. The Congressional delegations from Washington and Missouri, the two states where it assembles most of its aircraft—to support the plan. And in the Senate, it found a powerful ally in Edward M. Kennedy of Massachusetts, the ranking Republican on the Appropriations Committee, who is a fan of lease-purchase deals for the military.

Boeing lobbied with a professional experience—including Mr. de Leon, who also was a staff director for the House Armed Services Appropriations subcommittee. For example, he helped negotiate the lease language.

With Senator Patty Murray, a Washington Democrat, the Boeing president, Philip A. Condit, has repeatedly met with senior lawmakers like Daniel Inouye, the chairman of the Senate Appropriations subcommittee, on the war on terrorism, and the Senate majority leader, Thomas Daschle. Last week, Mr. Condit returned to discuss the deal with several leading lawmakers, including the speaker, J. Dennis Hastert, and Representatives Jerry Lewis of California, the influential chairman of the House subcommittee on defense appropriations, and Bruce Vento of Minnesota, the senior Republican on the Appropriations Committee.

A spokesman for Mr. Lewis, Jim Specht, said the Congressman remained undecided on the lease deal, but added: "There is the concern that the proposed Joint Strike Fighter contract, something has to be done to make sure we support all of our industrial base."

All the while, Boeing won a yet another Senator McCain, who last week accused Boeing of "playing victim, blaming its own job cuts, many of which occurred before Sept. 11, on the tragedy itself."

Boeing seems to have won Congressional support for accelerating purchases of C-17’s, the all-purpose cargo planes it builds in Long Beach, Calif., at a former McDonnell Douglas plant. Last spring, Boeing formally asked that the Pentagon buy 60 more planes at a cost of about $150 million each. Without that new order, dollar increases in the program’s cost are scheduled to close later this decade.

Boeing has also tried to wiggle its way into the Strike Fighter deal. The company has been lobbying in Congress to allow it to buy more unmanned aircraft or its FA-18 to take the place of Navy and Air Force versions of the Joint Strike Fighter if Lockheed did not agree to give it a substantial piece of the work.

It has urged Senator Christopher S. Bond, a Missouri Republican, to continue programs to expand the company, and to_split the Strike Fighter work with Boeing. Senator Bond withdrew his bill for lack of support, but on Friday he won Senator funds for the development of an unmanned version of the F-18 that the Pentagon should have two manufacturers of tactical fighter aircraft.

"I want to make sure we maintain that production line in St. Louis, because it’s in the national interest," Mr. Bond said in an interview.

Lockheed, however, notes that it already has two major partners, the British military contractor BAE Systems and Northrop Grumman. "There is only so much work to go around," said a company official. "We have a strong team."" Mr. Condit argued that Boeing’s "depth of experience in the unmanned area" and its "size and breadth" should give the President the authority not to spend the money if we found other more compelling needs for national defense, which seems like a reasonable solution to the dilemma in which we found ourselves.

(Mr. CLELAND assumed the Chair.)

Mr. MCCAIN. Mr. President, when the Department of Defense appropriations bill was on the floor, Senator GRAMM of Texas, I, and others decided that we would do what we could to oppose this being included in the legislation.

We were prepared to engage in extended debate on this and many of the other provisions of the Defense appropriations bill. After conversations with Senator GRAMM and Senator STEVENS, I agreed to an amendment on my behalf in the Senate. I would give the President the authority not to spend the money if we found other more compelling needs for national defense, which seems like a reasonable solution to the dilemma in which we found ourselves.

Now, of course, to sweeten the pot, we have four 737’s which will go out to Andrews Air Force Base and be part of the aircraft that are used for ferrying VIPs and Members of Congress around the world.

I think you could make an argument that Boeing needs to be bailed out, that they are in trouble. They are a major manufacturing company. They lost out on a new fighter aircraft competition. There may be some argument to that. I might even consider cutting them a check for some money. We can give them a lot of other interests around here.

But there was never a hearing in the Armed Services Committee—never a
We will not take care of these veterans, but we will put about $3 billion out. That is never considered by the Armed Services Committee—not once. Never did it come up. No. No. Mr. President. Again, it was stuck in an appropriations bill, stuck into an appropriations bill with no hearings. Not even in the Appropriations Committee did they have a hearing on this.

What I am saying is, this system has run amok. This system has run amok. We are now in the situation where anyone who wants the Appropriations Committee becomes irrelevant, particularly at the end of the year.

Where is the relevancy of the Commerce Committee when $310 million in appropriations is added on a Defense appropriations bill? Where is the relevancy when billions of dollars on a Defense appropriations bill are put in that have nothing to do with defense?

Where is the relevancy of the authorizing committees when billions and billions of dollars are added without a hearing, without consideration, and without authorization?

I suggest that the Appropriations Committee change their Web site, the one I quoted earlier, that says that only authorized appropriations will be made. It says:

Authorization laws have two basic purposes. They establish, continue, or modify federal programs, and they are a prerequisite under House and Senate rules . . . for the Congress to appropriate budget authority for programs.

I strongly recommend that the Appropriations Committee remove that from or at least add: However, in practice, that is not the case.

We now have disabled veterans who are not receiving the money that they need. It is an effort that I and the Presiding Officer have engaged in for several years now. They do not have a very big lobby around here. They do not have the de Leon and De Millers, and a lot of high-priced lobbyists. So veterans who have disabilities are being deprived money they should rightly have, that any other person stricken with a similar disability, under any other circumstance, would receive.

We still have men and women in the military living in barracks that were built during World War II and the Korean war.

We still have a situation, at least up until the surge of patriotism as of September 11, where there has been enormous difficulty in maintaining our manpower. This was quite interesting, to show the greatest exodus of Army personnel in September 11, where there has been enormous difficulty in maintaining our manpower. And, by the way, they are very schizophrenic in their political outlook because they give pretty much the same amount of money to both parties, which shows how ideologically driven they are.

And we will get 767s! I am sure they are nice airplanes. But who is going to pay for it? Who is going to pay for it? The average taxpayer, because the cost to the taxpayer—of this little backdoor, backroom maneuver is billions of dollars more than it should have been.

I remind you, the average lifespan of a tanker is around 35 to 40 years. That is the average lifespan because they are given to have a change in the rules. So they last a long time.

So what are we going to do? Pay 90 percent of the cost of the airplane and, after 10 years, pay to have it de-engineered as a tanker back to Boeing, at a minimum of one-third of the life of the tanker. With a straight face, how can we possibly do this?

I had a lot of other concerns about the porkbarrel, but I want to say this. One of two things is going to happen around here in the Senate: Either the Appropriations Committee controls the entire agenda and does the things that we continue to see in ever increasing numbers—and I have been tracking it for many years; every year the Appropriations Committee adds more and more projects that are not authorized every year; and this year it is a big jump—or we are going to stop it; or we are going to have a change in the rules that comports with the Web site of the Appropriations Committee; that is, that no appropriation will be made that is unauthorized and no appropriation will exceed the authorized level either in an appropriations bill or in a conference report.

It is a pretty simple rule. And it would be subject to a point of order.

Now, there are times where appropriations have to be made, and that is where the point of order would come in. But unless we change the rules the way this body goes—I suggest to my colleagues that they understand we can have nice hearings.

We have some very interesting hearings in the Commerce Committee on a broad variety of subjects. It is great. It is the most intellectually stimulating experience I have ever had in my service on the Commerce Committee and on the Armaments Committee, of which I have been a member since 1987.

I find it extremely enjoyable. The discussions are wonderful. I learn more about how our military is conducting their operations, how we are planning for the future. But do not think, as members of the authorizing committee, you will have the slightest effect on what is done in this body.

I am not going to take too much longer, but I will just make a reference. In 1997—since the Senator from Hawaii is here—there was a proposal put in an appropriations bill to build two ships in Mississippi. And certain waivers were made in those require-ments that two ships would operate from the State of Hawaii. About $1 billion worth of taxpayers' money was on the line.

I said, this is crazy. You can't do this. This is outrageous. Do you know what happened a few weeks ago? The company went bankrupt. There are two hulls sitting in the State of Mississipi. The taxpayers are already on the hook for $300-some million, and it will probably rise to $1 billion.

If that proposal had gone through the Commerce Committee, it never would have seen the light of day because, on its face, it was crazy. To give a 30-year or 20-year, or whatever it is, exclusivity to a cruise line in return for that money, anybody would ask, there was no way it was going to succeed. And I said so at the time.

So now the taxpayers are on the hook for $1 billion.

We are talking about real money. What is going on here? It is because we are violating the process and the rules for the way we should operate. Perhaps this Boeing deal would have gotten some consideration in a very different fashion. Probably what would have resulted is that we would have authorized the purchase of three or four 767s and then in the following year we would have authorized some more, depending on what the administration wanted. But now we are putting in 100 airplanes that weren't in the top 60 requirements the Air Force told the Congress and the American people they needed. After 10 years, one-third to one-fourth of their lifespan, we give them back. How does anybody justify this type of porkbarrel?

I suggest that the Senate look at itself. I can't speak for the House. The Senate ought to look at itself. What are we doing? What do we do here? I think I may be one of four or five Senators who has examined this bill. I may be one of four or five who has looked at this bill because I have about 10 staffers leafing through it trying to figure out what is in it. Everybody certainly wants to go home. I understand that. That is why I will not talk too much longer.

I said on the floor of the Senate that the Department of Defense appropriations bill would be the last bill we considered because it would have the most pork in it because everybody would want to go home and nobody would want to look at it. This is a bill that we received sometime this afternoon or late morning; this is the legislation, $343 billion. What is it full of? Does anybody know? I have had about 10 prints of it. You try to find out what is in there. We have already found billions of dollars of unauthorized projects.
This kind of behavior cannot go on. It can’t go on. You will lose the confidence of the American people. You will lose their faith that you are representing them and their tax dollars and their priorities.

The Appropriations Committee's profit-theft: On the 21st of December, the last bill, the last train loaded up, nobody has read it, and we vote for it. We all vote for it because, of course, we are in a war. We can’t not do that. I won’t. But the fact is, we do have the way they are doing business, and we ought to look at ourselves and see if we are proper stewards of the taxpayers’ dollars.

More importantly, are we proper stewards of our Nation’s defense? Are we placing our national priorities for our military and the men and women in the military and their needs first?

This is going to be a long war on terrorism. We can’t afford to put all this stuff in the Appropriations bill that has nothing to do with defense. We can’t load it up with all this pork for the Salt Lake City Olympics. We can’t give sweetheart deals to cruise lines.

Early next year when we come back, I will propose a change in the rules of the Senate. I hope it will be considered by many of my colleagues. I know it probably won’t be considered by those on the Appropriations Committee because now they have all the power. But I believe that this is a body of equals, of 100 equal Senators. Some are elected to our majority; some are chairmen and ranking members of committees and, of course, more powerful than others. But we are equals when it comes time to do what we should be able to do with the taxpayers’ dollars.

The power is now in the hands of the Appropriations Committee and those Appropriations Committee chairmen. You read these things. First you laugh, and then you cry. It is really unbelievable. I laughed when I saw $75,000 for the Reindeer Herders’ Association. I cried when I saw $6 million for the Cunene. We needed to upgrade airports all over America.

I was very disturbed when I saw that for the byways program, last year 40 States got money for the Scenic Byways Program; this year it is 11. I was very disturbed when I saw the Transportation Appropriations Committee took $453 million out of the formula for highway fund distribution to the States and distributed it among the States of the appropriators. How do you justify that?

We debated for a week in the Senate on that formula. I didn’t like the result because Arizona receives less money from Washington in our taxpayers’ dollars, but I accepted the verdict of the entire 100 Senators. Now hundreds of millions of dollars that should be fairly distributed under that formula were taken by the Transportation appropriators without a debate, without a hearing, and distributed to the States of the appropriators.

That kind of thing cannot continue. It cannot continue or it renders meaningless not only the nonappropriators but the debate we had. Why did we waste a week debating the TEA-21 formula. Because we thought it was important. We thought that was the way the money would be distributed. Then the Appropriations Committee takes that money and redistributes it, coincidentally, to the States of the members of the Appropriations Committee. We can’t continue doing this.

I know the hour is late. I apologize to my colleagues if I have inconvenienced some of them. But I warned them weeks ago that the last train would be the Defense appropriations bill, and everybody would want to vote for it and leave.

I just hope that a document this big, with this much money, $343 billion in taxpayers’ money, that before we vote on something such as this again, at least let’s look at it and see what it contains.

I yield the floor.

Mr. HATCH. Mr. President, I want to take this opportunity to set the record straight with respect to a good deal of misinformation which has been circulating about Federal support for the 2002 Winter Games in Salt Lake City, Utah. In fact, earlier today, one of our colleagues took the floor to condemn the funding Congress has provided for the 2002 Olympics. I listened carefully to his remarks. I have to say that if his understanding of the situation were found to be true, and how he feels. Unfortunately, however, I believe he and others have relied on incomplete and distorted press accounts which are, simply, a disservice to the Olympic spirit that a majority of Americans have raced to embrace. Most of these distortions seem to have originated with an article in the December 10, 2001 edition of Sports Illustrated. The article, ironically entitled “Snow Job,” is in fact a snow job itself.

The thrust of the criticisms to which I refer appears to be an incorrect assumption that, in seeking support for the Olympic Games, the State of Utah is somehow attempting to enrich itself unfairly at the expense of American taxpayers. Nonsense. Poppycock. Malarky. What those who race to criticize our Olympic games fail to consider is that these are the world’s Olympic Games, a time-honored tradition which we in the United States have had the honor of hosting. The torch will arrive in Salt Lake City on November 23, 2001.

Most disappointing, the article to fails to demonstrate an understanding of federal funding of state highway projects and the costs associated with highway projects already in the planning stages for federal funding.

Earlier, my colleague stated that the Olympic Games will cost about $1.5 billion. Wrong again. Actually, it is over that amount. But as the GAO report makes perfectly clear, Federal support only accounts for 18 percent of that total. In truth, as the GAO analysis makes clear, the total projected cost, both public and private, of staging the 2002 Winter Olympic and
Paralympic Games, excluding additional security requirements resulting from the September 11, 2001 terrorist attacks, is $1.9 billion. Of this total, GAO estimates that $342 million will be provided by the federal government, 18 percent of total public and private funding. The remaining cost that the State of Utah will provide is $560.3 million. That is 80 percent, or almost half the Federal amount provided by the 50 States for this international effort.

Local governments alone are providing more than $75 million, and the Salt Lake Organizing Committee has raised the vast majority of the funding, $1.3 billion. That is 70 percent. This represents the hard work of hundreds of people who have spent weeks and months raising private donations. This is a true public-private partnership, which shows America at its best.

So why are we not racing to praise this effort, rather than condemn it? The GAO report levels the playing field by making more accurate funding comparisons with previous Olympic Games held in the United States. Rather than using a dollar to dollar comparison, a distorted calculation, the GAO report uses a percentage comparison, a better gauge to access the true costs to the Federal government.

For the edification of my colleagues, I would like to point out that a second report will be published shortly that compares the 2002 Winter Salt Lake Winter Olympics with Olympic games in other years. This report will be even more enlightening with regard to total cost growth for the Olympic games and to the extent other governments have subsidized the Olympics. The GAO report indicates that while the total costs for staging the U.S. Olympic Games, particularly the winter games, have grown, the percentage of federal participation has remained fairly constant taking into consideration increasing security requirements due to the bomb incident in Atlanta and events leading up to September 11.

In fact, the Sports Illustrated article attempts to throw a negative spin on security spending for the Olympics by stating that “Surprisingly, all but $40 million of the $240 million in security spending was approved before September 11.” Authors of the article fail to appreciate that a great majority of the security money was dedicated before September 11 because the intelligence community had knowledge of the growing terrorist threat in the world.

After September 11, the fact that security required little revision is testimony to the thoroughness in Olympic security planning and preparation. For any of my colleagues who still remain unconvinced, I urge you to review the GAO report and obtain a true picture of federal support for the Olympic Games.

I also want to address specifically the issue of federal funding for an area that has received the most attention in the press and elsewhere, yet is perhaps the least understood. This concerns federal funding for Utah transportation projects over the last five years. It has been a popular parlor game to criticize funding for Olympic transportation costs. Many naysayers have rushed to judgment without giving credit to any construction projects that were not designed specifically for the Olympics. Let me address the three largest projects that have attracted considerable attention and set the record straight.

First, let us discuss the North/South Light Rail in Salt Lake City. Since 1983, the Utah Transit Authority has planned a light rail system to handle the increased traffic in and around Salt Lake City on a daily basis. The system design calls for two connected light rail lines one running north and south from downtown Salt Lake City south to Sandy City, and a second east/west line connecting downtown with Salt Lake International Airport and the University of Utah. The system is designed to be built in phases with the first phase winning approval by the Federal Transit Administration, FTA, through a rigorous competitive process in 1996.

Under this process, FTA is required to rank proposed projects according to a number of objective criteria and to select those projects that are ranked highest. The criteria address such areas as ridership, mobility improvements, environmental benefits, operational efficiencies, and cost effectiveness. It is important to remember that the project must meet the FTA criteria before it is ever considered for federal funding and must compete with other projects for limited funds. Thus, the project was found worthy and funded by both Federal and state transportation monies. This action was completely independent of the Olympics.

The North/South line was completed in December 1999 at a total project cost of $312.5 million, of which $241.3 million was paid by the federal government. The State of Utah paid $61.2 million which represents 20 percent of the bill. This is in keeping with the traditional split for state transportation projects, the state can fund as little as 20 percent and the federal as much as 80 percent of the project costs.

It is important to note that this light rail project benefits all Salt Lake City citizens. Not only does it help the poor who are unable to afford cars but it also draws commuters out of cars thus helping the environment. Everyone benefits from greater mobility and better air quality. From the opening of the line in 1999, ridership has far exceeded expectations and it has continued to rise. Again, this project was not built or funded as an Olympic project. It was approved by the Administration and Congress based on a detailed analysis of the merits of the project itself and the long-term transportation needs of the Salt Lake Valley.

The University Connector Light Rail is the second phase of the light rail program. It will run from downtown Salt Lake City to the University of Utah. In 2000, the Administration and Congress approved a full funding grant agreement, allowing the Utah Transit Authority to begin construction. The tremendous success of the North/South light rail line was a key factor in the decision by Congress and the Administration to approve the project. Like the first phase, this phase was approved by FTA pursuant to a rigorous evaluation process. However, once the project was deemed to qualify under the normal Federal guidelines, the Administration could have accelerated it based on a possibility that it could be completed before the Olympics. Nevertheless, everyone, including the Congress, recognized that there was a possibility that the segment would not be completed in time for the Olympic Games and, therefore, the agreement included provisions allowing for the temporary halt of construction with resumption following the Games.

Fortunately, UTA is on schedule to complete the project and therefore the extension will be operating during the Olympics. However, it is important to note that this project was never deemed necessary by the Olympic Games by the Salt Lake Organizing Committee; in fact, operations on the line will be suspended for opening and closing ceremonies at Rice-Eccles Olympic Stadium, which is served by the University Connector. The cost of the project will be $118.5 million with $84.0 million federally funded. Without a doubt, the most misunderstood of all the Utah transportation projects is the I-15 reconstruction. This $1.59 billion project has been characterized as an Olympic project by the Salt Lake Valley and correct some deplorable infrastructure problems such as cracks in

December 20, 2001
CONGRESSIONAL RECORD — SENATE
S13843

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roadbeds and crumbling bridges. Critics also fail to recognize that the I-15 project has been a bargain for the Federal government by any analysis. The Federal taxpayer is only funding $210 million out of a $1.59 billion project. While the Federal government has authorized another $243 million in spending for this project in Utah for advance construction authority, these additional Federal funds may not be used.

Based on projections, the most the Federal government may contribute is 25–30 percent of the project cost well below the customary 80 percent Federal share. Instead of criticizing our State, we should be applauded. Some may ask, "Why did Utah pick up the lion's share of the I-15 reconstruction?"

Utah, though a relatively small state, is seriously committed to transportation improvements as demonstrated by the dedication of State funds for transportation projects. The Utah State Legislature, during the 1997 session, established an aggressive state funding program. The program, known as the Utah Highway Fund, will provide for over $3 billion for transportation improvements across the entire State over a ten year period. The I-15 reconstruction project is the premier project funded under the CHF program. The annual allocation of about $200 million per year in federal highway funds is insufficient to address all of the transportation needs of the state.

I want to point out that these three transportation projects, rather than a grab of federal money based on some loose association with the Olympics, are in fact long-planned and well thought-out projects to benefit the local community. The light rail system has been nationally noted as a shining example of urban/suburban Smart Growth. And interestingly, all three projects were considered and planned as a Joint Transportation Corridor which was one of the first in the country and an environmental impact assessment. Today such joint corridors are common, but the Utah projects were first among this trend.

Finally, I take great exception with the Sports Illustrated article's sensational innuendos about some Utah businessmen. Did these businessmen benefit from road improvements due to the Olympic venues held on or near the Olympic venues? Certainly. Did these businessmen benefit from road improvements due to the Olympic Games? Some did. Did these businessmen benefit from the economic growth due to the Olympic Games? Certainly. Did these businessmen benefit from road improvements due to the Olympic Games? Some did. Did these businessmen benefit from the economic growth due to the Olympic Games? Certainly. Did these businessmen benefit from road improvements due to the Olympic Games? Some did. Did these businessmen benefit from the economic growth due to the Olympic Games? Certainly. Did these businessmen benefit from road improvements due to the Olympic Games? Some did. Did these businessmen benefit from the economic growth due to the Olympic Games? Certainly. 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Mr. STEVENS. I thank the Senators for their remarks and for their pledges on my amendment.

Mr. INOUYE, I join with my friend, the Senator from Alaska, to thank you for your remarks and let you know that Senator STEVENS and I will closely follow the progress of this new program.

Mr. CONRAD. Mr. President, I rise to offer for the RECORD a preliminary scoring by the Budget Committee of the conference report to H.R. 3338, the Department of Defense Appropriations Act for fiscal year 2002, submitting a final, official statement for the record after CBO completes its scoring of the conference report.

Preliminarily, the conference report provides $317.206 billion in non-emergency discretionary budget authority, almost all of which is for defense activities. That budget authority will result in new outlays in 2002 of $212.907 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the conference report total $309.256 billion in 2002. By comparison, the Senate-passed bill provided $317.206 billion in nonemergency budget authority, which would have resulted in $309.365 billion in outlays.

In Department of Defense Appropriations Act for Recovery from and Response to Attacks on the United States. An estimate of the impact on outlays from the
Mr. MCCAIN. Mr. President, I rise once again to address the issue of wasted spending in our appropriations measures, in this case the bill funding the Department of Defense for fiscal year 2002. In provisions too numerous to mention in detail, this bill, time and again, chooses to fund pork-barrel projects with little or no relationship to national defense at a time of scarce resources, budget deficits, and unfunded, urgent defense priorities.

As I pointed out previously to this body on December 7, the Appropriations Committee is intent on using the Department of Defense Appropriations Bill Conference Report, totaling $343 billion, would be the last business in the Senate and so it is. Not because of its level of difficulty, but because it is so easy to�� the mother of all pork projects in a large massive bill or maybe it wasn’t because we found it as well as many other groups. For example, let me read a few comments.

The Nation is at war, a war that has united America in a common goal—to find the enemies who terrorized the United States on September 11th and bring them to justice. In pursuit of this goal, our servicemen and women, and millions of Americans, are serving under extremely difficult conditions, far away from their families. Many other Americans have also been affected by this war and its economic impact, whether they have lost their jobs, their homes, or have had to drastically cut expenses this holiday season.

The weapons we have given them, for all their impressive effects, are, in many cases, neither in quantity nor quality, the best that our government can provide.

For instance, stockpiles of the precision guided munitions that we have relied on so heavily to bring air power to bear so effectively on difficult, often moving targets, with the least collateral damage possible, are dangerously depleted after only 10 weeks of war in Afghanistan. This is just one area of critical importance to our success in this war that underscores just how carefully we should be allocating scarce resources to our national defense.

Yet, despite the realities of war, and the responsibilities they impose on Congress as much the President, the Senate Appropriations Committee has not seen fit to change in any degree its usual blatant use of defense dollars for projects that may or may not serve some worthy purpose, but that certainly impair our national defense by depriving legitimate defense needs of adequate funding.

In even the middle of a war, a war of monumental consequences, the Appropriations Committee is intent on using the Department of Defense Appropriations Bill Conference Report for dispensing corporate welfare. It is a terrible shame that in a time of maximum emergency, the United States Senate would persist in spending money requested and authorized only for our Armed Forces to satisfy the needs or the desires of interests that are unrelated to defense needs.

The Investor’s Business Daily, on December 18, 2001, had this to say in an article titled At the Trough: Welfare Checks To Big Business Make No Sense, “Among the least justified outlays is corporate welfare. Budget analyst Stephen Slivinski estimates that business subsidies will run $87 billion this year up a third since 1997. Although President Bush proposed $12 billion in cuts to corporate welfare this year, Congress has proved resistant. Indeed, many post-September 11 bailouts have gone to big business. Boeing is one of the biggest beneficiaries. Representative Norman Dicks, a Democrat from Washington, is pushing a substantial increase in research and development support for Boeing and other defense contractors, the purchase of several retrofitted Boeing 767s and the leasing of as many as 100 767s for purposes ranging from surveillance to refueling. Boeing has been hurt by the storm that hit airlines, since many companies have slashed orders. Yet China recently agreed to buy 30 of Boeing’s planes. Problems predate the September 11 attack. It is one thing to compensate the airlines for forcibly shutting them down; it is quite another to toss money at big companies caught in a demand cycle. Boeing, along with many other major exporters, enjoys its own federal lending facility, the Export-Import Bank. Exim uses cheap loans, loan guarantees and loan insurance to subsidize purchases of U.S. products. The bulk of the money goes to big business that sell airplanes, machinery, nuclear power plants and the like. Last year alone, Boeing benefitted from $3.3 billion in credit subsidies. While corporate America gets the profits, taxpayers get the losses...The Constitution authorizes Congress to promote the general welfare, not enrich Boeing and other corporate behemoths. There is no warrant to take from Peter so Paul can pay higher corporate dividends. In the aftermath of September 11, the American people can ill afford big business profligacy in Washington. If Congress is not willing to cut corporate welfare at a time of national crisis, what is it willing to cut?”
As I mentioned last week when the Senate version of the Defense Appropriations bill was being debated and—now carried through the Conference Committee there is a sweet deal for the Boeing Company that I’m sure is the envy of corporate lobbyists that last year end of K Street to the other. Attached is a legislative provision to the Fiscal Year 2002 Department of Defense Appropriations bill that would require the Air Force to lease one hundred 767 aircraft for use as tankers for $26 million apiece for the next 10 years. Moreover, in Conference Committee the appropriators added four 737 aircraft for executive travel mostly benefitting Members of Congress. We have been told that these aircraft will be assigned to the 89th Airlift Wing at Andrews Air Force Base. Since the 10-year leases have yet to be signed, the cost of the planes cannot be calculated, but it costs roughly $85 million to buy one 737, and a lease costs significantly more over the long term.

The cost to taxpayers?
Two billion and six hundred million dollars per year for the aircraft plus another $1.2 billion in military construction funds to modify KC-135 hangars to accommodate their larger replacements, with a total price tag of more than $30 billion over 10 years when the costs of the 737 leases are also included. This leasing plan is five times more expensive to the taxpayer than had a purchase, and it represents 30 percent of the Air Force’s annual cost of its top 60 priorities. But the most amazing fact is that this program is not actually among the Air Force’s top 60 priorities nor do new tankers appear in the 6-year defense procurement plan for the Service.

That is right, when the Air Force told Congress in clear terms what its top priorities were tankers and medical lift capability aircraft weren’t included as crucial. In fact, within its top 30 programs, the Air Force has stated that the 767s in the future are driving the military to buy higher-priced, inferior products when we do not allow foreign competition. “Buy America” restrictions undermine DoD’s ability to procure the best systems at the least cost by imposing翌 hurdles to interoperability and armaments cooperation with our allies. They are not only less cost-effective, they also constitute bad policy, particularly at a time when our allies’ support in the war on terrorism is so important.

Secretary Rumsfeld and his predecessor, Bill Cohen, oppose this protectionist and costly appropriation’s policy. However, the appropriations’ staff ignores this expert advice when preparing the legislative draft of the appropriations bills each year. In the defense appropriations bill are several examples of “Buy America” pork—prohibitions on procuring anchor and mooring chain components for Navy warships; main propulsion diesel engines and propellers for a new class of Navy dry-stores and ammunition supply ships; supercomputers; carbon, alloy, or armor steel plate; ball and roller bearings, winch, or conversion of any naval vessel; and, other naval auxiliary equipment, including pumps for all shipboard services, propulsion system components such as engines, reduction gears, and propellers, shipboard blower and spreaders for shipboard cranes.

Also buried in the smoke and mirrors of the appropriations markup is what appears to be a small provision that has large implications on our warfighting ability in Afghanistan and around the world. Without debate or advice and counsel from the Committee on Armed Services, the appropriators changed the policy on military construction funds to prohibit previous authority given to the President of the United States, the Secretary of Defense, and the Service Secretaries to shift military construction money within the MILCON account to more critical military construction projects in time of war or national emergency. The reason for this seemingly small change is to protect added pork in the form of military construction projects in key states, especially as such projects have historically been added by those Members who sit on the Military Construction Appropriations Subcommittee, at the expense, Mr. President, that is, projects the Commander-in-Chief believes are most needed to support our military overseas.

Does the appropriations committee have any respect for the authorizing committees in the Senate?
I look forward to the day when my appearances on the Senate floor for this purpose are no longer necessary. There is nearly $2.5 billion in unrequested defense programs in the defense appropriations bill and another $1.1 billion for additional supplemental appropriations not directly related to defense that have been added by the Chairman of the Committee. Consider what $3.6 billion when added to the savings gained through additional base closings and more cost-effective business practices could be used for. The problems of our armed forces, whether in terms of force structure or modernization, could be more assuredly addressed and our warfighting ability greatly enhanced. The public expects more of us.

But for now, unfortunately, they must witness us, blind to our responsibilities in war, going about our business as usual.

I ask unanimous consent that the list of earmarks from the fiscal year 2002 Department of Defense Appropriations Bill Conference Report be placed in the RECORD.
There being no objection, the material was ordered to be printed in the RECORD, as follows:

FY 2002 Defense appropriations pork
(In millions)

DIVISION A ........................................ 2.1

Operation and Maintenance, Army

Fort Knox Distance Learning Program ........................................ 2.1
Army Conservation and Ecosystem Management ........................................ 2.1
Fort Richardson, Camp Denali .................................................................. 4.3
Water Systems ......................................................................................... 0.6
Rock Island Bridge Repairs ..................................................................... 0.6
Memorial Tunnel, Consequence Management ........................................ 16.5
FIRES Programs Data ............................................................................. 6.8
Skid Steer Loaders .................................................................................. 7.5
USARPAC Transformation Planning .................................................. 8.5
December 20, 2001

CONGRESSIONAL RECORD — SENATE

S13849

FY 2002 Defense appropriations pork—Continued

Minimally Invasive Therapy ........................ 5.0
Anthropod-Borne Infectious Disease Control 2.5
VCT Linkage .............................. 3.2
Tissue Engineering Research ...................... 4.7
Monoclonal Anti-body based technology (Heteropolymer System) 3.0
Dye Targeted Laser Fusion ........................ 3.4
Joint Diabetes Program .......................... 5.0
Center for Prostate Disease Research 6.4
Spine Research ................................ 2.1
Brain Biology and Machine Initiative .............. 1.8
Medical Simulation training initiative .......... 0.75
TACOM Hybrid Vehicle .......................... 1.0
N-STEP ..................................... 2.5
IMPACT ..................................... 3.5
Composite Body Parts ........................... 1.4
Corrosion Prevention and Control .................. 1.4
Mobile Parks Hospital ........................... 5.6
Vehile Body Armor Support System .................. 5.6
Casting Elimination Program ...................... 5.8
Managing Army Tech. Environment .................. 1.0
Visual Cockpit Optimization ....................... 4.2
Electronic Commodity Pilot Program ............... 1.0
Battle Lab at Ft. Knox ........................... 3.5
TIME ..................................... 3.0
Force Provider Microwave Treatment Scan ......... 1.4
Mantech Program for Cylindrical Zinc Batteries .... 1.8
Continuous Manufacturing Process for Mental Matrix Composites ........ 2.6
Modular Extendable Rigid Wall Shelter ............ 2.6
Combat Vehicle and Automotive technology ......... 2.6
Auto research center ............................ 2.0
Hydrogen fuel vehicle demonstration ............... 5.0
Electronic Display Research ........................ 9.0
Fuel Cell Power Systems .......................... 2.5
Polymer Fusion/Utilization ...................... 2.5
DoD Fuel Cell Test and Evaluation Center ......... 5.1
Pt. Fuel Cell Test Center .......................... 2.5
Bionics ..................................... 5.1
Diabetes Project, Pittsburgh ........................ 5.1
Osteoprosis Research ............................ 2.8
Aluminum Reinforced Metal Matrix Composition .... 2.5
Combat Vehicle Res Weight Reduction .............. 6.0
Pt. Ord Demonstration Project ...................... 2.0
Vanadum Tech Program ............................ 1.3
ERADS ..................................... 2.0
Advanced Diagnostics and Therapeutic Digital Tech .... 1.3
Artificial Hip ................................... 1.3
Biomechanics Research ........................... 2.5
Brain Biology and Machine Initiative .............. 1.8
Cancer Center of Excellence (Notre Dame) ........... 2.1
Center for Integration of Medicine and Innovative Technology ........... 8.5
Center for Health Care at Worcester Polytechnic Institute ........... 1.0
Continuous Expert Care Network Teddy Initiative Program ....... 1.5
Disaster Relief and Emergency Medical Services (DREAMS) ........ 8.0

FY 2002 Defense appropriations pork—Continued

Hemoglobin Based Oxygen Carrier 1.0
Hepatitis C ................................... 3.4
Joel Cancer Research-eye .......................... 4.2
Care ......................................... 2.5
LISTAT ..................................... 2.0
Secure Telemedicine Technology Program .............. 3.4
Memorial Hermann Telemedicine Network .......... 9.0
Monoclonal Antibodies ............................ 1.0
Emergency Telemedicine Response and Advanced Technology Program .... 1.5
National Medical Textbook ....................... 7.7
Neuropharmacological Research Program ........... 2.1
Neurology Gallo Center-alcoholism research .......... 5.6
Neurotoxin Exposure Treatment Program ............ 2.0
Polyoxyxylated Hemoglobin ... SEATrebral cervical cancer visualization and treatment .... 2.5
Smart Aortic Arch Catheter ....................... 3.3
National tissue Engineering Center .................. 3.3
Center for Disease Research at WRAMC .......... 4.2
Research, Development, Test, and Evaluation ......... 102
Southeast Atlantic Coastal Observing System (SEA-COOS) .......... 1.0
Marine Mammal Low Frequency Sonar .................. 1.0
High Resolution Digital mammography .............. 10.0
Military Dental Research .......................... 7.7
Vector Thrusted Ducted Propeller .................... 2.8
Ship Servicing Fuel Cell Technology Verification & Training Program .... 3.4
Aluminum Mesh Tank Liner ........................ 2.8
AEGIS Operational Readiness Training System (ORTS) .......... 2.8
Materials, Electronics and Computer Technology .......... 19.3
Human Systems Technology ........................ 2.6
Undersea Warfare Weaponcy Technology ............... 1.7
Medical Development ............................ 59.0
Manpower, Personnel and Training ADV Tech DEV .......... 2.0
Radar, Research, Development, Test, and Evaluation: Bug to Drug Identification and CM ........... 13.0
American Indian youth education consortium ........... 13.0
Business/Tech manuals R&D ........................ 1.5
AGILF Fort Demonstrations ......................... 8.5
Defense Health Programs .......................... 8.3
Health Study at the Iowa Army ........................ 1.0
Ammunition Plant ................................ 3.4
Coastal Cancer Control ........................... 5.0
Drug Interdiction and Counter-Drug Activities, Defense .................. 4.2
Mississippi National Guard Counter Drug Program ....... 2.5
West Virginia Air National Guard Counter Drug Program ........... 2.0
Regional Counter Drug Training Academy, Meridian MS .......... 1.4

Earmarks:

Marmite Technology (MARITECH) .................. 5.0
Metals Affordability Initiative ....................... 5.0
Magnetic Bearing cooling turbine ..................... 5.0
Roadway Simulator ............................. 21.0
Aviator's night vision imaging system ............... 2.5
HGU-96/P System ............................... 5.0
Fort Des Moines Memorial Parks and Education Center .......... 1.0
National D-Day Museum ........................... 5.0
Dwight D. Eisenhower Memorial Commission ............ 1.0
Clean Radar Upgrade, Clean AF8, Alaska .............. 8.0
Padgett Thomas Barracks, Charleston, SC ........................ 15.0
Broadway Armory, Chicago .......................... 3.0
Advancement Identification, Friend-or-Foe ........................ 35.0
Transportation Multi-Platform Gateway Integration for AWACS .......... 20.0
Emergency Management ............................ 20.7
Washington-Metro Area Transit Authority ............. 39.1
Pt. Knox MOUT site upgrades ........................ 3.5
Civil Military Programs, Innovative .................... 10.0
ASE INFRARED CM ATIRCM LIRP ................ 10.0
Tooling and Test Equipment ........................ 35.0
Integrated Family of Test Equipment (IFIE) .......... 15.0
T-AKE class ship (Buy America) ...................... 15.0
Welded shipboard anchor chain (Buy America) ......... 3.4
Dwight D. Eisenhower Memorial
Gwittchya Z bee Corporation ........................ 4.2
Air Force's lease of Boeing 767s ....................... 1.5
Enactment of S. 746 .............................. 1.5
2002 Winter Olympics in Salt Lake City, Utah .......... 4.0
Nutritional Program for Women, Infants and Children ........... 0.0
International Sports Competition ....................... 15.8
Animal and Plant Health Inspection Survey ............. 105.5
Food and Safety Inspection ........................ 15.0

Total Pork in Division A (FY 2002 Defense Appropriations): $2.5 Billion ....... 1.4

DIVISION B

Commercial related earmarks:

Port Security ............................... 93.3
Airports and Airways Trust Fund, payment to air carriers ........................ 50.0

DoT Office of the Inspector General ........................ 1.3

FRA Operations (from aviation Trust Fund) .................. 200.0

FRA Facilities and Equipment ........................ 108.5

Passenger Baggage Bagg Match Demonstration at Reagan National Airport .......... 2.0

Federal Highway Administration misc. appropriations ($10 million requested) ........ 100.0

Capital Grants to the National Railroad Passenger Corporation .......... 1.0

Federal Transit Administration ........................ 100.0

Capital Investment Grants .......................... 100.0

FY 2002 Defense appropriations pork—Continued
The record is clear. The Air Force has been a contributing partner and fully supports the tanker replacement program contained in this appropriations bill.

The existing tankers are old and require costly maintenance. They are in urgent need of replacement. The K-135s were first delivered to the Air Force in 1957. On average, they are 41 years old. KC-135s spend about 400 days in major depot maintenance every 5 years.

The tanker replacement program contained in this bill will save taxpayers $5.9 billion in upgrade and maintenance costs. The record is clear. We need to move forward on tanker replacement. Our aging tankers have flown more than 6000 hours since September 11. Our ability to project force depends on our refueling capabilities. We can no longer ignore these old and expensive aircraft.

The record is also clear on my State of Washington. This will help the people of Washington, and by extension, by the highest unemployment rate of any state in the nation. I am here to do everything I can to help my constituents. Any Senator, including critics of the leasing provisions in this bill, would do the same thing.

But this is not just about my State. Every state involved in aircraft production will benefit. In addition, it is in our national interest to keep our only commercial airlift capability and in tough times, to keep that capacity and to keep that skill set.

The Air Force has identified this as a critical need. We rely on refueling tankers. Now is the time to move forward with tanker replacement. I again commend Senator INOUYE, Senator STEVENS, Senator CANTWELL, Senator CONRAD, Senator ROBERTS and the many others who have worked so hard to move this program forward.

Mr. President, I rise to thank my Senate colleagues who have been supportive in addressing the issue of tanker replacement which has been hotly debated here on the floor. I support the tanker leasing provisions in the bill, and I am grateful to Senator INOUYE and Senator STEVENS for their work on the Boeing 767 leasing provisions. Many Senators worked on this issue. There were many hurdles to address and overcome. It is clear that we need to move forward on tanker replacement. I again commend the leadership demonstrated by Chairman DANIEL INOUYE and Senator TED STEVENS. They have done great work, and I encourage the Senate to embrace this appropriations conference report.

Mr. BIDEN. Mr. President, I rise today to thank my Senate colleagues for their support of two important aviation needs and to express my disappointment that the House did not support those decisions. I know that it is always difficult to reconcile the decisions made in the Senate with those made in the House, but this case, I am very sorry to see that the Senate’s wisdom was not sustained.

When the Defense Appropriations bill left the Senate, it included full-funding for two important aviation assets—C-5 avionics modernization and 10 additional Blackhaws for the Army National Guard. Unfortunately, the bill that we have before us does not include those items. Instead, the C-5 avionics funding is cut by $70.50 million and there are only 4 Blackhawks going to the Army National Guard.

Let me first review the importance of the C-5 Avionics Modernization Program. Funding was not only fully included in the Senate’s Defense Appropriations bill, but which both the House and Senate Armed Services Committees fully supported in their bills.

The C-5 is what the military uses when it needs to deploy equipment with as much equipment as possible. This was confirmed once again in Operation Enduring Freedom where the Air Force reports that C-5s have hauled forty-six percent of the cargo during the operation while only flying approximately twenty-eight percent of the sorties. This plane is a vital part of our military success. It is also a key player in our nation’s humanitarian efforts, so critical to the long-term success of our national security strategy.

Taking $70.50 million from the President’s funding request means that critical Secretary of Defense directed Flight and Navigation Safety modifications and Global Air Traffic Management modifications will be delayed by the program years in getting the safety equipment continue to place aircrafts at risk at a time when they are engaged around the world in the war on terrorism and humanitarian missions. Delays also prevent the C-5 from being fully capable of handling certain parts of the world as AMP modifications are necessary to comply with new GATM regulations.

At a time when we are asking our military to do so much, to deny our aircrews and military planners C-5s that have the safety upgrades and operational improvements that the AMP will provide does not make sense. Again, I am sorry that the House did not agree with the Senate. I hope we can reverse this problem by accelerating the program with increased funding. I will certainly fight to do that and I hope that other colleagues who have been supportive in the past will join me in that fight next year.

My other concern with this bill is that the Army National Guard’s need for additional UH-60 Blackhawk helicopters has not been properly addressed. Today, the Army National Guard possesses only 12 of the Army’s total utility airlift capability. Unfortunately, only twenty-seven percent of the fleet is usually flyable. On a regular basis a full seventy-three percent of the utility helicopters in the Guard are grounded because of a lack of major maintenance to our concerns! Virtually every state confronts significant shortages, and some states, like Delaware, have absolutely no modern helicopters, relying instead on one or two Vietnam-era helicopters.

This means that regular state missions cannot be executed. Pilots and maintenance personnel cannot remain proficient. These skilled personnel are
not able to do their job, get frustrated, and decide not to stay in the military. Meanwhile, the Army is simply unready in this area. In normal times, these are unacceptable realities. Today, when the Guard has been asked to do so much more, it is unfathomable to me why we would not do more to fix these problems.

The Senate recognized the need to do more and provided a first installment of ten new Blackhawk helicopters for the Army Guard. Unfortunately, this bill does not go far enough. Today, many in the Army utility aviation units do not have even the bare minimum they need to stay proficient, let alone do their missions. This is certainly true in Delaware and I know it also true for at least five other states. This bill does not even allow the Guard Bureau to put one new Blackhawk in each state that needs seven to ten!

The men and women who serve in the Guard every day, both in their states and overseas, deserve to have the equipment they need to perform their missions. I am sorry the House did not agree to do more to address their aviation needs this year and I will work with my colleagues again next year to try to do better.

Mr. President, this bill includes a number of important items that will benefit our military and I support it. But, I want to put my colleagues on notice that next year I will be fighting to achieve modernization and to get additional UH-60s for the Army National Guard. The Senate spoke wisely last week in fully funding both of these aviation needs and I am sorry that the House was unwilling to sustain that wise action.

Mr. ALLARD. Mr. President, being that I was not able to discuss the Fiscal Year 2002 Defense Authorization Act last Thursday, I wanted to take a few minutes to discuss a few aspects of this important bill. I strongly support the Fiscal Year 2002 Defense Authorization Act. I want to congratulate Chairman LEVIN and the Ranking Member WARNER for the good work and the way they have moved this important bill for our men and women in the military. I believe this is a balanced bill which provides a much needed and deserved increase for our military men and women. After years of declining budgets, this bill continues the increases in resources which started 2 years ago.

The bill provides $349.3 billion in budget authority, plus authorizes the $21.2 billion in emergency supplemental appropriations as requested by the President in order to respond to the terrorist attacks. The bill also adds to over $779.4 million above the request for the Department of Energy’s environmental cleanup programs and nuclear weapons activities.

When I became the Personnel Subcommittee Chairman in 1999, the subcommittee provided the first major pay raise for our troops in over 20 years and I am glad that this year's bill continues this trend. The bill provides a targeted pay raise effective January 1, 2002, ranging 5 to 10 percent, with the largest increase going to junior officers and non-commissioned officers.

While no member enjoys having bases closed, we must move forward. The possibility of closure, it is that time that we recognize we do have excess capacity and that is time to consider another round of base closings as requested by the administration. After much negotiating, the conferees authorized a round of base closings in 2005, with established criteria based on actual and potential military value that the Secretary of Defense must use to determine which bases to recommend.

As the rulemaking member of the Strategic Subcommittee, I would like to congratulate my chairman, Senator REED, for his good work on this bill. He worked in a bipartisan and even handed manner. While we disagreed on the missile defense programs, Senator REED and I were in agreement on most of the remaining major issues before the subcommittee.

While many in Congress may disagree on funding levels of missile defense, no one can argue that ballistic missile defense, whether with nuclear, biological, or chemical warheads, present a considerable threat to U.S. troops deployed abroad, allies, and the American homeland. The consequences of such an attack on the United States would be substantial. Staging attacks on the United States currently has no system capable of effectively stopping even a single ballistic missile headed toward the American homeland or deployed U.S. troops.

To end this vulnerability, the President requested a significant increase in funding for ballistic missile defense programs which was an important first step toward protecting all Americans against ballistic missile attack. The conference provided $5.3 billion, $2 billion more than the fiscal year 2001 level, for the continued development of ballistic missile defenses. In addition, the conferees provided flexibility for the President to use up to $1.3 billion of these funds for programs to combat terrorist threats.

In an effort to increase the efficiency and productivity of the missile defense programs, the administration requested to fundamentally restructure the nation’s ballistic missile defense programs in four strategic areas: Boost, Midcourse, Terminal DEFENSE, SYSTEMS ENGINEERING, SENSOR, and TECHNOLOGY DEVELOPMENT. This new approach will provide the flexibility to allow programs that work to mature but the ability to cancel programs that do not. Plus, the program will provide enhanced testing and test infrastructure.

A major testing initiative included in the President’s request is the 2004 Pacific missile defense test bed, the conferees supported this request, for $786 million for the included $273 million for construction primarily at Fort Greely, Alaska and other Alaska locations. Beginning in 2004, the Pacific missile test bed will allow more challenging testing in a far wider range of engagement scenarios than can be accommodated today.

The conferees provided the following levels for the remaining missile defense programs: $780 million for BMD system activities including battle management, communications, targets, countermeasures, and system integration; $2.2 billion (matching the President’s request) for terminal defense systems, including Patriot Advanced Capability-3 (PAC-3), Medium Extended Air Defense System (MEADS), Navy Area (which has now been cancelled by the Administration), Theater High Altitude Air Defense (THAAD), and international missile defense programs, including the Arrow program: $3.9 billion (matching the President’s request) for mid-course defense systems, including ground-based (formerly known as national Missile Defense) and sea-based (formerly known as Navy Theater Wide Defense) ballistic missile defense programs; $685 million (matching the President’s request) for boost phase systems, including the Airborne Laser (ABL) and Space-Based Laser (SBL); $146 million (matching the President’s request) for the Peacekeeper ICBM.

The Strategic Subcommittee also has oversight over two-thirds of the Department of Energy’s budget as it relates to our nuclear weapons and defense nuclear cleanup programs.

During the subcommittee’s hearings, we heard from DOE that one of the major shortfalls of the Department is the conditions of the infrastructure of our DOE labs and plants, the need for a principal deputy administrator at the National Nuclear Security Administration, and an increase in DOE’s environmental cleanup programs and nuclear weapons activities.

Therefore the conferees provided $6.2 billion for DOE environmental cleanup and management programs including: $3.3 billion for work at facilities with
complex and extensive environmental problems that will be closed after 2006; $1.1 billion for the Defense Facilities Closure Program; $595.7 million for construction and site completion at facilities that will be closed by 2006; $216 million ($20 million more than the President’s request) for Defense Environmental Management Science and Technology programs; and $153.5 million ($12 million more than the President’s request) for Defense Environmental Management Privatization. In regards to the National Nuclear Security Administration conference provided $7.1 billion for managing the nation’s nuclear weapons, nonproliferation and naval reactor programs, including: $1 billion for stockpile life extension and evaluation programs; $2.1 billion for focused efforts to develop the tools and knowledge necessary to ensure the safety, reliability, and performance of the nuclear stockpile in the underground nuclear weapons testing. Included in this, the conference provided $219 million to fully fund plutonium pit manufacturing and certification; $200 million to begin to recapitalize the nation’s nuclear weapons complex infrastructure, much of which dates to the post-World War II era; $688 million for the naval reactors program, which supports operation, maintenance and continuing development of Naval nuclear propulsion systems.

There is one issue that I am very proud to say is included in this bill and that is the creation of the Rocky Flats National Wildlife Refuge. This effort has been done in a bipartisan manner with Congressman Udall, and more than 2 years worth of work by local citizens, community leaders, and elected officials. Its passage has ensured that our children and grandchildren will continue to enjoy the wildlife and open space that currently exists at Rocky Flats. However, even with this passage, my primary goal remains the safe cleanup and closure of Rocky Flats.

I would like to mention a few of the following high points of the bill. Rocky Flats will remain in permanent federal ownership through a transfer from the Department of Energy to the U.S. Fish and Wildlife Service after the cleanup and closure of the site is completed. Secondly, we understand the importance of planning for the transportation needs of the future and have authorized the Secretary of Energy and the Secretary of the Interior the opportunity to grant a transportation right-of-way on the eastern boundary of the site for transportation improvements along Indiana Street;

The third point is one of the most important directives in this Act and it states that “nothing . . . shall reduce the level of cleanup at Rocky Flats required under the RFCA or any Federal or State law.” I believe it is important to reiterate that the cleanup levels for the site will be determined by the various laws and processes set forth in the Rocky Flats Cleanup Agreement and State and Federal law; and

Fourth, we firmly believe that access rights to private property rights must be preserved. Therefore, this legislation recognizes and preserves all mineral rights, water rights and utility rights-of-ways. This act does, however, provide the Secretary of Energy and the Secretary of Interior the authority to enter into reasonable conditions with the property owner access to private property rights for cleanup and refuge management purposes.

I would also like to highlight another section of the bill which encourages the implementation of the recommendations of the Space Commission, which concluded that the Department of Defense is not adequately organized or focused to meet U.S. national security space needs. There are four major sections of the provision.

The first provision requires the Secretary of Defense to submit a report on steps taken to improve management, organization and oversight of space programs, space activities, and funding and personnel resources. The second provision requires the Secretary of Defense to take actions that ensure space development and acquisition programs are jointly carried out, and, to the maximum extent practicable, the roles and missions of the Space Command, the bill states that the position should not serve concurrently as commander of the North American Air Defense Command and as Commander-in-Chief, U.S. Space Command. Plus, the bill provides the needed flexibility in general officer limits to ensure that the commander of Air Force Space Command will serve in the grade of general.

Finally, even though I strongly support the Fiscal Year 2002 Authorization Act, I am very disappointed that this bill ignored real shortcoming as it relates to our military’s voting rights. While my original bill went much further in implementing the Space Commission report, I believe this is a good step and, if needed, I hope we can revisit this issue next year to ensure that space management and programs get the senior level support it deserves.

Finally, even though I strongly support this bill, I am very disappointed that this bill ignored a real shortcoming as it relates to our military voting rights.

When I introduce S. 381, my Military Voting Rights Bill, I sought to improve the voting rights of overseas military voters in six key ways. And this Senate agreed to include that bill in our version of the defense authorization. But I am severely dismayed that the conferees provided none of the most important provisions relating to military voting.

Considering the egregious acts of last November, with the memory of campaign lawyers standing ready with preprinted military absentee ballot challenge forms, we needed to respond. And yet the House of Representatives, led by the House Administration Committee, refused to accept the sections of the Senate passed bill that would most effectively ensure the voting rights of our military men and women and their families.

In September, the GAO released a 92-page report entitled “Voting Assistance to Military and Overseas Citizens Should Be Improved.” I would urge you to read the entire thing, but let me read one of the summary headers: “Military and Overseas Absentee Ballots in Small Countries Were Disqualified at a Higher Rate Than Other Absentee Ballots.”

Let me also read from a Miami Herald article, November 19, 2000: “Fifty percent of the more than 3,500 ballots in Florida were thrown out last week for technical reasons, and elections observers are wondering whether the State’s election laws are fair, especially to military personnel.”

Two major flaws in the military voter system—flaws that we have concrete proof were exploited—could have been fixed this week by changes in the Senate’s Military Voting Rights Bill that the House refuses to accept.

The first section prohibits a State from disqualifying a ballot based upon lack of postmark, address, witness signature, lack of proper postmark, or on the basis of comparison of envelope, ballot and registration signatures alone—these were the basis for most absentee ballot challenges.

There has been report after report of ballots that were mailed—for example, form-deployed ships or other distant postings—without the benefit of postmarking facilities. Sometimes mail is bundled, and the whole group gets one postmark, which could invalidate them all under current law. Military “voting officers” are usually junior ranks, quickly trained, and facing numerous other responsibilities. We can not punish our service personnel for the good faith mistakes of others.

And military voters who are discharged and must be before an election but after the residency deadline cannot vote through the military absentee ballot system, and sometimes are not able...
to fulfill deadlines to establish residency in a State. There are roughly 20,000 military personnel separated each month. Our section allowed them to use the proper discharge forms as a residency waiver and vote in person at their new polling site. This brings military attention to their new community quicker. But the House rejected this section as well.

The Senate moved to address these problems. The Houses refuses to do so. This is an issue I, and those who feel as strongly as our nation’s veteran and active duty service organizations, will continue to press.

Mr. BOND. Mr. President. I rise to raise some significant concerns about S. 1389, the Homestake Mine Conveyance Act of 2001, which has been attached to the Department of Defense-Supplemental conference report.

This legislation will have serious adverse implications for the Federal Government most notably, the National Science Foundation (NSF) and the Environmental Protection Agency (EPA)—due to its unprecedented legal protections provided to the State and the Homestake Mining Company and its potentially significant budgetary costs.

While some modifications to the original have been made to the bill to address many of the problematic legal and programmatic issues, these changes were modest at best and the bill as a whole still has significant legal, budgetary, and policy implications that could negatively impact NSF and EPA. This bill is an improvement over the original legislation introduced by the senators from South Dakota, but it is still problematic and troubling.

As the ranking member of the VA-HUD Appropriations Subcommittee, I believe in deferring to the scientific expertise and judgment of the NSF and its Science Board in determining which projects had scientific merit and deserved funding. The Congress should not be in the business of legislating what is scientifically meritorious. The Homestake legislation totally circumvents the merit review process long-established and followed by the agency.

The reality of this matter is that the South Dakota Senators are using NSF as a means to save jobs that will be lost as a result of the mine closing. While I appreciate the effort to save people’s jobs, it should not be done by undermining the scientific merit review process. This is simply the wrong approach and creates a new, dangerous precedent.

Further, the broad indemnification provisions in the bill, even with the proposed modifications, are sweeping. The Federal Government would also be required to provide broad indemnification to both the Homestake Mining Company and the State for PASD and FUTURE claims related to the site. The sweeping and unprecedented language is in conflict with, and greatly expands, the Federal Government’s potential tort liability well beyond provided in the Federal Tort Claims Act. The Federal Government’s liability with respect to environmental claims would also be potentially unlimited. It is unclear whether the bill affects some of the National Science Board court-approved Consent Decrees (CD) that the Federal Government has already entered into. These CDs address certain remediation and natural resource damage claims. There are additional legal questions about the Anti-Deficiency Act and tort law concerning compensation after the fact of injury.

Funding this costly project would also potentially sap funding for other current and new initiatives that have scientific merit and which the Congress and Administration fully support. Critically important scientific research initiatives such as nanotechnology, information technology, and biotechnology initiatives may be significantly impaired. Major research projects related to astronomy, engineering, and the environment could be cut back or not funded.

I hope my colleagues will be sensitized to the dangerous budgetary implications of the Homestake legislation. I am extremely troubled by this legislation and hope that political pressure does not influence the ultimate outcome of the proposed project in the Homestake bill.

Mr. DASCHLE. Mr. President, I am delighted that the Congress has incorporated S. 1389, the Homestake Mine Conveyance Act of 2001, as amended, into the fiscal year 2002 Department of Defense Appropriations conference report.

This important legislation will enable the construction of a new, world-class scientific research facility deep in the Homestake Mine in Lead, SD. Not only will this facility create an opportunity for the next generation of physicists and other fields, it will provide unprecedented new economic and educational opportunities for South Dakota.

Just over a year ago, the Homestake Mining Company announced that it intended to close its 125-year-old gold mine in Lead, SD, at the end of 2001. This historic mine has been a central part of the economy of the Black Hills for over a century, and the closure of the mine was expected to present a significant economic blow to the community.

In the wake of this announcement, you can imagine the surprise of South Dakotans to discover that a committee of prominent scientists viewed the closure of the mine as an unprecedented new opportunity to establish a National Underground Science Laboratory in the United States. Because of the extraordinary depth of the mine and its extensive existing infrastructure, the site would be an ideal location for research into neutrinos, tiny particles that can only be detected deep underground, where thousands of feet of rock block out other cosmic radiation.

Earlier this year, I met with several of these scientists to determine how they planned to move forward. They told me they intended to submit a proposal to the National Science Foundation for a grant to construct the laboratory. After a thorough peer review, the National Science Foundation would determine whether or not it would be in the best interests of science and the United States for such a laboratory to be built. The scientists also explained that since the National Science Foundation normally does not own research facilities, the mine would need to be conveyed from Homestake Mining Company to the State of South Dakota for construction to take place. For the company to be willing to donate the property, and for the state to be willing to accept it, both would require the Federal Government to assume some of the liability associated with the property.

The purpose of the Homestake Mine Conveyance Act of 2001 is to meet that need. It establishes a process to convey the mine to the State of South Dakota, and for the Federal Government to assume some of the liability and for conveyance to take place. If the mine is conveyed, the State of South Dakota will be required to purchase environmental insurance for the property and set up an environmental trust fund to protect the taxpayers against any environmental liability that may be incurred.

I believe this process is fair and equitable to all involved. It will enable the laboratory to be constructed and the environment to be protected.

I am not a scientist, and the decision to build this laboratory must be made by the scientific community. However, it is helpful to review some of the information I have received from the team of scientists supporting this project to better understand why we would take the unusual step of conveying a gold mine to the State with federal indemnification.

Dr. John Bahcall is a scientist at the Institute for Advanced Study in Princeton, NJ. He was awarded the National Medal of Science in 1998. He is a widely recognized expert in neutrino science and given an authority on the scientific potential of an underground laboratory. Recently, I received a letter from him explaining the research opportunities created by an underground laboratory. In the letter, he explained, "There are profound implications in the fields of physics, astronomy, biology, and geology that can only be carried out in an environment that is..."
Homestake: Status Report and Update.''

I'd like to share some of their report:

"The announcement on September 11, 2000, that the Homestake Gold Mine would soon close presented a remarkable opportunity for creating a dedicated multipurpose deep underground laboratory in the U.S. Among its attributes are:

- Homestake has very favorable physical properties. It is the deepest mine in the U.S. The rock is hard and of high quality; even at depth there is an absence of rock bursts common at sites of comparable depth. Large cavities built at depths of 7400 and 8000 feet have been shown to be stable over periods of a decade or more. The mine is dry, producing only 500 gallons/minute of water throughout its 600 km of drifts.

- Homestake has shafts that can be adapted to provide unprecedented horizontal access. The replacement cost of the Ross and Yates shafts under the No. 6 winze, which access the proposed laboratory site, is approximately $300 million. The shaft cross sections are unusually large, 15 x 28 feet, and the Yates hoist, powered by two 1250 hp Nordberg motors, can lift nearly 7 tons. This makes it possible to lower cargo containers directly to the underground site. Finally, there are several existing ventilation shafts as well as an extensive set of ramps that connect the levels, providing important secondary escape paths.

- Homestake is a site with remarkable flexibility. There are drifts approximately every 150 feet in depth, allowing experiments to be conducted at multiple levels and opening up possibilities of a very wide range of science. Coupled with the extensive ventilation system—including a massive cooling plant with four York compressors and 2300 tons of refrigeration—this allows a wide range of experiments to be mounted, including those involving flammable cryogens or other substances best sequestered and separately vented.

The flexibility to accommodate a very wide range of science is important because significant advantages will accompany a single multipurpose national laboratory. There are economies of scale in infrastructure and safety, including the development of common specialized facilities (like a low-background counting facility). This reduces costs and saves human scientific capital. Concentration also produces a stronger scientific and technical environment. It allows synergisms between disciplines to grow.

The proposed principle site of the laboratory is the region at 7400 ft between the Ross and Yates shafts. The space in the mine and the core of the equipment for the experiments already funded for the Homestake: Status Report and Update.''

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The mine is fully permitted for safety and rock disposal on site, and is located in a state supportive of mining.

The mine includes surface buildings, extensive fiber optics and communications systems, a large inventory of tools and rolling stock that may be transferable to the laboratory, and skilled engineers, geologists, and miners who know every aspect of the mine."

This is not the first time that Homestake, or other abandoned mines, have been used to support this kind of research. In fact, underground scientific research at the Homestake mine dates back to 1965, when a neutrino detector was installed in the underground mine at the 4850-foot level. Research from that experiment is acknowledged as critical to the development of neutrino astrophysics. Similar experiments have continued in the Soudan mine in Minnesota, and in underground laboratories outside of the United States, leading to important new discoveries and developments in particle physics and theory.

As I've stated, the purpose of the legislation passed by the Senate is to take the conveyance property needed for the construction of the laboratory from Homestake Mining Company to the State of South Dakota. I'd like to take a moment to explain why it is necessary for the Federal Government to transfer the mine to the State, and indemnify the company and the State in order for this conveyance to take place.

The National Science Foundation, which is reviewing a $281 million proposal to construct this laboratory, does not operate its own research facilities. Instead, it provides grants to other entities to operate facilities or to conduct experiments. In keeping with this tradition, the proposed laboratory would not be owned by the Federal Government, but instead would need to be operated by an entity other than the NSF. Since it is not practical for the company to retain ownership of the site as it is converted into a laboratory, Homestake expressed a willingness to donate the underground mine and infrastructure to the State of South Dakota, together with certain surface facilities, structures and equipment that are necessary to operate and support the underground mine, provided that it could be released from liabilities associated with the transfer and the future operation of its property as an underground laboratory.

Relief from liability is necessary because the construction of the lab will require the company to forgo certain reclamation actions that it would normally take to limit its liability in the mine. For example, in connection with closing the underground mine, Homestake planned to remove electric substations, decommission hoists and substations, decommission hoists and ventilation systems, a large inventory of flammables, cryogens, or other substances best sequestered and separately vented.

"The announcement on September 11, 2000, that the Homestake Gold Mine would soon close presented a remarkable opportunity for creating a dedicated multipurpose deep underground laboratory in the U.S. Among its attributes are:

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- Homestake has shafts that can be adapted to provide unprecedented horizontal access. The replacement cost of the Ross and Yates shafts under the No. 6 winze, which access the proposed laboratory site, is approximately $300 million. The shaft cross sections are unusually large, 15 x 28 feet, and the Yates hoist, powered by two 1250 hp Nordberg motors, can lift nearly 7 tons. This makes it possible to lower cargo containers directly to the underground site. Finally, there are several existing ventilation shafts as well as an extensive set of ramps that connect the levels, providing important secondary escape paths.

- Homestake is a site with remarkable flexibility. There are drifts approximately every 150 feet in depth, allowing experiments to be conducted at multiple levels and opening up possibilities of a very wide range of science. Coupled with the extensive ventilation system—including a massive cooling plant with four York compressors and 2300 tons of refrigeration—this allows a wide range of experiments to be mounted, including those involving flammable cryogens or other substances best sequestered and separately vented.

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The Act establishes a specific procedure that will be followed in order for conveyance to take place and Homestake to be relieved of its liability. It does not become effective unless the National Science Foundation selects Homestake Mine as the site for a National Underground Science Laboratory. This means that conveyance procedures will not begin until it is clear that the NSF supports the construction of a laboratory. Second, a due diligence inspection of the property will be conducted by an independent entity to identify any condition that may pose an imminent and substantial endangerment to public health or the environment. Third, any condition of the mine that meets those criteria must be corrected before conveyance takes place. Homestake may choose to contribute toward any necessary response actions. However, Section 101 also provides that limits Homestake's contribution to this additional work, if necessary, to $75 million, reduced by the value of the property and equipment that Homestake is donating. In addition, the Administrator of the Environmental Protection Agency has certified that necessary steps have been taken to correct any problems that are identified can be proceeded.

Since some of the steps required to convert the mine into a laboratory go above and beyond normal reclamation, the company is not obligated to deliver the property in a condition that is suitable for use as a laboratory. However, those portions of the mine that require the most significant reclamation, including the tailings pond and waste rock dumps, are specifically prohibited from being conveyed under this Act and will remain Homestake's responsibility to reclaim. Under normal circumstances, the mine would close in March of 2002. Since it must be kept open beyond that date to leave open the option to construct the laboratory, Congress has already appropriated $10 million in the VA-HUD Appropriations bill to pay for expenses needed for that purpose.

It is important that all aspects of the conveyance process be completed in a timely manner. It will facilitate the construction of the laboratory, the inspections, reports and conveyance will need to proceed in phases, with the inspections being initiated after Homestake has completed the reclamation work that may otherwise have been required. While the Act sets no specific deadline for the completion of these procedures, it is important that the entire process be completed in no more than eight months from the date of passage of the Act. The timeframes in the Act for public comment, draft report, and EPA's review of the report are intended to emphasize the need for timely action.

S. 1389 also contains important provisions to protect taxpayers from any potential liability once the transfer of the mine takes place. First, South Dakota must purchase property and liability insurance for the mine. It may also require individual experiments to purchase liability insurance. Second, the bill requires that South Dakota establish an Environment and Project Trust Fund to finance any future clean-up actions that may be required. A portion of annual Operations and Maintenance fees will be deposited into the fund, and the state may also require individual projects to make a deposit into the fund. The insurance and trust fund provisions of this bill will help to provide a firewall between the taxpayers and any future environmental clean-up that may be required.

I want to thank all of those who have been involved in the development of this legislation. I particularly appreciate the work of my colleagues and the hard work and support of Governor Bill Janklow of South Dakota. I also want to thank my colleagues in Congress for their support of this bill.

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accepts the report, then the conveyance may proceed. If the report identifies a condition in the Mine that may pose an imminent and substantial endangerment to public health or the environment, the State or other persons must make a deposit into the Environment and Project Trust Fund established in Section 7 that is sufficient to cover the costs of the response action. The amount of the deposit is to be determined by the independent entity, on a net present value basis and taking into account whether it will be earned or deposited until the time that expenditure is expected to be made. Homestake may choose to contribute toward the response actions. However, Section 4 includes a provision that limits Homestake's contribution to this additional work, if necessary, to $75 million, reduced by the value of the property and equipment donated to the State. Funds deposited into the Fund to meet this requirement may only be expended to address the needs identified in the inspection. Once any response actions have been completed, or necessary funds have been deposited, then the independent entity may certify to the EPA that the conditions identified in that report have been abated or are no longer a significant and substantial threat to human health or the environment have been corrected.

Final Review. Not later than 60 days after receiving the certification, the EPA must make a final decision to accept or reject the certification. Conveyance may proceed only if the certification is accepted.

Section 105. Assessment of Property. Section 5 sets forth the process for valuing the donated property and services. For purposes of determining the amount of Homestake's potential contribution toward response actions identified in Section 4(b)(4)(C), the property being donated by Homestake is to be valued by the independent entity according to the Uniform Appraisal Standards for Federal Land Acquisition. To the extent that some property has been or will be donated as access to abandoned underground tunnels, only has value for the purpose of constructing a laboratory, that entity is directed to include the estimated costs of reusing that property in the analysis. Homestake's donation, and the cost of reusing any donated equipment. The valuation is to be submitted to the Administrator of the EPA, the state, and Homepostake in a separate report that is not subject to the procedures in Section 4(b). If it is determined that the conveyance can most efficiently be proceeded in accordance with this section, then that valuation report is to accompany each of the due diligence reports.

Section 106. Liability Assumption or Liability. Upon conveyance, the United States shall assume liability for the mine and laboratory. This liability includes damages, reclamation, cleanup of hazardous substances under CERCLA, and closure of the facility. If property transfer takes place in steps, then the assumption of liability shall occur with each transfer for those properties. Liability protection. Upon conveyance, neither Homestake nor the State of South Dakota shall assume liability for the mine or laboratory. The United States shall waive sovereign immunity for claims by Homestake and the State, assume this liability and indemnify Homestake against it. However, in assuming this liability and indemnifying Homestake, the United States shall waive sovereign immunity for claims by Homestake under CERCLA, and close the mine and laboratory. This liability is conditioned on Homestake's donation, and the cost of reusing the facilities in the absence of substantial endangerment to public health or the environment, then Homestake may, with the consent of the EPA and the Scientific Advisory Board, the State, and the laboratory's operator, establish an environmentally sound and safe facility. If the report identifies a condition that is expected to be made.

Section 107. Insurance Coverage Requirement to Purchase Insurance for Mine. To the extent such insurance is available, the State shall purchase property and liability insurance for the mine and the operation of the laboratory to provide coverage against the liability assumed by the United States. The requirement to purchase insurance will terminate if the mine ceases to be used as a laboratory or Operations and Maintenance funding is not sufficient to operate the laboratory.

Terms of Insurance. The State must periodically consult with the EPA and the Scientific Advisory Board and consider the following factors to determine the coverage, type, and policy limits of insurance: the nature and size of the projects in the laboratory and the cost and availability of commercial insurance, and the amount of available funding. The insurance shall be secondary to insurance purchased by the federal government; and in excess of amounts available in the Fund to pay any claim. The United States shall make additional insured and will have the right to enforce the policy.

Funding of insurance purchase. The State may finance the purchase of insurance with funds from the Fund or other funds available to the state, but may not be compelled to use state funds for this purpose.

Project insurance. In consultation with the EPA and the Scientific Advisory Board, the State may require a project sponsor to purchase property and liability insurance for a project. The United States shall be an additional insured on the policy and have the right to enforce it.

State insurance. The State shall purchase unemployment compensation insurance and workers' compensation insurance required under state law. The State may not use funds from the Fund for this purpose.

Section 108. Environment and Project Trust Fund Establishment of fund. On completion of conveyance, the State shall establish an Environmental Fund and Project Trust Fund in an amount determined in the inspection. Capitalization of Fund. There are several streams of money that will capitalize the Fund, some of which have restrictions on the way they may be spent. The streams of money that will capitalize the Fund include: payments for other costs related to the conduction of the laboratory, the cost of removing equipment from the lab, and material no longer used or necessary for the operation of the laboratory, the cost of removing projects from the lab or to pay claims associated with that project; purchases of insurance by the State (except for employment related insurance); payments for other costs related to liability and the closure of the laboratory; the local government; and Federal Authority. To the extent the United States is liable, it may direct that amounts in the Trust Fund be applied toward it.

Section 109. Waste Rock Mixing. If the State, acting in its capacity overseeing the laboratory, determines to dispose of waste rock excavated for the construction of the laboratory on land owned by Homestake that is not conveyed under this legislation, then the State must first receive approval from the Administrator before disposing such rock.

Section 110. Requirements for Operation of Laboratory. The laboratory must comply with all federal laws, including environmental laws.

Section 111. Contingency. This Act shall be effective contingent upon the selection of the Mine by the National Science Foundation as the site for the laboratory.

Section 112. Obligation in the Event of Nonconveyance. If the conveyance does not occur, then Homestake's obligations to respond are limited to the requirements of current law.

Section 113. Payment and Reimbursement of Costs. The United States may seek payment from the Fund in the event the liability it has undertaken.

Section 114. Consent Decrees. Nothing in this title affects the obligation of a party to two existing consent decrees.

Section 115. Offset, Offsets. Title. Section 116. Authorization of Appropriations. Such funds as are necessary to carry out the Act are authorized.

The PRESIDING OFFICER. The major-
previously, we included waiving income taxes and payroll taxes for families of the victims of September 11. The House of Representatives in their bill included only income taxes and not payroll taxes.

When the House repassed the bill and sent it to us, they included a provision that did not include payroll taxes but set a minimum of $10,000 so lower income people would receive some tax refund. The House wanted to retain the principle of not waiving payroll taxes but at a lower level to give some refund to low-income families. This was seen as agreeable to both sides and fair.

Mr. GRAMM. Mr. President, further reserving the right to object, it is my understanding there were additional provisions such as extended unemployment, provisions of that nature. Are they in this bill?

Let me suggest the absence of a quorum so we could look at that.

The PRESIDING OFFICER. The majority floor.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection.

Mr. DASCHLE. Mr. President, I have a unanimous consent request that is pending.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BAUCUS. Reserving the right to object, is this the victims relief bill, I ask the majority leader?

Mr. DASCHLE. I answer to the Senator from Montana it is the victims relief bill.

Mr. BAUCUS. Reserving the right to object, I shall not object, there is a disaster in the State of Montana and other higher plains States, which is a drought. I have been seeking agricultural disaster assistance, I see that is not going to happen. I ask my friend from South Dakota if he can assure me that at the first opportunity next year we will take up and consider the agricultural disaster assistance bill.

Mr. DASCHLE. Mr. President, I commend the Senator from Montana for his efforts over the course of the last several months. I have been impressing the Senate to act on disaster relief. Many farmers in South Dakota share this problem, and I have applauded the efforts made by the Senator from Montana. I appreciate his interest and his determination to see that it adequately responds to the Great Plains, the Midwest, and elsewhere.

I assure the Senator from Montana that at the first appropriate opportunity, we will find a way to address the legislation to find a way in which to respond. As he recalls, we did some of that last summer. We had a good debate about how much was necessary. I think the Senator from Montana is correct in his observations that there is still a great deal more to be done. I will work with him to see that that happens.

Mr. BAUCUS. Mr. President, I thank my good friend from South Dakota. I just want to add that this bill is very necessary to the victims relief bill, as it was reported to the Committee on Finance. I will not belabor it by going through the provisions. According to the rules, there is not time to do so. Sufficient to say, this bill must pass in the next several hours because it will give much-needed relief. I thank my friend.

Mr. SCHUMER. Mr. President, reserving the right to object, and I will not object, I would like to just say that some of the provisions that are not in this bill—first, the victims relief part of the bill is very necessary. We did not want to stand in the way of that. Originally, when the victims relief bill came over to the House, it had provisions to benefit Lower Manhattan. We will not know that Lower Manhattan is in real trouble because of what happened on September 11. The great fear is that businesses, large and small, will leave. The fear factor is enormous.

Mr. SCHUMER. Mr. President, I ask the Members, this final victims package is a good package. I earlier introduced a measure to make sure we included the provisions of S. 1493, which is supported by Senator WARNER, Senator CAMPBELL, and Senator CRAIG. I am glad these ideas have been recognized, that this war we are fighting is against terrorists who target defenseless men, women, and children. The areas in which these attacks occur are combat zones.

I am glad this package has been worked out, because the last thing the families of these victims need to be worrying about is paying taxes, whether income taxes or other types of taxes—this bill addresses those concerns.

While my colleague from New York may want to add some other items to this measure—but at this late hour will not—I commend to my colleagues the fact that the police officers and firefighters who first responded to the World Trade Center attacks, as well as the Pentagon, risked their lives in hazardous conditions, breathing toxic gases, to save the lives of their fellow citizens.

In my view, those who are serving in those terrorist attack zones ought to be looked upon as the same as those who work in combat zones, and the taxes of those first responders for that month ought not be subject to income taxes. I am going to work next year to get this proper recognition for our firefighters, law enforcement officers, and rescue personnel, but I do not want to hold up this good victims’ relief package which means a good deal to a lot of families who feel a very big hole in their hearts during this holiday season.

I yield the floor.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, and I shall not object.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I say to the Members, this final victims package is a good package. It will be a good part of the victims relief bill, as it was reported to the Committee on Finance. I will not belabor it by going through the provisions. According to the rules, there is not time to do so. Sufficient to say, this bill must pass in the next several hours because it will give much-needed relief. I thank my friend.

Mr. LOTT. Has the unanimous consent request been agreed to?

Mr. SCHUMER. I withdraw my objection.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Virginia.
Mr. NICKLES. Mr. President, I thank my colleague, Senator ALLEN, for his comments. I also thank my colleague, Senator TORRICELLI, for his work and the work we did in the Finance Committee. We also included the victims from the Oklahoma City bombing disaster 6 years ago in which 189 people lost their lives. Likewise, they should not have to pay taxes for that year or the preceding year. The amount of income is almost de minimis, but it is only fair.

I thank my colleagues from New York and New Jersey for their cooperation. My colleagues from New York had many additional, very interesting items — accelerated depreciation and other ideas to stimulate the economy. We are happy to work with them to try to make that happen in the near future.

I thank my colleagues for their support, and I shall not object.

The PRESIDING OFFICER. Is there objection?

If there is no objection, without objection, it is so ordered.

The majority leader.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the vote on the conference report to accompany H.R. 3338 occur immediately following the remarks made by the senior Senator from West Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TORRICELLI. Will the majority leader yield? The PRESIDING OFFICER. Is objection heard? Mr. LOTT. Mr. President, I seek recognition, but in view of what we have just agreed to, I know the Senator from New Jersey wants to be heard. I yield the floor to him.

Mr. TORRICELLI. Mr. President, I thank the Republican leader for his courtesy. I want to say a word of thanks to all of my colleagues. I was proud to have offered this provision in the Finance Committee and again on the Senate floor.

The PRESIDING OFFICER. The Chair needs to ascertain if there is objection to the preceding unanimous consent request.

Mr. MCCAIN. I withdraw my objection.

The PRESIDING OFFICER. The objection is withdrawn. Without objection, it is so ordered.

The Chair laid before the Senate a message from the House, as follows:

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 2884) entitled “An Act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States on September 11, 2001,” with the following House amendment to senate amendments:

In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill, insert the following:

SECTION 1. SHORT TITLE; ETC. (a) SHORT TITLE.—This Act may be cited as the “Victims of Terrorism Tax Relief Act of 2001.”

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; etc.

TITLES I—RELIEF PROVISIONS FOR VICTIMS OF TERRORIST ATTACKS

Sec. 101. Income taxes of victims of terrorist attacks.

Sec. 102. Exclusion of certain death benefits.

Sec. 103. Estate tax reduction.

Sec. 104. Payments by charitable organizations treated as exempt payments.

TITLES II—OTHER RELIEF PROVISIONS

Sec. 201. Exclusion for disaster relief payments.

Sec. 202. Authority to postpone certain deadlines and required actions.

Sec. 203. Application of certain provisions to terrorist or military actions.

Sec. 204. Clarification of due date for airline excise tax deposits.

Sec. 205. Treatment of certain structured settlement payments.

Sec. 206. Personal exemption deduction for certain disability trusts.

SEC. 3. EXCLUSION OF CERTAIN DEATH BENEFITS.

(a) IN GENERAL.—Section 101 (relating to certain death benefits) is amended by adding at the end the following new subsection:

“(d) INDIVIDUALS DYING AS A RESULT OF CERTAIN TERRORIST ATTACKS.—

“(1) IN GENERAL.—In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply if the individual had died other than as a result of the terrorist attacks against the United States on September 11, 2001 or during the period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if the claim therefor is filed before the close of such period.

“(2) LIMITATION.—Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to amounts which would have been payable if the individual had died other than as a specified terrorist victim (as defined in section 892(d)(2)).

“(3) TREATMENT OF SELF-EMPLOYED INDIVIDUALS.—For purposes of paragraph (1), the term ‘employee’ includes a self-employed individual (as defined in section 401(c)(1)).”.

(b) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending before, on, or after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if the claim therefor is filed before the close of such period.

Sec. 4. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.

Sec. 5. No impact on social security trust funds.

TITLES III—TAX BENEFITS FOR AREA OF CERTAIN TERRORIST ATTACKS

Sec. 101. Income taxes of victims of terrorist attacks.

Sec. 102. Exclusion of certain death benefits.

Sec. 103. Estate tax reduction.

Sec. 104. Payments by charitable organizations treated as exempt payments.

TITLES IV—DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS

Sec. 401. Disclosure of tax information in terrorism and national security investigations.

Sec. 501. No impact on social security trust funds.

TITLES V—NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

Sec. 601. No impact on social security trust funds.

(b) CONFORMING AMENDMENTS.—

(1) Section 205(a)(1) is amended by inserting “and victims of certain terrorist attacks” before “on death.”

(2) Section 6013(f)(2)(B) is amended by inserting “and victims of certain terrorist attacks” before “on death.”

(c) CLERICAL AMENDMENTS.—

(1) The heading of section 692 is amended to read as follows:

“SEC. 692. INCOME TAXES OF MEMBERS OF ARMED FORCES AND VICTIMS OF CERTAIN TERRORIST ATTACKS ON DEATH.”

(2) The second sentence of section 201 of the table of sections for part II of subchapter J of chapter 1 is amended to read as follows:

“Sec. 201. Income taxes of members of Armed Forces and victims of certain terrorist attacks on death.”

(3) The effective date of section 692 is amended to read as follows:

“Sec. 692. Income taxes of members of Armed Forces and victims of certain terrorist attacks on death.”

(4) The effective date of section 205 is amended to read as follows:

“Sec. 205. Exclusion of certain death benefits.”

(5) The effective date of section 206 is amended to read as follows:

“Sec. 206. Personal exemption deduction for certain disability trusts.”

(6) The effective date of section 401 is amended to read as follows:

“Sec. 401. Disclosure of tax information in terrorism and national security investigations.”

(7) The effective date of section 501 is amended to read as follows:

“Sec. 501. No impact on social security trust funds.”

(a) IN GENERAL.—Section 101 (relating to certain death benefits) is amended by adding at the end the following new subsection:

“(d) INDIVIDUALS DYING AS A RESULT OF CERTAIN TERRORIST ATTACKS.—

“(1) IN GENERAL.—In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply if

“(A) with respect to the taxable year in which falls the date of death, and

“(B) with respect to any prior taxable year in the period beginning on the last taxable year ending before the taxable year in which the wounds, injury, or illness referred to in paragraph (2) were incurred.

“(2) SPECIFIED TERRORIST VICTIM.—For purposes of this subsection, the term ‘specified terrorist victim’ means any decedent—

“(A) who dies as a result of wounds or injury sustained at any time before the close of the 1-year period beginning on the date of the enactment of this Act by an act of terrorism, as defined in section 892(d)(2),

“(B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a participant or conspirator in any such attack or a representative of such an individual.”.

(b) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending before, on, or after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if the claim therefor is filed before the close of such period.

Sec. 103. ESTATE TAX REDUCTION.

(a) IN GENERAL.—Section 2201 is amended to read as follows:

“SEC. 2201. COMBAT ZONE-RELATED DEATHS OF ARMED FORCES PERSONNEL.

“Sec. 201. Income taxes of victims of terrorist attacks.


Sec. 203. Estate tax reduction.

Sec. 204. Payments by charitable organizations treated as exempt payments.

Sec. 3. EXCLUSION OF CERTAIN DEATH BENEFITS.

(a) IN GENERAL.—Section 101 (relating to certain death benefits) is amended by adding at the end the following new subsection:

“(d) INDIVIDUALS DYING AS A RESULT OF CERTAIN TERRORIST ATTACKS.—

“(1) IN GENERAL.—In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply if

“(A) with respect to the taxable year in which falls the date of death, and

“(B) with respect to any prior taxable year in the period beginning on the last taxable year ending before the taxable year in which

“$S13858 CONGRESSIONAL RECORD — SENATE December 20, 2001
“(d) Effective Date; Waiver of Limitations.—

(1) Effective Date.—The amendments made by this section shall apply to estates of decedents: (A) dying on or after September 11, 2001, and (B) in the case of individuals dying as a result of the April 19, 1995, terrorist attack, dying on or after April 19, 1995.

(2) Waiver of Limitations.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is presented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of reason, such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

SEC. 104. PAYMENTS BY CHARITABLE ORGANIZATIONS TREATED AS EXEMPT PAYMENTS.

(a) In General.—For purposes of the Internal Revenue Code of 1986—

(1) payments made by an organization described in section 501(c)(3) of such Code by reason of the death, injury, wounding, or illness of an individual incurred as a result of the terrorist attacks against the United States on September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before October 16, 2001, shall be treated as payments made in good faith according to a reasonable and objective formula which is consistently applied, and

(b) in furtherance of public rather than private purposes, and

(2) in the case of a private foundation (as defined in section 509 of such Code), any payment described in paragraph (1) shall not be treated as made to a private foundation for purposes of section 4941 of such Code.

(b) Effective Date.—This section shall apply to payments made on or after September 11, 2001.

TITLE II—OTHER RELIEF PROVISIONS

SEC. 201. EXCLUSION FOR DISASTER RELIEF PAYMENTS.

(a) In General.—Part III of subchapter B of chapter 2 of subtitle A of subchapter A of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 140 and inserting after section 139 the following new section:

‘‘SEC. 139. DISASTER RELIEF PAYMENTS.

(1) General Rule.—Gross income shall not include any amount received by an individual as a qualified disaster relief payment.

(b) Qualified Disaster Relief Payment Defined.—For purposes of this section, the term ‘qualified disaster relief payment’ means any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,

(3) to a person engaged in the furnishing or providing of goods or services by a person (as defined in section 136) in furtherance of public rather than private purposes in good faith according to a reasonable and objective formula which is consistently applied, and

(4) to a person (as defined in section 136) in good faith according to a reasonable and objective formula which is consistently applied, and

(b) Effective Date.—This section shall apply to taxable years ending after September 30, 2001.

SEC. 7508A. AUTHORITY TO POSTPONE CERTAIN DEADLINES AND REQUIRED ACTIONS.

(a) Expansion of Authority Relating to Disasters and Terroristic or Military Actions.—Section 7508A is amended to read as follows:

‘‘SEC. 7508A. AUTHORITY TO POSTPONE CERTAIN DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.

(a) In General.—In the case of a taxpayer affected by a Presidentially declared disaster (as defined in section 1023(h)(3)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to one year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer—

(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extension under any other provision of this subtitle for periods after the date (determined by the Secretary) of such disaster or action),

(2) the amount of any interest, penalty, addition to tax, or addition to the tax for periods after such date, and

(3) the amount of any credit or refund.

(b) Special Rules Regarding Pensions, etc.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1023(h)(3)) or a terroristic or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this section and such plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of

(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extension under any other provision of this subtitle for periods after the date (determined by the Secretary) of such disaster or action),

(2) the amount of any interest, penalty, addition to tax, or addition to the tax for periods after such date, and

(3) the amount of any credit or refund.

(c) Qualifying Disaster Defined.—For purposes of this section, the term ‘qualifying disaster’ means—

(1) a disaster which results from a terrorist or military action (as defined in section 692(c)(2)),

(2) a Presidentially declared disaster (as defined in section 1023(h)(3)) or a terroristic or military action (as defined in section 692(c)(2)),

(3) a terrorist or military action (as defined in section 692(c)(2)), and

(4) any disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

(5) with respect to amounts described in subsection (b), a disaster which is determined by an applicable Federal, State, or local authority (as defined in section 692(c)(2)), such disaster as described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local government or agency or instrumentality thereof.

(d) Coordination With Employment Taxes.—For purposes of chapter 2 and subtitle C, a qualified disaster relief payment shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

(e) No Relief For Certain Individuals.—Subsections (a) and (f) shall not apply with respect to any individual identified by the Attorney General to have been a participant or conspirator in a terrorist or military action.

(f) ‘Exclusion of Certain Additional Payments.—Gross income shall not include any amount received as payment for the operation or maintenance of the Air Transportation Safety and System Stabilization Act.’

(b) Conforming Amendments.—The table of sections for part III of subchapter B of chapter 1 is amended by stricken the item relating to section 139 and inserting the following new items:

‘‘Sec. 139. Disaster relief payments.’’

‘‘Sec. 140. Cross references to other Acts.’’

(c) Effective Date.—The amendments made by this section shall apply to taxable years ending after September 11, 2001.

SEC. 202. AUTHORITY TO POSTPONE CERTAIN DEADLINES AND REQUIRED ACTIONS.

(1) Wheth...
disregarding any period by reason of the preceding sentence.

“(c) SPECIAL RULES FOR OVERPAYMENTS.—The rules of section 7508(b) shall apply for purposes of subsection (b) of section 7508A.

(b) CLARIFICATION OF SCOPE OF ACTS SECRETARY MAY POSTPONE.—Section 7508(a)(1)(K) (relating to time to be disregarded) is amended by striking ‘‘in regulations prescribed under this section’’.

(c) CONFORMING AMENDMENTS TO ERA.—(1) Part 5 of subtitle B of title 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131 et seq.) is amended by adding at the end the following new section:

**SEC. 516. AUTHORITY TO POSTPONE CERTAIN DECADES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.**

‘‘In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terrorist or military action (as defined in section 692(c)(2) of such Code), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.’’.

(2) Section 4002 of Employee Retirement Income Security Act of 1974 (29 U.S.C. 1300) is amended by adding at the end the following new subsection:

(i) SPECIAL RULES REGARDING DISASTERS, ETC.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terrorist or military action (as defined in section 692(c)(2) of such Code), the corporation may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

(d) ADDITIONAL CONFORMING AMENDMENTS.—(1) Section 6404 is amended—

(A) by striking subsection (h),

(B) by redesignating subsection (i) as subsection (h), and

(C) by adding at the end the following new subsection:

‘‘(i) CROSS REFERENCE.—

‘‘For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terrorist or military action, see section 7507A.’’.

(2) Section 6081(c) is amended to read as follows:

‘‘(c) CROSS REFERENCE.—

For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.’’.

(d) CLERICAL AMENDMENTS.—(1) The item relating to section 7508A in the table of sections for chapter 77 is amended to read as follows:

‘‘Sec. 7508A. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terrorist or military actions.’’.

(2) The table of contents for the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 517 the following new item:

‘‘Sec. 518. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terrorist or military actions.’’.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters and terrorist or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after the date of the enactment of this Act.

**SEC. 203. APPLICATION OF CERTAIN PROVISIONS TO TERRORISTIC OR MILITARY ACTIONS.**

(a) DISABILITY INCOME.—Section 104(a)(5) (relating to compensation for injuries or sickness) is amended by striking ‘‘a violent attack’’ and all that follows through the period and inserting ‘‘a terrorist or military action (as defined in section 692(c)(2))’’.

(b) EXEMPTION FROM INCOME TAX FOR CERTAIN MILITARY OR CIVILIAN EMPLOYEES.—Section 692(c) is amended—

(1) by striking ‘‘outside the United States’’ in paragraph (1), and

(2) by striking ‘‘SUSTAINED OVERSEAS’’ in the heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after September 11, 2001.

**SEC. 204. CLARIFICATION OF DUE DATE FOR AIRLINE EXCISE TAX DEPOSITS.**

(a) IN GENERAL.—Subtitle E is amended by—

(1) in section 301(a) of the Air Transportation Safety and System Stabilization Act (Public Law 107–42) is amended to read as follows:

‘‘(c) AIRLINE-RELATED DEPOSIT.—For purposes of this subsection, the term ‘airline-related deposit’ means any deposit of taxes imposed by subchapter C of chapter 33 of such Code (relating to transportation by air).’’

(b) EFFECTIVE DATE.—The amendment made by section 301 of the Air Transportation Safety and System Stabilization Act is in effect on or after September 11, 2001.

**SEC. 205. TREATMENT OF CERTAIN STRUCTURED SETTLEMENT PAYMENTS.**

(a) IN GENERAL.—Subtitle B is amended by—

(1) striking subsection (h),

(b) by redesignating subsection (i) as subsection (h), and

(c) by adding at the end the following new subsection:

‘‘(i) CROSS REFERENCE.—

‘‘For time for performing certain acts postponed by reason of war, see section 7508, and by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.’’.

‘‘(A) IMPOSITION OF TAX.—There is hereby imposed on any payment of consideration for alienation for consideration.

‘‘(b) FACTORS.—The factoring deposit shall be transferred to the assignee and shall be sufficient to pay any tax required to be withheld on such proceeds.

‘‘(c) TAX ON COMPENSATION FOR INJURIES OR SICKNESS.—Notwithstanding any other provision of law, the tax equal to 40 percent of the factoring deposit required under subsection (b) shall not be attributable to the compensation for injuries or sickness.

‘‘(B) TEMPERATURE STABILIZATION ACT (PUBLIC LAW 107–42).’’

**CHAP 55.—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS.**

‘‘Sec. 5581. Structured settlement factoring transactions.

‘‘Sec. 5581A. Structured settlement factoring transactions.

‘‘(2) IMPOSITION OF TAX.—There is hereby imposed on any payment of consideration for alienation for consideration in a structured settlement factoring transaction a tax equal to 40 percent of the factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

‘‘(B) EXCEPTION FOR CERTAIN APPROVED TRANSACTIONS.—

‘‘(1) IN GENERAL.—The tax under subsection (b) shall not apply to a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance for a qualified order.

‘‘(a) APPLICATION OF ORDER.—A plan may, notwithstanding any other provision of law, authorize transactions—

‘‘(i) to enforce such blanket security interest as against the structured settlement payment rights, or
(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

(4) FACTORING DISCOUNT.—The term ‘factorng discount’ means an amount equal to the excess of—

(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payment rights are acquired.

(5) RESPONSIBLE ADMINISTRATIVE AUTHORITY.—The term ‘responsible administrative authority’ means the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

(6) STATE.—The term ‘State’ includes the Commonwealth of Puerto Rico and any possession of the United States.

(7) COORDINATION WITH OTHER PROVIDERS.—

(1) IN GENERAL.—If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement factoring transaction to which the provisions of this section(1) apply, then the provisions of sections 72, 104(a)(1), 104(a)(2), 130, and 461(h) were satisfied at the time the structured settlement factoring transaction was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions to the payments to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

(2) THE ALTERNATIVE OF TAX.—The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

“Chapter 55. Structured settlement factoring transactions.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than the provisions of section 5891(d) of the Internal Revenue Code of 1986, as added by this section) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after the 30th day following the date of the enactment of this Act.

(2) CLARIFICATION OF EXISTING LAW.—Section 5891(d) of such Code (as so added) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into on or after such 30th day.

(3) TRANSITION RULE.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of the enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing for structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) or

(B) the adjusted basis of the qualified New York Liberty Zone property shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

(II) which is computer software (as defined in section 167(f)(1)(B)) and is in the active conduct of a trade or business by the taxpayer in such Zone,

(iii) substantially all of the use of which is in the Commonwealth of Puerto Rico and any possession of the United States,

(iv) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after September 10, 2001, and

(v) which is acquired by the taxpayer by purchase (as defined in section 179(d)) after September 10, 2001, and placed in service by the taxpayer on or before the termination date, but only if no written binding contract for the acquisition was in effect before September 11, 2001.

The term ‘termination date’ means December 31, 2006 (December 31, 2009, in the case of nonresidential real property and residential rental property).

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending on or after September 10, 2001.

(2) QUALIFIED NEW YORK LIBERTY ZONE PROPERTY.—Such term shall include qualified leasehold improvement property.

(3) ELECTION OUT.—If a taxpayer makes an election under this subsection with respect to any class of property for any taxable year, such subsection shall not apply to all property in such class placed in service during such taxable year.

(4) SPECIAL RULES RELATING TO ORIGINAL USE.—

(5) SELF-CONSTRUCTED PROPERTY.—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer’s own use, the requirements of clause (ii) of subparagraph (A) shall be treated as met if the taxpayer began construction of the property after September 10, 2001, and placed in service the property after September 10, 2001, before the termination date.

(6) SALE-LEASEBACKS.—For purposes of subparagraph (A)(ii), property—

(1) is originally placed in service after September 10, 2001, by a person, and

(II) sold and leased back by such person within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is placed in service before the leaseback referred to in subparagraph (II).

(D) ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—The deduction allowed by this subsection shall be allowable against the alternative minimum taxable income under section 55.

(E) 5-YEAR RECOVERY PERIOD FOR DEPRECIATION OF CERTAIN LEASEHOLD IMPROVEMENTS.—

(1) IN GENERAL.—For purposes of section 168, the term ‘5-year recovery period’ includes any improvement to an interior portion of a building which is nonresidential real property if—

(A) the property described in paragraph (B) is located in a qualified New York Liberty Zone property.
"(i) such building is located in the New York Liberty Zone,

(ii) such improvement is made under or pursuant to a lease (as defined in section 168(h)(4)), or

(iii) by the lessee (or any sublessee) of such portion,

(iv) the lease of such portion, or

(v) such improvement is placed in service—

(A) after September 10, 2001, and more than 3 years after the date the building was first placed in service, and

(B) before January 1, 2007,

(vi) no written binding contract for such improvement was in effect before September 11, 2001.

(B) CERTAIN IMPROVEMENTS NOT INCLUDED.—Such term shall not include any improvement for which the expenditure is attributable to—

(i) the enlargement of a building,

(ii) any elevator or escalator,

(iii) any structural component benefiting a common area, and

(iv) the internal structural framework of the building.

DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

(A) COMMITMENT TO LEASE TREATED AS LEASE.—A commitment to enter into a lease shall be treated as a lease, and the parties to such commitment shall be treated as lessor and lessee, respectively.

(B) RELATED PERSONS.—A lease between related persons shall not be considered a lease.

(C) IN GENERAL.—In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

(D) EXCEPTION FOR CHANGES IN FORM OF BUSINESS.—Such term shall not include the qualified leasehold improvement property under clause (i) by reason of—

(i) death,

(ii) a transaction to which section 381(a) applies, or

(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business.

REQUIREMENT TO USE STRAIGHT LINE METHOD.—The applicable depreciation method under section 168 shall be the straight line method in the case of qualified leasehold improvement property.

9-YEAR RECOVERY PERIOD UNDER ALTERNATIVE SYSTEM.—For purposes of section 168(g), the class life of qualified leasehold improvement property shall be 9 years.

INCREASE IN EXPENSING UNDER SECTION 179.—In general.—For purposes of section 179—

(A) the limitation under section 179((h)(1)) shall be increased by the lesser of—

(i) $35,000, or

(ii) the cost of section 179 property which is qualified New York Liberty Zone property placed in service during the taxable year, and

(B) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified New York Liberty Zone property shall be 50 percent of the cost thereof.

RECAPTURE.—Rules similar to the rules under section 168(f)(5) shall apply with respect to any qualified New York Liberty Zone property which ceases to be used in the New York Liberty Zone.

TAX-EXEMPT BOND FINANCING.—

(1) IN GENERAL.—For purposes of this title, any qualified New York Liberty Bond shall be treated as a tax-exempt facility bond.

(2) QUALIFIED NEW YORK LIBERTY BOND.—For purposes of this subsection, the term ‘qualified New York Liberty Bond’ means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of such issue are to be used for qualified project costs,

(B) such bond is issued by the State of New York or any political subdivision thereof,

(C) the Governor of New York designates such bond for purposes of this section, and

(D) such bond is issued during calendar year 2002, 2003, or 2004.

LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated for this subsection shall not exceed $15,000,000,000.

QUALIFIED PROJECT COSTS.—For purposes of this subsection—

(A) IN GENERAL.—The term ‘qualified project costs’ means the cost of acquisition, construction, reconstruction, and renovation of—

(i) nonresidential real property (including fixed tenant improvements associated with such property) located in the New York Liberty Zone, and

(ii) public utility property located in the New York Liberty Zone.

(B) COSTS FOR CERTAIN PROPERTY OUTSIDE ZONE INCLUDED.—Such term includes the cost of acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed tenant improvements associated with such property) located outside the New York Liberty Zone but within the City of New York, New York, if such property is part of a project which consists of at least 100,000 square feet of usable office or other commercial space located in a single building or multiple adjacent buildings.

LIMITATIONS.—Such term shall not include—

(i) costs for property located outside the New York Liberty Zone to the extent such costs exceed $7,000,000,000,

(ii) costs with respect to residential rental property to the extent such costs exceed $3,000,000,000, and

(iii) costs with respect to property used for retail sales of tangible property to the extent such costs exceed $1,500,000,000.

MOBILE FIXTURES AND EQUIPMENT.—Such term shall not include costs with respect to movable fixtures and equipment.

SPECIAL RULES.—In applying this title to any qualified New York Liberty Bond, the following modifications shall apply:

(1) A section 146 (relating to volume cap) shall not apply.

(2) Section 147(c) (relating to limitation on use for land acquisition) shall be determined by reference to the aggregate authorized face amount of all qualified New York Liberty Bonds rather than the net proceeds of each issue.

(3) Section 147(d) (relating to acquisition of existing property not permitted) shall be applied by substituting ’50 percent’ for ’15 percent’ each place it appears.

(4) Section 148(f)(4)(C) (relating to exception for proceeds to be used for finance construction expenditures) shall apply to construction proceeds of bonds issued under this section.

(5) Financing provided by such a bond shall not be taken into account under section 168(g)(5)(A) with respect to property substantially all of the use of which is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in such Zone.

(F) Repayment of principal on financing proceeds by the surety shall be taken into account under section 168(f)(4)(C) (relating to exception from the application of the requirements for such a bond to be used for finance construction expenditures) shall apply to construction proceeds of bonds issued under this section.

(G) Financing provided by such a bond shall not be treated as taxpayer return information.
(iv) TERMINATION.—No disclosure may be made under this subparagraph after December 31, 2003.

(b) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES—Subsection (i) of section 6103 relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) DISCLOSURE UPON REQUEST OF INFORMATION RELATING TO TERRORIST ACTIVITIES, ETC.—

"(i) IN GENERAL.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of clause (ii), the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the response or investigation of any terrorist incident, threat, or activity.

"(ii) APPLICATION FOR ORDER.—The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for the order referred to in clause (i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

"(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

(c) SPECIAL RULE FOR EX PARTE DISCLOSURE BY THE IRS.—

"(i) IN GENERAL.—Except as provided in paragraph (6), the Secretary may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (C)(i). Upon such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that—

"(I) there is reasonable cause to believe, based upon information believed to be reliable, that the return or return information may be relevant to a matter relating to such terrorist incident, threat, or activity, and

"(II) the return or return information is sought exclusively for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

"(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall be solely for the use of the officers and employees to whom such information is disclosed in such response or investigation.

"(B) DISCLOSURE TO INTELLIGENCE AGENCIES.—

"(i) IN GENERAL.—Except as provided in paragraph (6), any return or return information with which an officer or employee as provided in such order (to inspection by, or disclosure to, officers and employees of any Federal law enforcement agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. Return or return information opened to inspection or disclosure pursuant to the preceding sentence shall be solely for the use of such officers and employees in the investigation, response, or analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

"(ii) APPLICATION FOR ORDER.—An individual described in this subparagraph—

"(I) may be disclosed only to the extent necessary to apprise the head of the appropriate Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and

"(II) shall be solely for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

"(D) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures made on or after the date of the enactment of this Act.

TITLE V—NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

SEC. 501. NO IMPACT ON SOCIAL SECURITY TRUST FUNDS.

(a) IN GENERAL.—Nothing in this Act (or an amendment made by this Act) shall be construed to alter or amend title II of the Social Security Act (or any regulation promulgated under that Act).

(b) TRANSFERS.—

"(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

"(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary of the Treasury estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the President shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.
The amendment (No. 2689) was agreed to.
(The text of the amendment is printed in today's Record under "Adoptions Submitted and Proposed."

Mr. TORRICELLI. I express my thanks to Senator LOTT, Senator Baucus, Senator Grassley, Senator Nickles, and so many Members of the Senate who made this possible. I know during this Christmas season that the plight and distress of the widows and families of those who lost their lives in Virginia, New York, New Jersey, and Pennsylvania will be in all of our thoughts. That really is not enough.

Charities have raised an enormous amount of money, but it has not gotten to the victims' families. There is a victims' fund this Government has raised, but it has not yet gotten to these victims' families. This tax relief offers real and immediate benefits. It has the promise that as American citizens give funds out of the kindness of their hearts, the funds from those charities will not in turn be taxed as they get to the widows, the parents, or other relatives. It holds the promise that there will be a refund given to many of these families.

Offering financial relief is little solace given such enormous pain, but it is of some help. Families who have buried their loved ones are also paying mortgages, tuition, and buying groceries. This is real help.

I am grateful to the Members of the Senate who have helped pass this legislation. I am grateful to Chairman Thomas of the House Ways and Means Committee who has been with us, as an architect in its passage. I express on behalf of all the families for whom this means so much in this holiday season their gratitude to all of you who have made this possible. I yield the floor.

The PRESIDING OFFICER (Ms. Cantwell). The majority leader.

Mr. DASCHLE. Madam President, I thank both Senators from New Jersey for their extraordinary work in getting us to this point. This was not easy, and I am grateful to them for their persistence, their leadership, and their efforts. This would not have happened were it not for their direct involvement to this moment. I say the same to the Senators from New York for the tremendous work they have done assisting us in getting to this point as well.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Madam President, I will be brief because I know we want to finish up the debate on the Defense appropriations conference report and get a recorded vote. There are Senators who would like that to occur sooner rather than later, so I will not belabor the point.

I am glad we worked out the agreement to Senator Daschle. Senator September 11. I appreciate the cooperation all the way around. One can tell by the discussion that one of the reasons some of these other meritorious items were not added is that once we had one, there would be two, three, four, and we could not get all those worked out in the short time we had, and we stood the chance of losing the victims' tax provisions. I am glad we did that.

I also understand many of these provisions, including the New York provision, are in the stimulus package that has been voted on by the House. We are going to eventually get a stimulus package, and I hope and expect that provision will be in the bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. I thank the Chair. Madam President, I thank the Senate and the leadership of Senator Daschle, Senator Lott, the chairman of the House Ways and Means Committee, Senator Baucus, and others who have worked with us to allow this victims' relief effort to come to pass.

Nothing can be more sincere and heartfelt during this holiday season than to respond with this legislation for families who have lost so much. I thank the Senate for its efforts.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002—CONFERENCE REPORT—Continued

Mr. DASCHLE. Madam President, it is my understanding we now have agreement to go directly to the vote on the conference report to H.R. 3338. I appreciate everyone's cooperation in that regard and I ask that the Senate proceed. For the interest of all Senators, this will be the last vote of the day.

The PRESIDING OFFICER. Is there further debate?

The Senator from West Virginia.

Mr. BYRD. I will take 30 seconds. I had agreed, in the interest of letting Senators catch their planes, to having the vote and then have my statement concerning the homeland defense part appear in the record as though spoken before the vote. That unanimous consent was not agreed to and others spoke. The Senator from Arizona spoke. It was my understanding we would all give up that privilege and we would vote without speaking. Others have spoken. I am not going to stand in the way of Senators going home on this occasion, so I want to make it clear I did not object in the beginning so everybody who had speeches could make them.

I am willing to give up my speech right now. It is a great speech, but I will make it after the vote. I wanted to call it to the attention of the Senate that I kind of begrudgingly agreed to that request.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The question is on agreeing to the concurrent resolution.

The clerk will call the roll.

The legislative clerk called the roll.

The question is on agreeing to the concurrent resolution. Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from Missouri (Mr. BOND), the Senator from Nevada (Mr. ENSIGN), and the Senator from North Carolina (Mr. HELMS) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 94, nays 2, as follows:

(Roll Call Vote No. 380 Leg.)

YEAS—94

Allard
Almendarez
Allard
Baucus
Bayh
Bennett
Biden
Bingaman
Boxer
Breaux
Brownback
Burns
Byrd
Campbell
Cantwell
Carnahan
Carter
Chafee
Clay
de la Raza
Collins
Conrad
Corzine
Craig
Crapo
Daschle
DeWine
Dodd
Domino
Dorgan

Durbin
Edwards
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Grassley
Gregg
Harkin
Hatch
Hollings
Hollingsworth
Hutchinson
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McConnell

Miller
Murkowski
Murray
Nelson (FL)
Nelson (NB)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Saxby
Schumer
Sessions
Shelby
Smith (NH)
Smith (OK)
Snowe
Specter
Stabenow
Stevens
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

NAYS—2

Gramm
McCain
Akaka
Bond

Not Voting—4

Yeakell
Helms

The conference report (H.R. 3338) was agreed to.

Mr. REID. Madam President, I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT. Madam President, if I may take just one moment. I see Senator Daschle is getting ready to propose some unanimous consent requests as well.

Let me take a moment to say to the managers of the legislation and the chairman and ranking member of the committee, I know this has not been easy. There have been a lot of great ideas on both sides of the aisle as to how we could improve it or change it. You have been tenacious, you stuck with it, and you produced a good piece of legislation that is important for our country, important for our men and women in uniform.

This very morning the President called and said he was pleased with the result and he appreciates the leadership the Senate gave in this area.
I commend all of you, Senator INOUYE, Senator STEVENS, and Senator BYRD, for the work that has been done here.

I yield the floor.

Mr. MCCONNELL. Madam President, I have a unanimous consent request to propose at this time. There will be many other unanimous consent requests made over the course of this afternoon. We will certainly notify Senators as they are propounded so that those who have an interest in a particular issue can be in the Chamber when we make them. Let me begin.

I ask unanimous consent the Senate proceed to Calendar No. 232, H.R. 3210, and the only amendment in order be a Dodd-Sarbanes-Schumer substitute amendment, that the substitute be considered and agreed to, the bill, as amended, be read a third time and passed.

The PRESIDING OFFICER. Is there objection?

The Senate from Kentucky.

Mr. MCCONNELL. Madam President, I have a different approach in mind on this which I would like to propose.

I would like to respect our earlier commitment to them that they would have the opportunity to make their remarks. But we will certainly entertain these unanimous consent requests without extended comments. I appreciate everyone’s cooperation in that regard.

Mr. MCCONNELL. Madam President, the Republican leader and I have agreed that we would keep the remarks involving these unanimous consent requests to a minimum at this point to accommodate those Senators who are still waiting to speak on the Defense appropriations conference report. I would like to respect our earlier commitment to them that they would have the opportunity to make their remarks.

Mr. MCCONNELL. I was simply going to suggest that he modify his unanimous consent request. I was not going to make a speech.

Mr. DASCHLE. I would be happy to entertain the modification.

Mr. MCCONNELL. I was going to suggest the majority leader modify his unanimous consent request to adopt one amendment on each side with regard to liability only.

Mr. DASCHLE. Madam President, I appreciate the recommendation and proposal made by the Senator from Kentucky. I know this has been the subject of a good deal of discussion. There is no doubt the issue of liability will be a matter that will have to be addressed. But if we open it up to any amendment at this late hour, there is little likelihood we can complete our work in time for us to be able to go to conference before the holidays begin.

For that reason, I would have to object.

Mr. DASCHLE. Madam President, I would not have happened were it not for the tremendous effort made by each of the subcommittee chairs. I note especially the efforts of the Senator from Hawaii on the Defense appropriations bill, the largest of all bills with which we had to contend.

I congratulate them. I thank them. I note, again, the great work they have done in getting us to this point.

Mr. DASCHLE. Madam President, I have a different approach in mind on this which I would like to propose. The conference before the holidays begin.

The recommendations contained herein are the result of lengthy negotiations between House and Senate managers and countless hours of work by our staffs acting on behalf of all members.

The agreement provides $317.2 billion, the same as the House and Senate levels, consistent with our 302(b) allocations.

As in all conference agreements, neither side, nor any individual member had every issue go his or her way. It represents a compromise. It is one that protects the interests of both houses while clearly meeting our national defense responsibilities.

For the information of all Senators, I would have to object to that modification.

Mr. MCCONNELL. Madam President, I yield the floor.

Mr. LOTT. Madam President, under those conditions, I would have to object.

Let me just say that if we can set it up in a way to have a rollocall vote on that rather than a voice vote to make that very substantial change, I think we need to do both, and therefore I would have to object to that modification.

Mr. DASCHLE. Madam President, pursuant to the unanimous consent agreement, I would like to proceed with my statements.

Mr. LOTT. Madam President, pursuant to the unanimous consent agreement, I would like to proceed with my statements.

Mr. MCCONNELL. Madam President, under those conditions, I would have to object.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. LOTT. Madam President, under those conditions, I would have to object.

Mr. MCCONNELL. Madam President, I am happy to rise today to offer my unqualified support for the conference agreement on H.R. 3338, the Department of Defense Appropriations Bill for Fiscal Year 2002.

I am pleased to present the recommendations to the Senate today, as division A of this bill.

The recommendations contained herein are the result of lengthy negotiations between House and Senate managers and countless hours of work by our staffs acting on behalf of all members.

The agreement provides $317.2 billion, the same as the House and Senate levels, consistent with our 302(b) allocations.

As in all conference agreements, neither side, nor any individual member had every issue go his or her way. It represents a compromise.

It is one that protects the interests of both houses while clearly meeting our national defense responsibilities.

For the information of all Senators, I should point out that the bill provides more funding for our men and women in uniform than was recommended by either body.

I want to note to all my colleagues that this would not have been possible without the tremendous cooperation that I have received from Senator Stevens and his able staff led by Steve Cortese with Ms. Margaret Ashworth, Kraig Siracuse, Alycia Farrell, and Mr. John Kem, on detail from DOD.
The Senate owes all of them a debt of gratitude. I want to also note the efforts of my staff, Charlie Houy, David Morrison, Gary Reese, Susan Hogan, Tom Hawkins, Bob Henke, Lesley Kalan, and Mazie Mattson who have devoted so much time to preparing the committee's recommendations for this bill.

The Defense appropriations bill as recommended by the conference committee provides a total of $317,704,747,000 in budget authority for mandatory and discretionary programs for the Department of Defense. This amount is $1,923,633,000 below the President's request.

The recommended funding is below the President's request by nearly $2 billion because the Congress has already acted to reallocate $500 million for military construction and $1.2 billion for nuclear energy programs under the jurisdiction of the Energy Water Subcommittees.

The total discretionary funding recommended in division A of this bill is $317,206,747,000. This is less than $2 million below the subcommittee's 302(b) allocation.

The measure is consistent with the objectives of this administration and the Defense Authorization Conference Report which passed the Senate.

In addition, we believe we have accommodated those issues identified by the Senate which would enhance our nation's defense while allowing us to stay within the limits of the budget resolution.

Our first priority in this bill is to provide the quality of life of our men and women in uniform.

In that vein, we have fully funded a five percent pay raise for every military member as authorized.

We recommend additional funding for targeted pay raises for those grades and particular skills which are hard to fill.

We believe these increases will significantly aid our ability to recruit, and perhaps more importantly, retain our military personnel.

We have also provided $18.4 billion for health care costs. This is 46.3 billion more than appropriated in FY 2001 and nearly $500 million more than requested by the President.

This funding will ensure that tricare costs are fully covered.

It will also increase our military hospital funding to better provide for their patients and, by providing funding for "TRICARE FOR LIFE": we fulfill a commitment made to our retirees over 65.

This will ensure that those Americans who were willing to dedicate their lives to the military will have quality health care in their older years.

This is most importantly an issue of fairness.

It fulfills the guarantee our nation made to the men and women of our military when they were on active duty.

We also believe it will signal to those willing to serve today that we will keep our promises. In no small part we see this as another recruiting and retention program.

In title two, the bill provides $105 billion for readiness and related programs. This is $8.2 billion more than appropriated for fiscal year 2001. The bill reallocations funding from the Secretary of Defense to the military services for the costs of overseas deployments in the Balkans.

This is the way the Pentagon funds the Middle East deployments. The conference has agreed to leave a small amount in the appropriation for unforeseen emergencies.

For our investment in weapons and other equipment, the recommendation includes $60.9 billion for procurement, nearly $500 million more than requested by the President. The funding here will continue our efforts to recapitalize our forces.

The agreement fully supports the Army's transformation goals and purchases much needed aircraft, missiles and space platforms for the Air Force.

For the Navy, the bill provides full funding for those programs that are on track and ready to move forward.

In the case of shipbuilding, the conference strongly support the need to address our growing shortfalls in ship construction. The agreement provides more funding that in either House or Senate bill and $150 million more than requested.

In some cases, contract delays have allowed the conference to recommend reallocating funds for other critical requirements.

Included in that, the committee has recommended $700 million for procurement to support our national guard and reserve forces.

The conference funds 10 UH–60 helicopters for the National Guard and Army Reserve. It also provides four C–130's for our Air National Guard and Reserves.

The agreement adds funding for additional trainer aircraft for the Navy. It fully funds the requirements for the F–22, the JSF and the F/A–18.

In funding for future investment for research and development, the measure recommends $48.9 billion, nearly $1.5 billion more than the amounts appropriated for fiscal year 2001. Regarding missile defense, the bill is very close to the level requested by the President.

Last week, the Pentagon announced that it was terminating the Navy area wide missile defense program. Additionally, we were informed that the Pentagon is restructuring its space based on infrared—low program. These two adjustments allowed the conference to reduce funding for missile defense.

However, contrary to the provision in the Senate and the authorization bill, the committee provides $478 million in additional funding that can be used for counter terrorism programs.

This is a balanced bill that supports the priorities of the administration and the Senate.

In order to cut spending by nearly $2 billion, some difficult decisions were required. The bill reduces funding for several programs that have been delayed or are being reconsidered because of the secretary's strategic review, the nuclear posture review, and the quadrennial defense review.

The bill also makes adjustments that are in line with the reforms championed by the administration:

A concerted effort was made at reducing reporting requirements in the bill.

The bill also reduces funding for consultants and other related support personnel as authorized by the Senate.

As requested, the bill provides $100 million for DOD to make additional progress in modernizing its financial management systems.

Finally, the bill places a cap on legislative liaison personnel which the Secretary of Defense has indicated are excessive.

I would like to take a few minutes to discuss one item that some have mischaracterized.

The bill provides discretionary authority to the Defense Department to lease tankers to replace the aging KC–135 fleet. This is a program that is strongly endorsed by the Air Force as the most cost effective way to replace our tankers.

Despite what has been claimed, the language in the bill requires that the lease can only be entered into if the Air Force can show that it will be 10 percent cheaper to lease the aircraft than to purchase them. In addition, it stipulates that the aircraft must be returned to the manufacturer at the end of the lease period.

No business sector has suffered more from the events of 9–11 than has our commercial aircraft manufacturers. The tragic events of that day have drastically reduced orders for commercial aircraft.

We have been informed that Boeing, for example, will have to lay off approximately 30,000 people as a direct consequence of the terrorist attack. We have provided funding to support the aircraft manufacturers as a result of that tragedy.

We are including funds elsewhere in this bill to help in the recovery in New York and the Pentagon. The leasing authority which we have included in Division A allows us to help assist commercial airline manufacturers while also solving a long-term problem for the Air Force.

I strongly endorse this initiative which was crafted by my good friend Senator STEVENS with the support of several other Members, including Senators CANTWELL, MURRAY, ROBERTS, and LEVIN. I believe it deserves the unanimous support of the Senate.

Today is December 20th. Nearly one quarter of the fiscal year has passed.

The Defense Department is operating under a continuing resolution which significantly limits its ability to efficiently manage its funding.

I don't need to remind any of my colleagues that we have men and women
serving half way around the world defending us.

Less than one percent of Americans serve in today’s military. These few are willing to sacrifice themselves for us. They deserve our support.

One hundred days ago, our Nation was shocked and put on notice by a surprise attack. This is the bill, Mr. President, that allows us to respond to that attack.

It is also the measure we need to show our military forces that we support them.

This bill is urgently needed to fight and win this war and to demonstrate to the world our resolve.

I urge all my colleagues to support this bill.

The PRESIDING OFFICER (Mr. Corzine). The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I add my congratulations to the chairman of the subcommittee and the ranking member for their hard work on a very important legislation.

I also ask unanimous consent to have printed in the RECORD a letter by Air Force Chief of Staff John Jumper and Secretary of the Air Force James Roche basically explaining in detail their general war for terrorism, that mission and why the activities and events after September 11 have accelerated the interest in the replacement options that were a part of this legislation.


EDITOR-IN-CHIEF,

The Washington Post,

Washington, DC.

There being no objection, the letter was ordered to be printed in RECORD, as follows:

DEAR EDITOR: Robert Novak’s Dec 16, 2001 column, “Boeing Boodoggle,” wrongly implies the Air Force doesn’t have a position on leasing Boeing 767s for use as tanker aircraft. The Air Force has not submitted a proposal to the Air Force for the purchase of new 767 tankers—this is neither a new, nor a “behind closed doors” issue.

The Air Force Chief of Staff have been visible and vocal (letters, press statements) is their support for the need to begin to modernize the tanker fleet. More specifically, they have been clear on the desirability of leasing 767 tankers in order to get them deployed (and old high cost tankers retired) in operationally significant quantities and within projected budgets over the next decade.

Ms. CANTWELL. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. CARPER. Mr. President, I rise because we have passed the 13th conference report on the 13 appropriations bills.

As we prepare to return to our home States, everyone here in the Chamber and everyone in the Senate can find some aspect of the conference report on Defense to which to object.

In the end, what we have to do is consider the work as a whole—as a complete body—and make our judgments on it as not any one single item or issue but the whole notion of how we protect our Nation’s interests across the globe. On that, this measure deserves my support, and has gotten my support and obviously the support of a majority of our colleagues.

As we dispose of the conference report on the Defense appropriations bill, I regret that we leave behind other issues involving security for our country at home. I want to mention those today.

I hope before we adjourn at the end of this day, we will have had the opportunity to bring to this floor several measures that will be brought up by unanimous consent, and I hope with no objection. One of those deals with the security of our ports. As it turns out, for the hundreds of ports across and around our Nation where ships travel in and out of them every single week, the security we provide for those ports and for the people who live in the areas around those ports is inadequate.

The opportunity for someone to bring terrorist devices into our ports and into heavily populated areas is very real. It is one that we currently do not address well, and we need to.

The Senate Commerce Committee, under the leadership of Senator Hollings, has reported out legislation, I believe unanimously, on port security. It needs to come before this body and to be considered before we ultimately adjourn.

Secondly, on the issue of airport security, airport security has been dealt with and I think satisfactorily addressed by the House and Senate and by the President.

Many people in this part of the country, and around the country, travel by railroad. We leave undone, at least at these committees, issues to be addressed with respect to rail security, the security of people who are traveling on railroads as passengers around our Nation.

Again, the Commerce Committee, under the leadership of Senator Hollings, has reported out. I believe unanimously, legislation dealing with rail security. It is an important issue, and not just for those of us in the Northeast corridor; it is an important issue for our Nation. And we know, as the Presiding Officer does, there are hundreds of thousands of people who travel literally every day through tunnels that go in and out of New York, under Baltimore, and under this city that, if not too secure, are not well ventilated or well lit, and are not well protected.

This measure would help to address that, along with better surveillance of our bridges, providing better and more adequate security aboard our trains. My hope is that before we leave this day, before the Senate sets this day, we will have taken up this measure by unanimous consent and approve it in the Senate.

This was objection a few moments ago to another unanimous consent request which was made with respect to antiterrorism reinsurance. Other nations around the globe have been the target of terrorist attacks, and damage has been suffered from those attacks for many years. For us, fortunately, the experience of September 11 had never visited this country before. We have not had to trouble ourselves with determining how we provide adequately for insurance in the event of a terrorist attack.

Other countries deal with this differently. In Israel and the United Kingdom, which have had terrorist attacks...
for many years, those countries have their own approach. In Israel, for example, the country provides the insurance for the terrorist attacks. The Banking Committee and the Commerce Committee both have sought to craft legislation to deal with terrorist attacks. The Federal Government should share that. It is unfortunate we were not able to proceed with this legislation today, and it is imperative we take it up as soon as we return.

The last point I wish to address is with respect to other unfinished business. When terrorists attacked us on September 11, they didn’t just take people’s lives in New York, the Pentagon, and in Pennsylvania; they struck a body blow to our economy, which are still reeling, to some extent, from that body blow. The work of the Federal Reserve on monetary policy helps us with respect to that body blow.

The fact that energy prices have fallen so much helps us with respect to that body blow. The fact that we are spending, frankly, a lot of money with deficit spending, in order to fight terrorism here and across the country and around the world, provides stimulus to the economy and helps to reduce the length of time under which we will likely have a recession.

There is one other thing we could have done, and ought to have done, besides the terrorism reinsurance proposal that has been objected to, and that was to pass an economic recovery plan. That, I think, had broad bipartisan support by Democrats and Republicans. It would have accelerated depreciation and gotten businesses back into the business of making capital investment, and also would have provided a payroll tax holiday for businesses and employees as well. It would have provided extensions of unemployment insurance and helped folks on the health insurance side. It would have helped States that are reeling at this point in time. Unfortunately, we have not had the opportunity to debate that today and to pass a true bipartisan plan.

So we go home with half a loaf. We go into a deficit. We go home with half a loaf, but, as the President knows, we will come back next month. And as we come back next month, my hope is, if we have not dealt satisfactorily with railroad security and port security today, if we have not dealt with antiterrorism reinsurance today, as it appears we will not, that once we return we will take that up.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate from West Virginia be recognized. He has time under the previous bill already, but I would like him to be recognized as soon as I finish.

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBACK. Reserving the right to object, I have one unanimous consent request I would like to make regarding an immigration bill before, if possible, the Senator from West Virginia speaks.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Reserving the right to object, the Senators may be unaware, but under the previous order, I was to be recognized after the vote; right?

Mr. REID. Right.

The PRESIDING OFFICER. It was the understanding of the Chair that Senators INOUYE and STEVENS were to be recognized after the vote. And the Senator agreed to delay his statement, but the time had not been allotted to him specifically.

Mr. BYRD. Mr. President, I know what my rights are, and I know what the order said, I just have not pressed my rights. But I have no objection to the Senator making his request. I will not, however, for the Senator’s request, but I will be here when he makes his request.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Is my consent granted then, Mr. President?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—H.R. 3448

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to H.R. 3448, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3448) to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.

The PRESIDING OFFICER. Is there objection to proceeding to the measure at this time?

Mr. REID. I object to this bill. I object, the Senators may be unaware, but under the previous order, I was to be recognized after the vote; right?

Mr. REID. What I did say, I say to Senator BYRD, is that this is the authorization on which Senators KENNEDY and FRIST have worked. And I did say that the legislation you offered—without being specific in charge of that legislation—was real money, appropriated money, which would have done these things that this only authorizes. I am glad this is going to be authorized, but it is too bad we are not here collecting real money for the people.

Mr. BYRD. I object to this bill. I object to this being considered at this time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I will just state to my friend and colleague from West Virginia, he is very much my friend, and I know he has a Defense appropriations speech, and I look forward to hearing his comments on that, and then I look forward to working with him to kind of show him some of the provisions on which Senators FRIST, KENNEDY, and GREGG, and others have worked. I believe there are 75 or more cosponsors on this bill. I think it is a good bill, a bipartisan bill, strongly supported by both sides.

I will work with my colleague from West Virginia to acquaint him with that. I hope and expect we can pass it a little later this afternoon.

The PRESIDING OFFICER (Mr. DAVIS). Under the previous order, the Senator from West Virginia is recognized.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

Mr. BYRD. Mr. President, I have been more than patient. Under the majority leader’s order earlier, I was to
have spoken on this subject, the Defense Department appropriations bill. Under his order, I was to be recognized after the vote so as to accommodate Senators that they might catch their planes.

Now there were other consents offered which I heard. I didn't object to them, but I believe the record will show that I was to be recognized immediately after the vote for the statement which I wanted to make on the homeland defense section of the DOD appropriation bill. This has been very important.

I understand the problems of the two leaders. I have been majority leader before I have been minority leader, and I have been majority whip. I understand all their problems. This is the end of the year. Everybody wants to get away for Christmas. I don't want to interject myself in between someone's wish to catch a plane. But I have been very patient. I have let other consent orders come up without objecting because my speech is not all that important. But I wanted to make it.

Now we are hearing consents offered for bills. I don't know who is watching the place on this bill. The distinguished Senator from Kansas is going to make his request on a bill. I want to be here when he makes it. He is entitled to make his request. But time is fast fleeting when this Senator is going to stand aside and just continue to wait and let everybody else speak, let everybody else object to the order of speaking, and just stand aside and let it be done.

That is not a big thing. It won't change the history of the world one way or the other. But I just want to say this: Next year, the chairman of the Senate Appropriations Committee is not going to stand aside for every other Senator's convenience in times like this.

I shall proceed.

The Senate has considered the conference report for the fiscal year 2002 Defense Department appropriations bill. It is a good bill, but it could have been much better. As Senators are aware, included in this legislation is the final allocation of the $20 billion emergency supplemental funding approved by this Senate just 3 days after the vote, however, we have stepped back and worked on the smaller compromise plan that is before the Senate this afternoon. While it is not as comprehensive as the plan first proposed earlier this month, the allocation of the $20 billion emergency supplemental funding in this legislation provides support and resources that are needed right now for homeland defense, for national security, and for the recovery of New York City and the other communities directly affected by the September 11 attacks.

For those communities, the supplemental provides $3.2 billion. This brings the total commitment to the recovery effort to $11.2 billion, when previously released funds are included. The bulk of this funding, $4.35 billion, will fund debris removal at the World Trade Center site, repair public infrastructure such as the damaged subways and commuter trains, and assist individuals affected by terrorism, burial, and relocation. Another $2 billion will work to restore the economic health of the area.

This funding, to be provided in the form of community development block grants, will give businesses a much needed hand as they attempt to recover from the terrorist attacks. Other funding will improve security at transportation hubs and reimburse hospitals in New York that provided critical care on September 11 and for many days after.

Some of the money will help communities continue to live in fear of the ghosts of the terrorist attacks. As do the businesses and the communities, these children need to be made whole again. This money will assist in that effort.

As part of this supplemental allocation, the Defense Department will receive an additional $3.5 billion. When included with the funding in the regular Defense Appropriations bill, the Pentagon will receive an increase over last year. This is the single largest one-year increase in Defense spending in more than two decades. It gives the military the resources necessary to battle terrorism overseas. It makes sure that men and women who put themselves in harm's way will not fall short because of fiscal constraints. This package also provides for $775 million for repairs and reconstruction efforts at the Pentagon. As we rebuild Lower Manhattan, we must also repair the Pentagon.

Finally, we have provided in this allocation $8.3 billion for defense efforts here at home. In the days and weeks that have followed the attacks, committees on both sides of this Capitol have heard from experts, from federal, state, and local officials, and from regular Americans who are concerned for their safety at home. We cannot ignore the gaps in our homeland defenses. We cannot put off until tomorrow investments that must be made today. The $8.3 billion for homeland defense that is included in this legislation takes immediate steps to build our local department. It provides critical funding to expand hospital capacity and to train doctors and nurses on what to do in case of a biological, chemical, or nuclear attack. The funding closes some of the holes in our Northern Border and in our seaports. Under the leadership of the distinguished Senator from South Carolina, Mr. HOLDINGS, we had $50 billion for port security. These things were knocked out under that 60-vote point of order. We are not going to forget that. It provides funds for improved cockpit security, to hire additional sky marshals and to purchase explosives detection equipment. It provides funds for the Postal Service to protect postal workers and purchase equipment to make our mail safer. The funding that we have included in this package will help Americans to know that we are not standing idly by, ignoring what are such obvious needs in our homeland defense. We will try to protect Americans and to try to prevent the tragedy we witnessed in September from occurring again.
This package is a compromise. It is not a be-all and end-all package. This money will not fill all of the gaps that exist. But what this package will do is move us forward. It will fund those initiatives that we need to begin now, and lay the groundwork for priorities that every Senator knows await us in the spring.

I want to thank my good friend, Senator STEVENS, for his work on this package. We would not be standing here today if it were not for his steadfast efforts. I also want to thank our House counterparts, Chairman BILL YOUNG of Florida. My, what a fine Congressman he is and a fine chairman of the Appropriations Committee now. I am sure that BILL YOUNG wanted to do more, but under the constraints that were upon him, he could not do more.

I also thank Congressman DAVID OBEY of Wisconsin. He is always a stalwart. He stood up for homeland defense. He tried in the House to move it forward and increase it, but he didn’t have the votes. They and their staffs, led by Jim Dyer and Scott Lilly, worked closely with us to develop this package, and I appreciate their commitment to a successful completion.

As I mentioned earlier: with the Senate’s passage of this conference report, Congress will have completed work on each of the 13 individual appropriations bills. I congratulate Senator INOUYE and Senators DODD, BINGGELI, CAMPBELL, STEVENS, and their staffs, Charlie Houy and Steve Cortese, for crafting what I believe is a good Defense bill. I also am pleased that we were able to pass the thirteen individual bills on a partisan basis, with an average vote in the Senate of 91–6. We did not have to resort to an omnibus bill as has been the case in some years past. And we worked to protect the prerogatives of Congress. We did not invite the White House to sit at the table and negotiate these bills. That is not how the country will be best served, nor should it be. The Constitutional Framers vested the power of the purse in this legislative branch—the people’s branch—and we have a firm grasp on the strings. I only hope that Congress never sees fit to loosen that hold and give away what is the greatest single power afforded to this branch of government by the Framers, in their great wisdom.

Mr. President, before closing, I want to thank the members of my committee staff who have been so earnest and dedicated in their efforts this year. My staff director, Terry Sauvain, and my deputy staff director, Charles Kieffer, have done a remarkable job on these bills. They stayed at night staffed and stayed into the wee hours of the morning. They worked on the nuts and bolts. They worked and they grappled with problems and answered questions from disgruntled Senators and people on the outside and people on the inside. I don’t think they have been able to maintain their sanity. I congratulate them for the good work they did. This is their first year in these positions, and they have certainly set a high standard for the years to come.

I also want to thank Edie Stanley and Kate Eltrich for their assistance, as well as the staffs of our 13 subcommittees. These appropriations bills are not written by magic. Nor they are the product of hard work, determination, and an understanding of the intricacies of each piece of legislation. The Senate is blessed to have such a fine group of men and women dedicated to the service of the nation.

I also want to thank members of my personal staff who have been invaluable to me. My Chief of Staff, Barbara Videnieks, may Administrative Assistant, Ann Adler, my Legislative Director, Jane Mellow, my Press Secretary, Tom Gavin, my legislative assistant, David McMaster, and the entire Byrd team have done an outstanding job on these bills.

Mr. President, the fiscal year 2002 Department of Defense appropriations bill is a good bill. I urge all Senators to support it.

Mr. President, I ask unanimous consent to have printed in the RECORD a document entitled “Compromise on $20 Billion Defense/New York/Homeland Defense Funding.”

The amendment allocates $20 billion as follows:

- Defense: $3.5 billion ($3.8 billion below President).
- New York/NJ/DC/MD/VA: 8.3 billion ($1.9 billion above the President).
- Homeland Defense: 8.3 billion ($3.9 billion above the President).
- UC/COBRA: 0.0 billion ($2 billion below President).

When combined with the $20 billion allocated by the President, the amendment results in the following allocation of the $40 billion approved in the September 18th supplement:

- Defense: $17.5 billion ($5.5 billion below the President).
- New York/NJ/DC/MD/VA: 11.2 billion ($1.8 billion above the President).
- Homeland Defense: 9.8 billion ($4.0 billion above the President).
- Foreign Aid allocated by President: 1.5 billion (same as the President).
- UC/COBRA: 0.0 billion ($2 billion below the President—in stimulus).
- Unallocated: 0 billion ($0.3 billion below the President).

Highlights of the $20 billion:

- New York and other communities directly impacted by September 11th attacks ($8.2 billion): Examples follow:
  - FEMA Disaster Relief, which funds debris removal at the World Trade Center site, repairs of public infrastructure such as the damaged subway, the damaged PATH commuter train, all government offices and provides assistance to individuals for housing, rental expenses, and relocation assistance, receives $4.35 billion.
  - Community Development Block Grants—$2 billion to help New York restore their economy.
  - Amtrak Security—$100 million for security in Amtrak tunnels.

New York/New Jersey Ferry Improvements—$100 million for critical expansion of interstate ferry service between New York and New Jersey.

The President—in stimulus.

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  - Amtrak Security—$100 million for security in Amtrak tunnels.
Animal and Plant Health Inspection Service: $119 million for enhanced facility security, for support of border inspections, for pest detection activities, and for other areas related to bio-security and for relocation of a facility at the National Animal Disease Laboratory.

Food Safety Inspection Service: $15 million for enhanced food security and for implementation of the Food Safety Bio-Terrorism Protection Program.

Food and Drug Administration: $151 million for enhanced food safety and counter-bioterrorism, including support of additional food safety inspections; expedited review of drugs, vaccines, and diagnostic tests; and enhanced physical and operational security.

State and Local Law Enforcement—$400 million.

FEMA firefighting—$210 million to improve State and local government capacity to respond to terrorist attacks.

Postal Service—$500 million to provide equipment to cope with biological and chemical threats such as anthrax and to improve security for Postal workers.

Federal Antiterrorism Law Enforcement (excluding amounts for New York)—$1.7 billion.

$745 million for the FBI.

$19 million for the U.S. Marshals.

$78 million for the Bureau of Alcohol, Tobacco, and Firearms.

$31 million for Federal Law Enforcement Training Center to train new law enforcement personnel.

$16 million for the Bureau of Alcohol, Tobacco, and Firearms.

$60 million for overtime and expanded aviation and border support for Customs.

$73 million for the Secret Service.

$290 million for increased Coast Guard surveillance.

$95 million for Federal courts security.

$70 million for Justice Department Legal Activities.

$190 million for EPA for anthrax cleanup costs and drinking water vulnerability assessments.

$66 million for EPA for bioterrorism response teams and EPA laboratory security.

$25 million for the FEMA Office of National Preparedness.

$30 million for the IRS.

$27 million for Olympic security.

$210 million for airport security.

$20 million for FAA research to expedite deployment of new aviation security technologies.

$118 million for FAA on airport security?

$109 million for tax security.

$116 million for Customs.

$300 million for FAA for cockpit security, sky marshals and explosives detection equipment.

$50 million for FAA research to expedite deployment of new aviation security technologies.

$18 million for transit security.

$50 million for Essential Air Service.

Port Security improvements—$209 million, including $93 million for DOT and $116 million for Customs.

Nuclear Power Plant/Lab/Federal Facility Improvements—$0.8 billion.

$145 million for Energy for enhanced security at a nuclear weapons plants and laboratories.

$130 million for the Corps of Engineers to provide enhanced security at over 300 critical dams, drinking water reservoirs and navigation facilities.

$30 million for the Bureau of Reclamation for multi-purpose projects.

$36 million for the Nuclear Regulatory Commission to enhance security at commercial nuclear reactors.

$50 million for security at the White House.

$26 million for GSA and the Archives to improve federal building security.

$100 million for NASA for security upgrades at the Kennedy, Johnson and other space centers.

$256 million for improved security for the Legislative Branch.

Nuclear Non-proliferation—$226 million for the safeguarding and acquisition of Russian and former Soviet Union missile nuclear materials and to help transition and retain Russian nuclear scientists.

Border Security—$0.7 billion.

$35 million for CBP to hire increased inspectors on the border and for construction of border facilities, with emphasis on the northern border.

$50 million for the Immigration and Naturalization Service.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. First, let me commend the Senator from West Virginia. Over the years, I have seen him accomplish many feats. None would be more outstanding than what he has done on homeland security for the City of New York. Like Horatio at the bridge, he stood there against all forces, particularly with respect to the executive branch, and otherwise, and made sure we at least got some semblance of homeland security started. It is on account of Senator BYRD of West Virginia.

Mr. BYRD. Mr. President. I thank the Senator for his kind words. I want to say this: If I were out in the streets of a big city and, for some reason, got into a street brawl, I would want Senator HOLLINGS with me. If that ever happened to me, I would say: Senator HOLLINGS, where are you? He is the man I want with me in a tough situation.

Mr. HOLLINGS. And if I were lost on a lonely, dusty road amongst the hills, I would want Senator BYRD with me.

PORT AND MARITIME SECURITY

Clearing House: $15 million for a facility at the National Animal Disease Laboratory. $265 million for GSA and the Archives to improve federal building security.

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The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, under the unanimous consent agreement, can we turn to S. 1214 and ask the clerk to report?

The PRESIDING OFFICER. The clerk will state the bill by title.

A bill (S. 1214) to amend the Merchant Marine Act of 1936 to establish programs to ensure greater security for U.S. Seaports, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina is recognized for 5 minutes.

Mr. HOLLINGS. In my 5 minutes, I thank the distinguished Senator from Arizona, my ranking member, for his kind words. I want to see S. 1214 and ask the clerk to report?

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The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina is recognized for 5 minutes.

Mr. HOLLINGS. In my 5 minutes, I thank the distinguished Senator from Arizona, my ranking member, this is really a bipartisan initiative—Senator GRAHAM of Florida who has been a leader in this regard and also Senator HUTCHISON of Texas.

I also thank the distinguished director of the Commerce, Science, and Transportation Committee, Mr. Kevin Kayes; Mr. Carl Bentzel, the expert on port security who has been working on this since the past several years; and Mr. Matthew Salmon.

We actually reported the bill before September 11 of this year. We have been working diligently to take care of the concerns on both sides of the aisle and both sides of the Capitol. We think this measure can pass expeditiously, as soon as the House returns.

Following the terrorist attacks of Sept. 11, we have worked hard to improve the security of America’s transportation system, starting with the airline security bill just signed into law. However, protecting America from terrorist threats is only as effective as the weakest line of defense. That means every mode of transportation must be secured, including maritime transportation.

The United States has more than 1,000 harbor channels and 25,000 miles of inland, intracoastal, and coastal waterways. Those waterways serve 361 ports and have more than 3,700 terminals handling passengers and cargo. The U.S. marine transportation system each year moves more than 2 billion tons of domestic and international freight, more than 60 percent of oil, transports 134 million passengers by ferry, and hosts more than 7 million cruise ship passengers. Of the more than 2 billion tons of freight, the majority of cargo is shipped in huge containers from ships directly onto trucks and railcars that immediately head onto our highways and rail systems. However less than 2 percent of those containers are ever checked by Customs or law enforcement officials. The volume of maritime trade is expected to more than double by the year 2020, making maritime security even more important for the future. This is a gap in our national security that must be fixed—and it must be fixed before enemies of the United States try to exploit our weakness.

Before discussing the specifics of our bill, I want to read an excerpt from a chilling story published October 8 in the The Times of London:

Intelligence agencies across the world are examining Osama bin Laden’s billion-dollar shipping interests. He maintains a secret fleet, under a variety of flags of convenience, allowing him to hide his ownership and transport goods, arms, drugs, and recruits with little official scrutiny. Three years ago, nobody paid much attention to a crew unloading cargo from a rusting freighter tied up on the quayside in Mombasa, Kenya. The freighter was part of Osama bin Laden’s merchant fleet and the crew were delivering supplies for the team of suicide bombers who went on to blow up the U.S. embassies in Kenya and Tanzania. Bin Laden’s covert shipping interests were hidden at the time, but until now security services have been slow to track down how many vessels he operates.

Lloyd’s List International reported that a NATO country’s intelligence service has identified more than 20 merchant vessels believed to be linked to Osama bin Laden. Those vessels are now subject to seizure in ports all over the world. Some of the vessels are thought to be owned outright by bin Laden’s business interests while others are on long-term charter.

Several weeks ago, a suspected member of the Al Qaeda terrorist network

December 20, 2001

CONGRESSIONAL RECORD—SENATE

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was arrested in Italy after he tried to stow-away in a shipping container heading to Toronto. The container was furnished with a bed, a toilet, and its own power source to operate the heater and recharge batteries. According to the " Maher on DSKCGSP4G1 with SOCIALSECURITY"

through metal detectors, our luggage is have a 98 percent chance of randomly potential terrorists and drug smugglers. In other words, po- only able to inspect between 1 to 2 per- according to the Customs Service, are reported 5.5 million trailer truckloads of outgunned. In the year 2000, we im- 

pected as well as our land borders with national borders that must be pro- 

And that's what seaports are: inter- 

anagement and tactics, and coordi- 

security bill also directly funds more 

their security efforts at our seaports 

these different security agencies and 

enforcement agencies responsible for a 

seaport's security rarely meet to coordi- 

That is what our legislation does—it creates mechanisms to integrate all 

these different security agencies and 

their security efforts at our seaports and the railways and highways that 

converge at our seaports. Our seaport security bill also directly funds more 

Customers officers, more screening 

equipment, and the building of impor- 

tant security infrastructure. 

Each agency is good at what they do individually. But they will be even 

stronger working together to share 

information and tactics, and coordi- 

nating security coverage at our sea- 

ports. More teamwork between these 

federal, state and local agencies—along with our security partners in the pri- 

dary sector—will produce a more 

secure seaport environment that is stronger than the sum of each agency's indi- 

vidual efforts. 

S. 1214, the Port and Maritime Secu- 

rity Act of 2001, requires the Secretary of Transportation to chair a National Security Committee. The Secretary is required to re- 

quest participation of the U.S. Customs Service and invite the participation of other federal agencies with an interest in crime or threats of terrorism at U.S. seaports. The bill also authorizes the establishment of subcommittees, including a subcommittee comprised of Federal, State, and local government law enforcement agencies to address port security issues, and law enforce- 

ment-sensitive matters. 

The Committee is required to advise on long-term solutions for maritime and port security; coordination of information-sharing and operations.
among federal, state and local governments, and area and local port and harbor security committees; conditions for maritime security loan guarantees and grants; and the development of a National Maritime Security Plan. Given the varied nature and geographical structure of our port system, it will be important to consider private sector input. A one-size-fits-all approach will not work because we are looking at a wide variety of waterside facilities and maritime transportation-related infrastructure.

The bill will mandate, for the first time ever, that all ports and waterfront facilities have a comprehensive security plan approved by the Secretary of Transportation. An element of port security often overlooked are the intermodal means for transporting cargo from the ships: railroads, highways, and barges. The bill requires that all the modes of oral different ports converging at the port be covered by a port’s security plan. To make the entire waterfront environment more secure, any facility that might pose a threat must tend to avoid duplicating costs. However, we will do more than just mandate security plans. We will have security experts to assess waterfront and port security, and provide these assessments to the individuals in charge of making security plans. Assessment information will be invaluable in helping the industry use the best information in order to complete effective security plans. The bill requires the Secretary to incorporate existing programs and practices when reviewing and approving security plans. The Department of Transportation will have to take into account the different security needs of each port. The Department must recognize and harmonize existing security practices to avoid duplicating costs. However, recognition of existing practices should not require the Department to endorse or approve the facilities.

At the seaport level, the bill will establish local port security committees at each U.S. seaport. The section would require membership of these committees to include representatives of the port authority, labor organizations, the private sector, and Federal, State, and local governments and law enforcement. The Committees would be chaired by the Coast Guard Captain of the Port 4 times per year. The Committees would be responsible for coordinating planning and other port security activities; making recommendations for the port security evaluations; annually reviewing security preparedness during a full-scale security exercise at least once every 3 years. These committees will play a vital role—day to day and month to month—coordinating the actions of law enforcement and the private sector in combating threats of terrorism and crime.

The bill requires the Secretary of Transportation, in coordination with the Director of the FBI, to ensure that all area maritime counter-terrorism and incident contingency plans are reviewed, revised, and updated no less than once every three years. The Secretary shall ensure that local port security committees conduct annual simulations for all such plans, and actual practice drills at least once every three years. The plans should be comprehensive and address terrorist threats to waterfront facilities and adjacent areas, cover elements of prevention and protection as well as response. I would hope that the Secretary would take steps to ensure that area maritime counter-terrorism and incident contingency plans are coordinated with security plans.

The bill creates standards and procedures for training and certifying maritime security professionals. The bill requires the Secretary of Transportation and the Federal Law Enforcement Training Center, FLETC, to establish a Maritime Security Institute for training security personnel, in accordance with internationally recognized law enforcement standards. I look forward to working with the Department of Transportation and the FLETC to develop standards and professionalize maritime law enforcement and security forces. I have worked with FLETC to establish a facility in Charleston, South Carolina to train Border Patrol personnel. I also look forward to working with the Secretary and FLETC to develop the Maritime Security Institute.

The legislation requires the Secretary of Agriculture, Secretary of the Treasury, Secretary of Transportation, and the Attorney General to work together to establish shared dockside inspection facilities at seaports for Federal and State agencies. At some U.S. ports, federal investigators and inspectors do not have any space available to conduct inspections and they have to route the cargo to other places before inspection. In other words, it would be similar to Customs officials at JFK airport asking arriving international passengers to take a cab to the Customs downtown in order to have their bags inspected. That is just not right.

To improve seaport security tactics, the bill directs the Secretary of Transportation to immediately establish professional and security teams for the purpose of responding to terrorist activity, criminal activity, or other threats to U.S. ports, especially in strategically important ports. The units shall consist of personnel trained in anti-terrorism, drug interdiction, navigation assistance, and facilitating responses to security threats. I want to thank Senator Edwards for his work on this security team initiative. I was pleased that we were able to include in the bill two other amendments authored by Senator Edwards that would promote research and development funds for non-intrusive scanning technology; the second establishes standards for locking marine containers. These amendments will contribute greatly to increasing security at our seaports.

Ports, terminals, waterfront facilities, and adjacent facilities will be required to immediately implement incident contingency plans for coordinating planning and other security measures, including securing their perimeters. The Secretary of Transportation will then prescribe regulations for the aforementioned parties to follow when designing the required maritime security plans. An important point is that the regulations will require ports to control and limit personnel access to security-sensitive areas. Ports also will be required to limit cars and trucks in security-sensitive areas, restrict firearms and other weapons, coordinate local and private law enforcement, and develop an evacuation plan. While the bill requires security programs to be individually tailored due to the varied nature of different ports, the Department of Transportation and the Attorney General will require certain elements to be incorporated in implementing new regulations. I would hope that the Department would review the feasibility of establishing a nationwide credentialing process. If we can harmonize identification procedures we can eliminate duplication and reduce costs.

The Secretary of Transportation will write regulations to designate controlled access areas in the Maritime Facility Security Plan for each waterfront facility and other covered entities, and require ports to limit access to security-sensitive information, such as passenger and cargo manifests. The regulations may require physical searches of persons entering controlled access areas or exiting such areas, security escorts, and employment history and criminal background checks for individuals with unrestricted access to controlled areas or sensitive information. An individual will be eligible to work in such ports if they meet the criteria established by the Secretary, and a background check does not reveal a felony conviction within the previous 7 years, or release from prison during the previous 5 years. An individual that otherwise may have been disqualified from a security-sensitive position may still be hired if the employer establishes alternate security arrangements acceptable to the Secretary. The bill would allow the Secretary to access FBI, fingerprint, and other crime databases to conduct background investigations, and transmit the results to port authorities or other covered entities. The bill also would require the Secretary and the Attorney General to establish and coordinate reasonable fees may be charged for the background checks.

The intent of conducting criminal background checks of port employees, employers and other maritime transportation-related employees, or maritime employees of the existing work relationships or dynamics. Rather the background checks are intended to identify legitimate criminal
and national security risks. The Secretary of Transportation will write regulations outlining how background checks should be conducted, and will be responsible for conducting the background checks. In the aviation security bill, Congress created a Deputy Secretary for Transportation Security. The person in that position should be responsible for implementing the national security check program.

The Secretary also will determine whether certain positions are controlled-access areas. Clearly, not all areas in ports are security risks areas justifying designation as such. I would suggest that controlled access areas include areas where ships tie up carrying combustibles, or storage areas for combustibles or explosives, areas where security admit credentialed persons into the port or terminal areas, or areas in the port or terminal where containers are opened or exposed. However, the Secretary will have the discretion to determine which areas are controlled-access areas. Clearly, not all areas in ports are security risk areas justifying designation as such. I would suggest that controlled access areas include areas where ships tie up carrying combustibles, or storage areas for combustibles or explosives, areas where security admit credentialed persons into the port or terminal areas, or areas in the port or terminal where containers are opened or exposed. However, the Secretary will have the discretion to determine which areas are controlled-access areas. The Secretary will have the discretion to determine which areas are controlled-access areas.

The bill gives the Secretary of Transportation additional authority to address security risks arising from foreign ports, such as enhanced enforcement against vessels arriving from such port, travel advisors for passengers, suspension of the right of a United States vessel to enter such port, and authority to assist foreign port authorities to maintain an appropriate level of security. The Secretary of Transportation would be authorized to work through the Secretary of State to notify foreign countries of security problems with their ports, and to publish a list of ports with insufficient security that would be posted prominently at U.S. ports, on passenger tickets, and as a travel advisory by the State Department. The Secretary of Transportation, after consultation with the Secretary of the Treasury, may require the condition of port entry into the U.S. for any vessel arriving from a port listed as not secure. In particular, I would like to commend both Senator KERRY, who chairs the Coast Guard Subcommittee, and Senator BREAUX, who chairs the Surface Transportation and Merchant Marine Subcommittee, for their efforts on this front.

Senators KERRY and BREAUX authored another critical section of this bill: the Sea Marshal program. The bill would authorize the Coast Guard to board vessels in order to deter, prevent, or respond to acts of terrorism or otherwise provide for the safety and security of the port and maritime environment. We would authorize $13 million over five years for this new Coast Guard enforcement. The provision in question also requires the Secretary to evaluate the potential of using licensed U.S. merchant marine personnel to supplement the law enforcement efforts of the U.S. Coast Guard.

The bill would authorize the President, without prior notice or a hearing, to suspend the right of any vessel or person of the United States to enter from a foreign port or depart to a foreign port in which a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to that port, or if a public interest requires the suspension of trade between the United States and that port. The bill would authorize the imposition of civil penalties of up to $50,000 for violating the law.

S. 1241 would require that we know more about the cargo and crew members entering into the United States. The more we know about a ship’s cargo, and where it originated, the better we can ensure that our ports and the United States are safe. The bill would urge that it be used only in the most extreme cases, and that enforcement alternatives for handling offending cargo interests be pursued in order not to disrupt all the other legal cargoes. But for the shippers who are not transparent, we will require it. By giving Customs advance cargo information, we can better screen imported cargo.

Specifically, the legislation requires carriers, including non-vessel-owning common carriers, to provide by electronic transmission, cargo manifest information in advance of port entry or clearance. However, the Secretary of Treasury may exclude classes of vessels for which the cost of such requirements are not necessary, and in some cases such as trucking, where the electronic transmission may not be possible. Customs should use its authority to require electronic transmission, but recognize, because of the nature of certain categories of transport, that it may not be possible to conduct electronic transmissions in every situation. The bill also outlines the cargo and route information that must be transmitted to Customs.

The bill prohibits the export of cargo unless properly documented, and no marine terminal operator may load, or cause to be loaded, any cargo that is not documented. The bill requires the U.S. Customs Service to be notified of improperly documented cargo that has remained in a marine terminal for more than 48 hours, and authorizes the Secretary to order that cargo to be searched, seized, and forfeited. Undocumented cargo should not sit in port areas for extended periods of time. Specifically, shippers who file Shippers Export Declarations (SEDs) by paper shall be required to provide a copy of the SED to the carrier; shippers who file their SEDs electronically shall be required to provide the carrier with a complete master bill of lading or equivalent shipping instructions, including the Automated Export System number. While it is important that we obtain certain crucial pieces of information about cargo, Customs should recognize that certain ele-

An important part of the legislation creates new requirements for the documentation and electronic transmission of passenger information in advance of entry or clearance into a port. It is important that the shippers have advanced information on foreign passengers and crew members to ensure that we are not admitting security risks. Evidence indicates that materials used in terrorist attacks in Kenya and Tanzania were shipped by vessels owned and operated by Osama bin Laden. More information—and more credible information—about foreign entrants will be vital given the volume of vessels, cargo and crew members entering into U.S. waters. In establishing such regulations, Customs should work with all federal agencies to harmonize data reporting requirements to ensure that entrants into the United States only require to file one set of policies such as INS pre-qualification of crew members between specific pre-approved train routes between the United States and Canada should be allowed to continue. Such policies ensure advance compliance, and stimulate regular cross-border operations, while not jeopardizing security.

I am also pleased that we were able to accept an amendment authored by Senator CLELAND to allow the Commissioner of Customs to develop a pilot program to pre-clear cargo into the United States if it is determined that such program would improve the security and safety of U.S. ports. However, before implementation of such a program, Customs and other agencies should ensure that it would not compromise existing procedures for ensuring the safety of these ports and the United States. The pilot program should be used to determine whether we can successfully shift the submission of cargo and cargo security to points outside the United States, and also ensure that the subsequent delivery of cargo is accomplished in a
way that protects against tampering and maintains the integrity of the cargo seal.

The bill directs the Customs Service to improve reporting of imports, including consigned items and goods, of in-bond movement at U.S. ports. Current policies can sometimes allow goods to travel into the United States, and travel for, in some instances, up to 37 days, without recording formal entry. The bill will require the reporting of in-bond movements prior to arrival to ensure advance filing of information identifying the consignee, consignor, country of origin, and the six-digit harmonized tariff code. The new information must be electronically filed by the importer of record, or its agent. This information will better enable Customs to track cargo and to intercept any suspicious cargoes in a more timely fashion. This reporting is not intended to reflect formal entry, but will allow Customs to use their targeting teams to in-bond and where current policies make it difficult to enter relevant targeting data.

Within 6 months of the bill’s enactment, the bill would require a report that evaluates the feasibility of establishing and maintains a database to collect and analyze information, including the feasibility of establishing a Joint Inter-Agency Task Force on Maritime Intelligence. Additional information, and coordination of information will be crucial in allowing law enforcement to evaluate threats in advance of U.S. arrival. Ultimately, policies allowing us to identify risks abroad will help us avoid being forced to rely on policies of deterrence and prevention on U.S. soil.

Perhaps most importantly, we need to give seaport authorities the resources to get the job done. It would be great if we could simply declare our ports to be more secure. However, it takes money to make sure the international borders at our seaports are fully staffed with Customs, law enforcement, and Immigration personnel. It takes money to make sure they have modern security equipment, including the latest scanners to check cargo for the most dangerous materials. And it takes money to make sure the physical infrastructure of a secure port is working. Our bill will provide $219 million over four years directly to these important national security functions. Cargo ships currently pay a tax on the gross registered tonnage the ship can carry. That tax rate, in current law, is scheduled to decline beginning in 2003. Our bill will simply extend the existing tax rate—which has been imposed since 1986—until 2006. All those revenues will be directed to help beef up security. These tax revenues will have to be appropriated, but they can only be spent on the programs authorized by this seaport security bill.

However, the funds provided directly by the tax extension are insufficient to cover all of the port security needs. So the bill includes additional authorizations of $865.5 million that Congress can appropriate as our colleagues come to realize the important security needs that must be met in the defense of our nation. Absent the realization of these authorized funds, Congress will be imposing an unfunded mandate on states and the private sector to secure our nation’s maritime border.

The money will help pay for many of the items previously mentioned, and additionally will be focused on building infrastructure at our seaports, including gates and fencing, security-related lighting systems, remote surveillance systems, concealed video systems, and other security equipment. The bill will directly fund and authorize $330 million in grants to local port security projects. Specifically, the bill amends the Merchant Marine Act of 1936 to provide grants to cover costs of projects, of which the federal government will pay up to 75 percent. Projects under $25,000 would not have a matching requirement, and the Secretary may approve federal contributions above 75 percent to a project when the Secretary deems to have high merit.

The bill also will fund loan guarantees that, according to regular credit risk premiums for federal loans, could cover as much as $3.3 billion in long term loans to port authorities acting to improve their security infrastructure. The loans could not cover more than 87.5 percent of the actual cost of a security infrastructure project, and can extend for up to 25 years. The loan authority will be funded through the federal government to leverage funds by extending credit to cover loans for security infrastructure, and can help port authorities reduce their capital costs for security infrastructure by amortizing it over time. Ultimately, this policy will help us build an infrastructure at our maritime borders in the most cost-effective way. The bill makes directly available and authorizes $166 million to cover the credit risks of loans extended under this provision.

U.S. Customs officers must be able to screen more than just 2 percent of the cargo coming into our seaports. Investing in new screening technologies will help human screeners inspect more cargo, and detect the most dangerous shipments. To increase the amount of cargo screened, the bill authorizes $345 million for FY02 for additional Customs personnel, and to help Customs update their computer systems concerning appropriate shipping. Our bill includes $168 million to purchase non-intrusive screening and detection equipment for the U.S. Customs Service.

While we cannot expect to screen every container entering into the United States, we need to provide some expectation of inspection, or create a negative impression that disuade smugglers from using the intermodal system to smuggle cargo. We are so busy investing in a anti-ballistic missile defense system, we fail to see perhaps even a greater threat: a cargo container equipped with a digital global positioning system can be delivered anywhere in the United States for less than $5,000. Why would the enemies of America spend millions on a rocket launcher and go up against the U.S. Air Force and U.S. Navy when they could spend $5,000 to ship a container full of explosives or other dangerous materials that has only a two percent chance of being inspected?

The bill also will authorize $75 million to establish a grant program to fund the development, testing, and transfer of technology to enhance security at U.S. seaports. The screening technology would focus on finding explosives or firearms, weapons of mass destruction, chemical and biological weapons. The grant would exceed 75 percent of the research program.

This bill is the product of bipartisan compromise. I want to thank the Administration for their efforts to produce this legislation. I also want to thank the Maritime Administration, Coast Guard and Office of the Secretary who all played a vital role in helping draft the bill. I had intended to work to include legislation that would increase various maritime criminal statutes. Unfortunately, in the crush of time we were unable to clear these amendments. I think that both Senator MCCAIN and I agree that these amendments are really important to be included in the final legislation on seaport security, and I will work with the Administration, and Chairman LEAHY and Ranking Member HATCH of the Judiciary Committee to include provisions updating our maritime criminal laws.

The bill would require the Secretary of Transportation to prepare and publish a National Maritime Transportation Security Plan for prevention and response to maritime crime and terrorism. The plan would include an allocation of duties among federal departments and agencies and among state and local governments and agencies; procedures and techniques for preventing and responding to acts of crime or terrorism; and designation of the federal official who shall be the Federal Maritime Security Coordinator for each area for which an Area Maritime Security Plan is required and prepared. Additionally, the bill would also require the Secretary of Transportation to establish Area Maritime Security Committees comprised of members appointed by the Secretary. Each Area Maritime Security Committee would be required to prepare a maritime security plan, and work with state and local officials to enhance contingency
planning. Each Area Maritime Security Plan must be submitted to the Secretary of Transportation. The plans are required to outline how to respond to an act of maritime crime or terrorism in or near the area, describe the area covered by the plan, and describe in detail the implementation of each security plan. This requirement is similar to the planning requirements that we mandated in the Oil Pollution Act for oil spill response, and will help ensure that we have local, regional and national plans in place to address this threat.

Mr. MCCAIN. Mr. President, once again I thank Chairman HOLLINGS for his efforts to address identified safety and security problems at our Nation's seaports. As I've stated before, S. 1214 today is designed to address port security lapses that have been under review by the Senate Committee on Commerce, Science, and Transportation for the past two years. After hearings earlier this year and last year, the Commerce Committee reported out S. 1214 in August. The bill is intended to provide both the guidance and funding needed to improve seaport security. I commend Chairman HOLLINGS' leadership on this very important issue to transportation security.

It is widely reported that transportation systems are the target of 40 percent of terrorist attacks worldwide. Since September 11, we have been working on a bipartisan basis to address the nation's most pressing needs in the wake of the terrorist attacks. The Senate Commerce Committee has been conducting a series of hearings to gain the information we need to help us evaluate potential transportation security risks and determine how best to respond to those potential risks.

While it is impossible to precisely quantify, there is no question that an attack on any one of our nation's 361 seaports would have far-reaching effects. With approximately 30 percent of our Nation's foreign trade moving through our seaports, the impact of such an attack would ripple through our Nation. Businesses nationwide would face problems getting supplies and exporting finished goods. Our entire economy would be impacted.

Both the Hart-Rudman Report on Homeland Security and the Interagency Commission on Crime and Seaport Security found our seaports to be vulnerable to crime and terrorism. While there is no way to make our Nation's seaports completely crime free and impenetrable to terrorist attacks, the bill before us today is a very strong first step in closing the gaps in our national security that now exist at our seaports.

I want to point out to my colleagues that the Commerce Committee has acted on S. 1214 prior to the September 11 attacks. As a result of the attacks, members of the committee and others have worked together to further modify the legislation to provide direction and funding to the agencies involved to focus their efforts not only on decreasing crime in our seaports, but to also increase protection against terrorist attacks.

In our efforts to increase our nation's seaport security, we have worked to take into account not only the wide range of threats and crimes surrounding our seaports, but also the unique nature of our ports. As I have said before, a “one-size-fits-all” approach will not work. Our ports are complex and diverse in both geography and infrastructure. This is why we have worked to ensure this provides for direct local input into the development of security plans for their ports, as well as for response plans for local responders should an attack occur.

S. 1214 would address a wide range of security shortcomings at our Nation's seaport that were identified in the Interagency Commission on Crime and Security in U.S. Seaports that was issued September 2000. According to the Commission's report, seaport crime encompasses a broad range of crimes, including the importation of illicit drugs, contraband, and prohibited or restricted merchandise; stowaways and alien smuggling; trade fraud and counterfeiting; smuggling of mislabeled or mis-stated merchandise; cargo theft; and the unlawful exportation of controlled commodities and munitions, stolen property, and drug proceeds. These crimes are violations of federal law, and therefore, the primary responsibility for enforcement falls to Federal agencies. This bill would give those agencies the authority and funding needed to make up for these shortcomings.

Additionally, the bill would provide needed improvements in preventing terrorist attacks at our Nation's seaports. While seaports represent an important component of the nation's transportation infrastructure, seaports' level of vulnerability to attack is high, and such an attack, as I just mentioned, has the potential to cause significant damage. The commission found little control over the access of vehicles and personnel to vessels, cargo receipt and delivery operations, and passenger processing operations. The port officials were able to identify was the lack of a generally accepted standard for physical, procedural, and personnel security at...
seaports that left seaports wide open for attack. This bill will allow the Department of Transportation, along with Federal, state and local law enforcement to take actions to close the security holes at ports nationwide.

The bill would provide $1.18 billion for seaport safety and security. The bill would require, for the first time ever, the Department of Transportation to assess the security status of U.S. seaports and require each port and related facility to submit security plans for review and approval. The bill would also improve advance reporting requirements for entry into the United States, provide more funding for screening equipment, facilitate law enforcement coordination at U.S. seaports, and authorize grants and loan guarantees to seaports and marine terminal operators to help finance the purchase of security equipment and defray the costs of security infrastructure.

I want to mention that while the Congress has already worked to approve aviation security legislation, and we are now moving forward on port security, both Chairman HOLLINGS and I remain committed to continuing our agenda for next session to address transportation security issues in all modes of transportation, including railroads and buses.

I urge my colleagues swift approval of this critical legislation.

Mr. President, allow me to congratulate our distinguished chairman of the Commerce Committee, Senator HOLLINGS, for his outstanding work in putting together S. 1214, The Maritime and Port Security Improvement Act. I also wish to congratulate Senators GRAHAM and MCCAIN for all of their hard work in moving this very important legislation that is crucial to homeland defense.

I also wish to recognize Carl Bentzel of the Surface Transportation and Maritime Subcommittee—and as a resident of a State that relies so much on the smooth operation of its waterways and ports—maritime security is one of my primary concerns.

My constituents live close to waterways and the Gulf of Mexico, and in many cases earn their living from our marine transportation system and its associated industries. So, as the Chairman of the Surface Transportation and Merchant Subcommittee—and as a resident of a State that relies so much on the smooth operation of its waterways and ports—maritime security is one of my primary concerns.

The security of our commercial sea and river ports has rarely been the focus of our national security plans. We have invested millions of dollars to
protect our airports and our land borders, but very little toward making sure that the goods and people arriving at our ports do not jeopardize our security. We know that Osama bin Laden controls a network of ships that hides his ownership. We have to assume that other terrorists or terrorist networks do, too. Therefore it is imperative that we take a more active Federal role in protecting the international boundaries of our seaports.

There is a unified Federal plan for overseeing security at the international borders of our sea ports. Right now the responsibility of building secure sea and river ports rests with states like Louisiana, its port authorities, and the private sector. That was a poor model for national security when we were fighting drugs and international smuggling—and it is totally inadequate after September 11 as we face the threat of terrorism.

That is why we must pass S. 1214, the Port and Maritime Security Act. For the first time we will require Federal approval of port security programs. These plans will have to meet rigorous standards for security infrastructure, screening equipment, evacuation systems, security controls, and back-ground checks for workers in security-sensitive areas.

We also will require more information about the cargo and passengers arriving at our ports. Right now we do not know enough about the cargo of the ships that call 24 hours a day. We need to change that immediately. We will require that ships electronically transmit their cargo manifests—and if the manifest does not match the cargo, it will not be unloaded. We also will check crew and passenger manifests in-formation to identify people who could pose a security threat. My Sub-committee held a hearing on rail and maritime security in the aftermath of the events of September 11. At that hearing we heard testimony that the Republic of Panama had issued more than one thousand false documents that allow unauthorized personnel to operate on-board their vessels.

More information—more reliable information—is the key to fighting crime and terrorism. The more we know about these ships, including who owns them and where they have been, the better we can target our law enforcement efforts at our ports to check on the most suspicious loads. We need to know who is on these ships, and, eventually, be able to quickly check the names with a computer database of known terrorists or other associates of international criminal organiza-tions.

This bill will require Federal, State and local law enforcement officials to better coordinate the sharing of that information. If a local police officer ar-rests someone for breaking into a secure area of the port, timely sharing of that information with State and Fed-eral officials might help identify the person as part of a larger international network. It is critical that Customs agents work with the local police, that the State police work with Immigration officials, and that the FBI work with local port authorities. That type of cooperation will dramatically im-prove port security. Seaports have many different agencies and jurisdic-tions. So this bill attempts to har-monize their efforts, and will require the Coast Guard, in their role as Cap-tain of the Port, to lead the coordina-tion of law enforcement.

The businesses that operate in sea-ports also play a crucial security role. They must be brought into a coopera-tive environment in which a port’s law enforcement information is commu-nicated and shared confidentially with privately-hired security officers. In re-turn, private security officers must have a direct line to share information with Federal, State, and local authori-ties.

To verify that the cargo loads match the manifests, we will need more Cus-toms officials to check that cargo. In-credibly, only 2 percent of the cargo containers arriving at our ports are ever checked by Customs officials. That is a huge hole in our national secur-ities, and we cannot force States and the private sector to comply with security mandates, yet not provide funding. The legis-lation will directly fund and author-ize $3.3 billion for the purchase of non-intrusive screening and detection equipment to be used by U.S. Customs officers. These Customs officers are on the front lines of protecting our country from the importation of illegal and dangerous goods. We must give them the latest technology and the most modern cargo screening equipment available.

We also must help the private sector and the port authorities meet these na-tional security challenges. This prob-lem would be must more simple to solve if the United States had national seaport security plans. However, that is not the case. Maritime infrastructure is owned by States and by the private sector. But the Federal Government has a role to play here for homeland security. We cannot force States and the private sector to comply with security mandates, yet not provide funding. The legis-lation will directly fund and author-ize $5.5 billion to fuel port security projects. The bill will also fund loan guarantees that could cover as much as $3.3 billion in long term loans to port authorities acting to im-prove their security infrastructure. Up-grading that infrastructure means in-stalling modern gates and fencing, se-curity-related lighting systems, remote surveillance systems, concealed video systems, and other security equipment that contributes to the overall level of security at our ports and waterfront fa-ci-lities.

Some of our shipping companies may worry that these new procedures re-quire more security and customs checks will slow the flow of inter-national commerce. But as we did in the airline security bill, we can strike the balance between increased security and the convenience of our open coun-try and economy. In Louisiana, our sea and river ports are a way of life, and an integral part of our economy. We have some of the largest seaports in America, and the Mississippi River runs through the heart of Louisiana. The river is a super-highway of commerce that helps drive our economy.

Security and the protection of our people from harm always will be our primary goal. However, we must do it in a way that does not dramatically slow the movement of goods and does not run afoul of our just-in-time-delivery economy. The answer to that problem is technology.

New scanners are now on the market that can x-ray and scan an entire 48-foot cargo container. Customs cur-rently depends primarily on gamma-ray systems that are adequate for see-ing through small vehicles or loosely-packed crates. But more powerful X-ray based machines—already used in Israel and the Netherlands and Hong Kong—can pierce several inches of steel and peer through more densely packed boxes. These machines can see everything from false compartments down to the buttons on a remote control. And they can be programmed to spot “density signatures” that indicate explosive and nuclear materials. The more the Federal Government, ports and the private sector invest in using this new scanning technology, the fewer cargo containers and boxes will have to be opened and searched by hand. That will increase the efficiency of international commerce and trade—while at the same time making our na-tion more secure.

Investing in scanners is even more critical when you consider that the ex-panding global economy raises the vol-ume of seaborne shipping by 7 to 10 per-cent each year. In other words, the amount of goods we ship through our seaports is expected to double by 2020. While that increased trade will benefit our economy, it also poses a national security threat if we are unable to keep pace with the growing volume of goods and people passing through our ports.

That is why the private sector must get behind our efforts—and behind this bill. Before September 11, port security was something of an afterthought. We now know enough about the new threat. The more we invest in the infrastructure of mak-ing our ports secure, the less likely that your key products and supplies will be delayed at the ports due to in-creased security. As public officials, our primary duty is to protect public safety and national security. If the pri-vate sector engages and cooperates with our efforts, there will be less im-pact from that tightened security upon the free flow of goods and supplies through our ports. Our goal is a public-private partnership that can work—and protect America at the same time.
We have made the investments at our airports and at our land borders to counter threats of terrorism and other international criminal organizations. It is now time to invest in the security of the international borders at our seaports. Over the last ten years, the total volume of imported and exported goods at seaports is expected to increase threefold.

Mr. NELSON of Florida. Mr. President, I rise to thank Chairman HOLLINGS and ranking member MCCAIN for agreeing to include in S. 1214, the Port and Maritime Security Act, a Coast Guard and Navy study to evaluate the merits of establishing a Center for Coastal and Maritime Security.

The events of September 11 cruelly illustrated the challenges we face in providing comprehensive and reliable security for our homeland. There is no challenge more daunting than the integration of our Federal, State and Local law enforcement agencies and their coordination efforts, with our Armed Forces, to protect our vast and complex maritime and industrial areas.

My amendment directs the administration to seriously consider establishing an institution that can provide integrated training for the organization, planning and execution of security systems necessary to protect our vulnerable ports and coasts from potential terrorist attacks.

I am grateful for the inclusion of language directing this study because the U.S. Navy's Coastal Systems Station in Panama City, Florida is uniquely staffed with coastal security experts to help the Coast Guard conduct this assessment. In analyzing the current and benefits of a Coastal and Maritime Security Center, I urge the Coast Guard to work closely with the Coastal Systems Station to ensure the best possible recommendation for the Administration and Congress.

Mr. President, I am confident that the study directed by this language will conclude that an investment in interagency integrated education and training to improve the protection of our ports is in the very best interests of our national security.

Mr. GRAHAM. Mr. President, this bill would take a significant step toward securing our Nation against future terrorist actions. Just as we have unanimously decided to bolster security at our airports, we must also improve the overall security and cargo processing operations at U.S. seaports.

If nothing else, September 11 has demonstrated the need to do more to secure our Nation from terror—whether it comes from land, sky or sea. Before discussing the specifics of this legislation, it is important to describe the circumstances that have caused the security issues at our seaports.

Seaports represent an important component of the Nation’s transportation infrastructure.

Each year, thousands of ships and millions of passengers enter and leave the United States through seaports. It is estimated that 95 percent of the cargo that enters the country from noncontiguous countries does so through the Nation’s 361 coastal and inland ports.

Alarming, less than 2 percent of this enormous number of cargo containers are actually inspected.

Over the last ten years, the total volume of imported and exported goods at seaports is expected to increase threefold.

Waterborne cargo alone contributes more than $750 billion to the U.S. gross domestic product and creates employment for 13 million people.

Despite the massive volume of cargo that moves through our Nation’s ports, there are no Federal security standards or guidelines protecting our citizens from potentially lethal cargo.

The Federal Government does not provide the resources for technology that an adequately screen cargo moving through our ports, leaving them vulnerable to criminal activity—from smuggling to cargo theft to terrorism.

Insecurity at our borders is given substantially less Federal consideration than airports or land borders.

At U.S. seaports, the Federal Government invests nothing in infrastructure, other than the human presence of the U.S. Coast Guard, U.S. Customs Service, and the Immigration and Naturalization Service, and whatever equipment those agencies have on-hand to accomplish their mandates.

Physical infrastructure is provided by State or local controlled port authorities, or by private sector marine terminal operators.

There are no controls, or requirements in place, except for the minimal standards promulgated by the Coast Guard for the protection of cruise ship passenger terminals.

Essentially, where seaports are concerned, we have abrogated the Federal responsibility of border control to the State and private sector.

In the face of these challenges, it appears that the U.S. port management system has fallen behind the rest of the world.

We lack a comprehensive, nationwide strategy to address the security issues that face our seaport system.

In early 1998—in response to the most daily reports of crime and narcotics trafficking at Florida seaports, and following the day 1 I spent working with the Customs Service at Tampa’s Port Mayaguez on October 14, 1997—I began an investigation of the security situation at seaports throughout the nation. At that time, and perhaps even more so today, I was very concerned that our seaports, unlike our airports, lacked the advanced security procedures and equipment that are necessary to prevent acts of terrorism, cargo theft and drug trafficking.

Based on this workday, and subsequent investigation, I asked President Clinton to establish a Federal commission to evaluate both the nature and extent of crime and the overall state of security in seaports and to develop recommendations for improvement.

In response to my request, President Clinton established the Interagency Commission on Crime and Security in U.S. Seaports on April 27, 1999.

In October 2000, the Commission issued its final report, which outlines many of the common security problems discovered in U.S. seaports. Among other conclusions, the Commission found that: one, intelligence and information sharing among law enforcement agencies needs to be improved at many ports; two, that many ports do not have any identity checks of the threats they face, because vulnerability assessments are not performed locally;

Three, that a lack of minimum security standards at ports and at terminals, warehouses, and trucking firms leaves many ports and port users vulnerable to theft, pilferage, and unauthorized access by criminals; and four, advanced equipment, such as small boats, cameras, vessel tracking devices, and large scale X-rays, are lacking at many high-risk seaports.

Our legislation addresses the problems of our seaports by instructing the Attorney General to coordinate the reporting of seaport related crimes with State law enforcement officials, so as to better analyze the reporting of data on cargo theft.

The bill would also increase the criminal penalties for cargo theft.

To address the lack of minimum security standards at America’s seaports, the bill would require Federal programs to be developed by each port or marine terminal.

Each security program will be submitted to the Security of Transportation for review and approval.

These security programs would require maintenance of both physical and procedure security for passengers, cargoes, crew members, and workers; provisions for establishing secure areas within a waterfront; creation of a comprehensive process to restrict access to restricted areas so only authorized individuals gain admittance; restriction of vehicular access; development of an evacuation process from port areas in the event of a terrorist attack or other such emergency; and establish security awareness for all employees.

Our bill requires the Coast Guard, in consultation with the appropriate public and private sector officials and organizations, develop a system of providing port security-threat assessments for U.S. seaports. The bill would authorize $60 million over 4 years to carry out this provision.

The Seaport Commission report found that current inspection levels of containerized cargo are insufficient to control potential security risks.

This bill will authorized $168 million over five years, for the Customs Service to purchase non-intrusive screening and detection equipment for use at U.S. seaports.

It would also authorize $145 million for 1,200 new customs inspector positions, and 300 new customs agent positions.
The bill would also create a research and development grant program to provide grants up to 75 percent of the cost of construction, acquisition or deployment of technology to help develop non-intrusive inspection technologies.

The bill would authorize $15 million annually for fiscal year 2002 to fiscal year 2006 for this purpose.

Implementing the provisions of the Port and Maritime Security Act of 2001 will provide concrete improvements in the efficiency, safety, and security of our Nation’s seaports, and will result in a demonstrable benefit for those who are currently pay tonnage duties.

This legislation is long overdue—that became too apparent the morning of September 11. Not only is it required to facilitate future technological advances and the anticipated increases in international trade, but it would ensure that we have the sort of security controls necessary to protect our borders from terrorist aliens, drug smuggling and terrorism.

As we work to lift our Nation’s fear of travel in our skies, we must also move to guarantee their safety on our seas.

This bill does not affect just those states with ports.

Each day 16,000 containers arrive in the United States. A single container can hold 30 tons.

These containers are either transported by truck or by rail throughout the United States.

To illustrate my point, I have a chart here which depicts a normal route of a cargo container during the Port of Los Angeles and arriving in New York.

These containers travel across America, often more than a dozen States before reaching their destination.

Our seaports are our first line of defense in preventing a potential tragedy.

Seaports play one of the most critical roles in expanding our international trade and protecting our borders from international threats.

The Port and Maritime Security Act” recognizes the importance of our seaports and devotes the necessary resources to move ports into the 21st century.

I urge my colleagues to look towards the future by supporting this critical legislation—and by taking action to protect one of our most valuable tools for promoting economic growth.

Mr. CLELAND. Mr. President, I rise today to commend improvements in the Port Security and Improvement Act. This legislation is overdue and absolutely needed in broadening our response to the threat of terrorism.

The Report of the Interagency Commission on Crime and Security in U.S. Seaports, issued in the fall of 2000, indicates that “the state of security in U.S. seaports generally ranges from poor to fair, and in a few cases, good.”

Now that this country is acutely aware of the repercussions of overlooking transportation and seaport security, Congress would be severely remiss if we did not act promptly to improve on the “poor to fair” rating at our ports.

I believe that technology can play an important role in ensuring the integrity, safety, and security of goods coming into this country via ship. To that end, my amendment that is included in S. 1214 establishes a pilot program run and operated by the Customs Service to examine different technologies and how they can be employed to verify that a container’s contents are what they say are and that they have not been tampered with during transport. With effective such technologies could then enter U.S. ports on an expedited basis. With 95 percent of foreign trade entering or leaving the U.S. via ship, allowing a quicker entrance by certain “trusted shippers” will allow a quicker conveyance to American consumers.

Already, I have seen outstanding demonstrations from people all over this country of their detection technologies and how they can be used to improve security. My amendment is a challenge to these innovators to develop such technologies for use in the shipping world.

Additionally, I have heard testimony from maritime experts that America needs to find ways to “push its borders back.” By “pushing back” our borders the intention is to ensure the integrity and inspection of goods entering the country at points farther out from our physical borders. If this process can be taken care of in a foreign port, confidence in the integrity of the goods increases and time is saved by domestic inspectors who can use their resources for something else.

It is our intent to ensure the securing of goods in the port of origin so that when these goods arrive in the U.S. we can be assured of their safety.

I thank Senator HOLLINGS for his help with my amendment, and I look forward to working with Customs to implement this program, which I believe will be helpful to get goods to market in safe but timely manner.

Mrs. FEINSTEIN. Mr. President, I am encouraged that the Senate is poised to pass legislation bolstering security at our Nation’s 361 seaports. I thank the members of the Senate Commerce Committee for their hard work on this bill.

While often out of the public eye, ports and harbors across the United States are America’s economic gateways. Every year, U.S. ports handle over 800 million tons valued at approximately $600 billion. If you exclude border commerce with Mexico and Canada, our ports handle 95 percent of U.S. trade. Two of the busiest ports of the nation are in California, at Long Beach and Oakland.

Yet, just 1 or 2 percent of the 11 million shipping containers reaching our ports are inspected each year. The Federal Government has taken steps to beef up security along our northern and southern borders. And we are addressing aviation security. But just about everything that arrives by ship is waved through.

This bill will strengthen law enforcement at our ports by establishing a federal port security task force and providing more funding for local efforts to boost port security. It is crucial that we increase cargo surveillance and intelligence and absolutely needed in broadening our response to the threat of terrorism.

The Port and Maritime Security Act of 2001 will provide our Customs agents and other port security forces with the equipment needed to detect chemical, biological, and nuclear weapons of mass destruction, WMD.

Osama bin Laden has stated that he considers it his “religious duty” to obtain such weapons.

Earlier this month, the director general of the International Atomic Energy Agency warned, “The willingness of terrorists to commit suicide to achieve their evil aims makes the nuclear terrorism threat far more likely than it was before September 11th.” According to the Agency, there have been 175 cases of trafficking in nuclear material since 1998, six times the numbers of trafficking in medical and industrial radioactivity material. Sadly, it is no longer beyond the pale to imagine that bin Laden and his associates might try to smuggle a nuclear device or so-called “dirty bomb” onto a cargo ship entering one of our busy seaports and then detonate it.

I was prepared to offer an amendment to make it quite clear that references in the bill to chemical, biological, or other weapons of mass destruction include nuclear devices.

Mr. HOLLINGS. If the senior Senator from California will yield, I assure her that I intend to authorize activities or funding to step up surveillance, inspection, and detection of WMDs at our seaports, we would want to target any kind of nuclear devices as well as chemical and biological weapons.

So, for instance, any authorizations in the bill for the purchase of detection equipment could be used to buy radiation pagers for the Customs agents who inspect cargo, or for radiation detection on cargo X-ray machines, or to retrofit existing X-ray machines with sensitive sodium iodide detectors.

Mrs. FEINSTEIN. I thank the chairman for his clarification. It is absolutely vital that we upgrade our detection technology. Oakland’s Howard Marine Terminal, for instance, is less than once-half mile from Jack London Square, a major tourist attraction. Ships that travel into and out of the Port of Oakland terminal pass within 400 yards of the Square.

Immediately following the September 11th attacks, a 920-foot tanker carrying 33 million gallons of liquefied natural gas (LNG) was prevented from entering the port. The tanker was kept 6 to 8 miles offshore while authorities figured out a way to safely guard the Harbor. It was not until November 4—with Coast Guard escorts—that the tanker was allowed into the harbor.

Mr. HOLLINGS. The Senator from California has raised good points. I appreciate her interest in the matter and...
Mr. HOLLINGS. Under the legislation, the Secretary of Transportation would issue regulations for security programs for cargo as well for protecting passengers, crew members and other workers. The authority for security of cargo is broad enough to cover not only cargoes in port but also dangerous cargoes anywhere in the maritime navigation system including those in transit through navigation locks.

Mr. WYDEN. I thank the chairmen again for answer and commend him for his leadership on this important issue.

Mr. ROCKEFELLER. Mr. President, I would like to ask the Senator from South Carolina if he would agree that in the aftermath of the terrorist attacks of September 11th, this nation came to a number of stark realizations about our vulnerabilities and the overall state of our security?

We have become aware that glaring security gaps exist throughout our nation's transportation system. The Senator from South Carolina has been a leader in focusing the Senate's attention on the need to improve the safety of our ports, and he has been steadfast in his support for additional protections for our nation's rail passengers. I hope that he will agree with me that as important as improving the security in these areas is, our job is not complete until we pay similar attention to the security of our freight rail system.

One of the most serious vulnerabilities in the nation's transportation system is possibility that terrorists may target hazardous materials being transported across this nation's vast and largely unsecured freight rail network. I am sure the Senator is aware that several studies conclude that the chemical industry is particularly vulnerable to terrorist attacks, and point to the shipment of hazardous materials by rail as one of

Mr. HOLLINGS. The important protections for the security of our ports exist and the appropriate steps we should take to close those gaps and at the same time ensure that the rights of port employees are protected.

Mr. WYDEN. Mr. President, I rise to engage the distinguished chairman of the Commerce Committee in a colloquy on very important legislation he has sponsored—the Port and Maritime Security Act of 2001. This legislation, which I am pleased to have cosponsored, would establish new Federal safeguards for the security of our ports and maritime commerce. I would appreciate the chairman clarifying whether the intent of this legislation is to cover not only the security of ports but also inland waterways such as the Columbia-Snake River system. This is an important issue for the Pacific Northwest region because dams on the Columbia and Snake Rivers are not only critical for maritime transportation and protecting the public from the threats emerging as a result of maritime trade, I would be happy to work with Chairman Hollings and Ranking Member McCain next year to evaluate whether any gaps in our criminal laws to protect our safety and security of our ports and the appropriate steps we should take to close those gaps and at the same time ensure that the rights of port employees are protected.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished chairman of the Senate Commerce Committee, the Senator from South Carolina, for the purpose of engaging the distinguished chairman of the Commerce Committee.

Mr. WYDEN. Mr. President, I have also expressed to Chairman Hollings my concerns that we properly limit access to and use of sensitive law enforcement information in background checks which are provided for in this bill. Chairman Hollings has assured me that the bill sets strict and appropriate limits as to both when such access will be required and how the information will be used once obtained. Additionally, the Chairman understands my continuing concern over the need for appropriate due process protections for employees of ports at all levels who may be subject to background checks. These provisions, he has assured me, would consider mitigating and extenuating circumstances related to the individual in question. Am I correct that it is the intent of the Chairman to ensure that the Department of Transportation and the nation's ports carry out background checks with proper safeguards in place that ensure due process protections for employees. And will the Chairman commit to work with me to that end? I would like to ask Chairman Hollings if he could explain these provisions?

Mr. HOLLINGS. Mr. President, we have included the important protections and limitations for such use in access in the bill. Background checks will be limited to those employees who have access to sensitive cargo information or unrestricted access to segregated "controlled access areas," that is defined areas within ports, terminals, and other critical maritime infrastructure which provide an initial security concern. Such controlled access areas could be: locations where containers will be opened, points where vessels containing combustible or hazardous materials are berthed and port security stations. In addition, under this bill the use of background information, once it is obtained, will be restricted to the minimum necessary to disqualify an ineligible employee. In other words, only the minimum amount of law enforcement information necessary to make eligibility decisions will be shared with port authorities or maritime terminal operators.

Moreover, this legislation ensures appropriate due process protections for port employees who may be subject to a background check. In the legislation the Secretary is required to establish an appeals process that includes notice and an opportunity for hearing by an individual who is found ineligible for employment as prescribed in Section 106. I also agree that this process should evaluate any extenuating and mitigating circumstances. I will work to ensure that we accomplish these objectives as the port security legislation moves forward.

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the most serious threats to the industry. In fact, I believe that a study requested by the Senator’s Appropriations Subcommittee and due to be published this month, will come to this very conclusion. I do not wish to suggest that transport of chemicals or other hazardous materials should be curtailed. While the transportation of hazardous materials poses risks to public health, the expeditious movement of certain products is necessary for many municipal and private water systems, is absolutely essential for the protection of human health.

The railroad and chemical industries have acknowledged the risks, and have taken strides toward improving the security of their facilities, hazardous materials shipments, and rolling stock since the September 11th attacks. These security improvements, and additional security enhancements that are planned, will be inordinately costly, perhaps reaching as high as $150 million in this calendar year, and another $150 million in 2002. I hope the Senator will agree that the extraordinary and unforeseen nature of the costs being incurred by hazardous materials shippers, tank car owners, and railroads, with the threats to human health and public safety that these security enhancements represent, justifies a program of short-term federal grants to reimburse or defray some of the post-September 11th security-related expenses these companies are incurring.

If the Senator from South Carolina does agree with the need to improve our nation’s rail security, and understands the unprecedented outlays that railroads and shippers have made or will make in the near future, would he commit to this Senator to hold whatever hearings deemed necessary, and to schedule a prompt mark-up in the Commerce Committee early in 2002 for legislation of mine to require the Secretary of Transportation to conduct a comprehensive terrorism risk assessment, and to set up a Rail Security Fund to make the types of grants that we have discussed here today?

Mr. HOLLINGS. I thank the Senator for his comments on the state of our nation’s transportation security, and I agree with his assertion that a complete treatment of our security needs would include legislation to improve the security of our rail network. I am aware that the need for the safe and expeditious rail transportation of chemicals and other hazardous materials is essential for our nation’s economy, and that the movement of some chemicals, including chlorine, is necessary for the preservation of public health. I am aware also of the security improvements that have been undertaken by railroads and hazardous materials shippers. I agree that the security-related expenses are extraordinary, and that in the interest of protecting the general public from the effects of a terrorist attack on hazardous materials shipped by rail, the federal government should help these companies on a short-term basis to defray their post-September 11th security-related expenses. I will promise the Senator from West Virginia that the Commerce Committee will take up the issue of rail security as early as possible during the next session of the Congress.

Mr. ROCKEFLER. I thank the Senator from South Carolina, and I thank the Presiding Officer.

BUS SECURITY ACT

Mr. CLELAND. Mr. President, I appreciate the chairman’s leadership in promoting safety in all modes of passenger and cargo transportation. In the Commerce Committee executive session on October 17, the committee addressed the important issue of passenger rail safety. The committee approved funding for the upgrading of Amtrak tunnels and bridges primarily along the much-used Northwest corridor. While I support and applaud the goal of increasing passenger rail safety and security—in fact I strongly support this legislation—at the same committee session I raised the issue of intercity bus safety. Attention became acute on this issue after the October 3 incident on a Greyhound bus in which a drunk driver killed two wasthat benefited a handful of people. Since that event, there have been other attempts to cause mayhem on buses, but thankfully, none have resulted in deaths. With over 774 million intercity bus passengers annually with companies serving over 4,000 communities, we cannot wait to act on securing this important mode of transportation.

Mr. HOLLINGS. I appreciate the fact that the Senator from Georgia brought this matter to the committee’s attention. Bus security is in fact an important issue which unfortunately cannot be appropriately addressed before the end of this year. I applaud the initiative of the Senator from Georgia and leadership on this issue and, in particular, his introduction of S. 1739, which establishes a competitive grant program to allocate funding to bus companies to increase security and safety and creates a research and development program for new technologies to increase bus security and safety. It is my intention to consider this legislation on the markup calendar of the Commerce Committee’s first executive session of 2002.

Mr. CLELAND. I applaud the chairman’s decision to advance the issue of bus safety. With bus terminals often sharing facilities with both airports and rail stations, omitting this critical component of the equation leaves a hole in the system. This mode of transportation is the largest domestic passenger service provider, and it has grown without the aid of federal support. Now that they need assistance to supplement their own efforts and protect our citizenry, it is time for Congress to appropriate money to upgrade the security of many small businesses, which may not be able to survive if assistance is not given to help boost security in order to bring passengers back to bus travel. Otherwise, these businesses may have to increase the cost to the customer to pay for the necessary security upgrades.

Mr. HOLLINGS. As chairman of the Commerce Committee, I am very aware of the need of the bus community. It is an important segment of our transportation infrastructure. I look forward to working with my colleague from Georgia on his legislation at the earliest opportunity in 2002.

Mr. CLELAND. I thank the Senator for his support and attention to this matter, and I look forward to working with you in the future on this issue of national importance.

Mr. SCHUMER. Mr. President, I seek unanimous consent to say a few words about the Port and Maritime Security Act of 2001 and the herculean efforts of the Senate Commerce Committee Chairman, Senator HOLLINGS, to get it passed.

In the aftermath of September 11, most of the legislation considered in this chamber has been reactive in nature. This bill, like Senator BYRD’s homeland security package, is decidedly different.

This bill is designed to prevent a terrorist attack on one of our nation’s most vulnerable pieces of infrastructure—our ports. This bill anticipates the possibility of an attack, and sets out to make that impossible. This is exactly the kind of legislation that we were sent to Congress to pass.

Yet it would not have passed without the dogged efforts of Senator HOLLINGS, who forced the issue as most members of Congress were leaving town.

Finally, I would just like to comment on Senator HOLLING’s use of David Stockman’s The Triumph of Politics, in his remarks today. I too remember those days in the early 1980’s, when the Laffer Curve and trickle-down economics were coming into vogue. I was a young congressman then, and I didn’t believe it would work, and I still don’t. And I share the chairman’s disbelief that even after September 11—when our Nation’s vulnerabilities have been so explicitly exposed and the need for additional security resources has been made so evident—we would again travel down that path.

Mr. President, I thank the Chairman for his efforts on this vital piece of legislation.

Mr. MURKOWSKI. Mr. President, I rise today to thank Chairman HOLLINGS and Senator MCCAIN for accepting my amendment to this important bill which will promote security at our Nation’s seaports.

America’s ports provide invaluable links between American productivity and markets both here at home and around the world.

Ports are a critical cog in the wheels of our economy. But quite frankly, our ports are vulnerable.
History has taught us lessons in vulnerability before, whether it be the USS Maine in Havana Harbor, the attack on Pearl, or the USS Cole in Yemen, ships and shipping are always a risky proposition, especially in the confines of port operations.

These lessons have new meaning in today’s reality of war. A single attack, on a single ship, on a single U.S. port could render the entire facility immobile.

What does that mean? No exports of U.S. cotton. No freighters carrying ore or grain barges up the Mississippi River. Simply put, No trade.

And perhaps most troubling, no energy.

In my State the Port of Valdez, at the end of the Alaska Pipeline, is responsible for providing much of the West Coast and Hawaii with its oil. And in Kenai, the facility sees billions of cubic feet of Liquidified Natural Gas transported each year.

What would happen if these ports were closed by some horrific act? How could we move our Nation’s domestically produced energy?

These facilities and others around the U.S. demand our best efforts to protect them.

But a large, and unfortunately growing, role for our ports is the importation of foreign-produced energy, crude oil, refined petroleum products and liquefied natural gas.

As imported energy becomes a larger share of the U.S. energy supply, we become more vulnerable to terrorist attacks.

The energy trade itself creates new terrorist targets.

In the aftermath of September 11th, the Coast Guard was forced to suspend LNG shipments into Boston Harbor for fear of those ships being used for terror.

What else is aboard those foreign flagged supertankers that enter our ports from the Middle East?

What is hidden in the holds? Biohazards? Chemical warfare? What else has that crew been trained to do?

These situations take on a new sense of reality after September 11.

My colleagues are well aware of my efforts to reduce our dependence on foreign oil and foreign supertankers by using our domestic resources.

The longer we wait, the more vulnerable we become.

The majority leader has used parliamentary tactics to subvert the will of the Senate and delay voting on our energy independence.

That is a debate that still lies before us.

But for today, as long as we remain dependent, we must do all we can to protect the safety of those ships and that energy.

My amendment which is now included in this bill makes certain that those who are the most knowledgeable in this most critically-important aspect of port operations are full participants in the effort to ensure port security.

It further ensures that when we talk port security, that we’re talking about our Nation’s energy security.

I greatly appreciate the willingness of the Chairman, Mr. HOLLINGS, and the Ranking Republican, Mr. MCCAIN, to accept this amendment.

This amendment will make a strong and much needed bill even stronger.

Mr. EDWARDS. Mr. President, I rise today to support the Port and Maritime Security Act of 2001 and to speak about the need to protect our seaports from terrorist attacks.

Our seaports are critically important to our national, and global, economy. Our seaports enable us to export our goods to the rest of the world and allow us to import the goods we do not produce domestically. Ninety-five percent of all U.S. overseas trade is conducted through these 361 public seaports.

Roughly 45,000 cargo containers enter the U.S. every day.

Our seaports are also an important component of our national security. In the interest of promoting trade, we accept increasing traffic in and around our seaports as ships, crew and cargo move goods between our nation and others. Yet even as we do this, we must recognize that the very volume of cargo moving through our seaports makes it difficult to adequately guard against a potential terrorist attack.

Traditionally, our seaports are viewed as highly vulnerable targets for terrorist attacks. They are open spaces, full of traffic, and difficult to monitor. Yet an attack against one of our larger seaports could dramatically impact our domestic economy by destroying cargo, eliminating jobs, and shutting off trading routes to other shippers.

Unfortunately, we have let our guard down with respect to our seaports by failing to adequately address the potential for a terrorist attack. We know how important our seaports are to our national and global economy, yet at best, inspectors are able to examine only about two percent of the cargo that passes through our seaports. This means that the vast majority of cargo entering our seaports is not inspected before the containers are allowed to move throughout the country. We can, and must, do better.

We must improve the quality of and deployment of detection technology and we must make sure that those who guard our seaports are equipped to prevent an attack. We have technology that scans containers to look for suspicious materials and shipments. It is in place right now, but not at all our seaports and not even at all of the largest seaports. We need to expand the deployment of this type of technology, and make sure all our seaports are equipped with the best available scanning technology. We must also make sure that the Coast Guard has the manpower and equipment it needs to protect our coast and ports and to respond in the event of an attack.

I am so pleased that we are passing the Port Security Bill. This is an extremely important piece of legislation and an important component of our national defense.

I would like to take this moment to thank Chairman HOLLINGS for working with me on several amendments I had to this important bill.

When the Commerce Committee held hearings on port security back in July, I raised several issues with the witnesses about the potential to our ports and the ability to protect against a possible terrorist threat. I have been working since then to develop legislation to address some of the concerns I had that were confirmed at the hearing.

When the Commerce Committee marked up its port security bill in early August, I received assurances from Chairman HOLLINGS that we would continue to work to make sure my concerns were addressed when the bill came to the Senate. By that time, we of course had no idea that our country was only a month away from such a horrendous terrorist attack.

But I am pleased that we are now taking up this bill. It will make our seaports and our nation safer. And I want to again thank the Chairman and Ranking Member for working with me on these amendments and for including them in the final bill.

Specifically, these amendments will:

improve our ability to safely handle cargo entering our country; provide the Coast Guard with additional anti-terrorism resources to protect domestic ports; and provide for the most modern security technology to be deployed in seaports.

My first amendment is an anti-tampering amendment that will ensure that the cargo we accept in our country has not been altered or interfered with. The amendment improves port security by allowing Customs to work with ocean shippers to better coordinate the tracking of cargo in our ports and across our country. It will improve security by enabling Customs to better assist shippers in preventing cargo tampering and cargo theft. It will also improve security by enabling Customs to track containers as they move across-country to ensure that they are not diverted for criminal or terrorist purposes.

My second amendment establishes Port and Maritime Security Teams, teams of Coast Guard personnel with training in anti-terrorism, drug interdiction, and navigation assistance. These units will operate high-speed boats that are equipped to patrol our coastal waters and respond immediately to terrorist or other criminal threats to our coast and seaports. These teams will already be equipped to protect U.S. vessels in foreign ports, my amendment brings them to our domestic defense.
My final amendment will ensure that the best available technology is deployed in our seaports to improve security, identify threats, and prevent terrorist attacks. The grant program would cover technologies to deal with such security risks as: explosives, firearms, weapons of mass destruction, chemical and biological weapons, drug and illegal alien smuggling, and trade fraud. This amendment is so important, because the type of cargo and containers that move through seaports are entirely different than what moves through our airports, and we need to make sure we are developing technology that recognizes those differences. Only about 2 percent of the cargo entering our seaports is inspected, without better technology, we are leaving ourselves too vulnerable to those who would exploit our seaports for terrorist or criminal activity.

Again, I would like to express my thanks to Chairman HOLLINGS and Senator McCAIN for helping make sure that these amendments were included in the final bill and for making sure that we take aggressive action to protect our seaports.

AMENDMENT NO. 2690

The PRESIDING OFFICER. Under the previous order, there is an amendment in order. The clerk will report the amendment.

The legislative clerk read as follows:

(The text of the amendment is printed in today’s RECORD under “Amendments Submitted.”)

Mr. HOLLINGS. Mr. President, I urge the adoption of the amendment. It is a managers’ amendment agreed to by Senators McCAIN, GRAHAM, HUTCHISON, and myself.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2690.

The amendment (No. 2690) was agreed to.

Mr. HOLLINGS. I urge passage of the bill, as amended.

The PRESIDING OFFICER. Does the Senator yield back all time?

Mr. HOLLINGS. I yield back all time.

The PRESIDING OFFICER. All time having been yielded back, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The PRESIDING OFFICER. The bill was passed.

Mr. HOLLINGS. Mr. President, may I be recognized?

The PRESIDING OFFICER. The Senator from South Carolina.

ECONOMIC STIMULUS

Mr. HOLLINGS. Mr. President, with respect to the stimulus bill, let’s go right to the point. It really was not a stimulus at all. Over a month ago, Joseph Stiglitz wrote an article entitled “A Boost That Goes Nowhere.” I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was agreed to and printed in the RECORD, as follows:

[From the Washington Post, Nov. 11, 2001]

A Boost That Goes Nowhere

(By Joseph Stiglitz)

The United States is in the midst of a recession, and it is going to be the worst in 20 years, and the Republican-backed stimulus package will do little to improve the economy—indeed it may make matters worse. In fact, the implementation will continue to rise and output will fall. But the U.S. economy will eventually bounce back—perhaps in a year or two. More worrying is the threat a prolonged U.S. recession poses to the rest of the world.

Already we see inklings of the downward spiral that was part of the Great Depression and the economic collapse of East Asia and bare growth in Europe are contributing to and aggravating the U.S. downturn. Emerging countries stand to lose the most. Globalization has created the illusion in the developing world as a promise of unbounded prosperity—or at least more prosperity than they have ever seen. Now the developing world, especially Latin America, can see the darker side of its links to the U.S. economy. It used to be said that when America sneezed, Mexico caught a cold. Now, when America sneezes, much of the world catches cold. And according to recent data, America is not just sneezing, it has had a bad case of the flu.

October unemployment figures show the largest monthly increase in two decades. The gap between the United States’ potential gross domestic product—what it would be if we had been able to maintain an unemployment rate of around 4 percent—and what is actually being produced is enormous. By my calculations, it is up to $350 billion a year! This is an enormous waste of resources, a waste we can ill afford.

It is widely held that every expansion has within it the seeds of its own destruction—and that the greater the excesses, the worse the downturn. The Great Boom of the 1990s had marked excesses. Irrational optimism has been replaced by almost equally irrational pessimism. Consumer confidence is at its lowest level in more than seven years. The low personal savings rate that marked the Great Boom may put even more pressure on consumers to cut back consumption now. It seemed to me that we were headed for a recession in 1993, a plan of tax increases and expenditure cuts that eventually took 11. In the coming months we will have the numbers that make clear that we are squarely in one now. The economic cost of the attacks went well beyond the direct loss of property, given the disruption to the financial system and the industries it impairs investment. The mood of the country discourages the consumption binge that would have been required to offset the reduction in investment.

In any case, monetary policy—the Federal Reserve’s lowering of short-term interest rates to heat up the economy—has been vastly oversold. Monetary policy is far more effective in reining in the economy than in stimulating it in a downturn, a fact that is slowly becoming apparent as the economy continues to sink despite a massive number of rate cuts; Tuesday’s was the 10th this year.

The Bush administration’s tax cut, which was also oversold as a stimulus, is likely to haunt the economy for years. Now the consensus is that a new stimulus package is needed; the president has ordered Congress to have one on his desk by the end of the month. Much of the stimulus debate has focused on the size of or the type that is largely beside the point. A lot of money was spent on the Bush tax cut. But the $300 and $600 checks sent to millions of Americans were likely put into bank accounts.

What worries me now is that the new proposal—particularly the one passed by the Republican-controlled House—are also likely to be ineffective. The House plan would rely heavily on tax cuts for corporations and upper-income individuals. The bill would put zero—yes, zero—into the hands of the typical family, but four with income of $50,000. Giving tax relief to corporations for past investments may pad their balance sheets, but will not lead to more investment now and will not prevent the further cuts that make things even worse by granting bigger benefits to very high earners. For instance, the tax cut for a family with income over $250,000, but this plan would give $250,000 over four years to families making $5 million a year—and much of that after (one hopes) the economy has recovered. It directs money to those who would spend it and offers few incentives for investment now.

It would not be difficult to construct a program that would be a much bigger bang for America’s unemployment insurance system is among the worst in the advanced industrial countries; give money to people who have lost their jobs after recession, and it would be quickly spent.

Temporary investment tax credits also would help the economy by encouraging firms to invest, or that consumers pay when they might not otherwise—a waste we can ill afford.

In every downturn, states and localities have to cut back on spending. Such actions as those in New York, which took $9 billion out of its budget, is not just sneezing, it has had a bad case of the flu.

Globalization has been sold to people in the United States as a win-win proposition for industrial countries; give money to people in developing countries; give money to people who have been required to offset the reduction in investment. But what matters is not just how I or other economists see this: It matters how markets, both here and abroad, see things. The fact that medium- and long-term bond rates (that bonds that reach maturity in five or 10 years or more) have not come down in tandem with short-term rates is a good sign.

Nor is the possibility that the interest rates (that are short-term rates) have not come down in tandem with medium- and long-term bond rates (that are medium- and long-term rates) a good sign. If short-term rates are lower, it suggests that the Federal Reserve will do the trick, only then would you risk a minimal-stimulus package of the kind the Republicans have drafted in both the House and Senate.

In any case, monetary policy—the Federal Reserve’s lowering of short-term interest rates to heat up the economy—has been vastly oversold. Monetary policy is far more effective in reining in the economy than in stimulating it in a downturn, a fact that is slowly becoming apparent as the economy continues to sink despite a massive number of rate cuts; Tuesday’s was the 10th this year.

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But what matters is not just how I or other economists see this: It matters how markets, both here and abroad, see things. The fact that medium- and long-term bond rates (that bonds that reach maturity in five or 10 years or more) have not come down in tandem with short-term rates is a good sign.
higher than the short-term rate, which now stands at its lowest level in 40 years. Whatever monetary policy does in lowering short-term rates can be largely undone by an administered-fiscal policy which can increase that gap between short and long rates; that gap has widened considerably.

Worse still, America has become dependent on borrowed capital abroad to finance its huge trade deficits; and the reduction in the surplus is likely to exacerbate this (on average, the two move together). If foreigners become less or more confident in America, they will shift their portfolio balance, putting more of the money elsewhere. That adjustment-process itself could put strain on the U.S. economy, for the terrorist attacks eroded confidence abroad in America and the American economy had eroded, with the bursting of the stock and dot-com bubbles. The two remaining years strengthened the suspicion of our economic management and our seeming safety. Both of these have now been questioned—and the stimulus package likely to become law has nothing to allay foreign fears.

As a former White House and then World Bank economist, I had the good fortune to watch downturns and recessions around the world. Two features are worth noting.

First, standard economic models perform particularly badly at such times, they almost always underestimate the magnitude of the downturn. One relies on these models only on very rosy days when the market may see International Monetary Fund and the U.S. Treasury badly underestimated the magnitude of the Asian downturns of 1997—and this mistake was at least partly responsible for the disastrous IMF policies prescribed in Indonesia, Thailand and elsewhere.

Second, there are long lags and irreversibilities: Once it is clear that the downturn is deep, and a stronger dose of medicine is administered, it takes six months to a year for the effects to be felt fully. Meanwhile, the consequences can be severe. The bankrupt firms do not become unbankrupt and start functioning again. Depression is likely to be particularly severe when the economy is hit by a series of adverse shocks. Market economies such as ours are remarkably robust. They can withstand severe shocks. But even before the Asian financial crisis, the America economy had eroded, with the bursting of the stock and dot-com bubbles. The two remaining years strengthened the suspicion of our economic management and our seeming safety. Both of these have now been questioned—and the stimulus package likely to become law has nothing to allay foreign fears.

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relief, such as a temporary speedup in depreciation and scaling back the corporate alternative minimum tax. But these will only pad business balance sheets for a while and do little to ignite the incentives. Meanwhile, the President gave in to Mr. Daschle on tax rebates for low-in-come Americans who didn’t get them last summer—that is, for people who pay little or no income tax anyway.

What really matters now is not whether a deal is struck but what Mr. Bush learns from his looming defeat. We’ll suggest at least two. The first is that only thing bipartisan about Mr. Daschle is his smile. The second is that O.J. Simpson, who destroyed Mr. Bush’s father, Mr. Daschle wants to make Mr. Bush a one-term President. Rumors abound that the South Dakota Democrat himself, but many people don’t he represents a Senate Caucus loaded with other potential candidates (John Kerry, Joe Lieberman, John Edwards, Hillary Clinton, Joe Biden).

All of them are pursuing the Daschle strategy of wrapping their arms around a popular President on the war. But on domestic policy they are competing against one another to advantage among the Democratic Party’s liberal interest groups. This critical mass of Presidential ambition is inevitably pulling the entire Senate to the center. In the stimulus debate, it explains why Mr. Daschle established the absurd condition that any “bipartisan” compromise had to be supported by two-thirds of all Senate Democrats. That means any 17 Democrats can kill anything, and there are more than enough Caucus liberals to do that.

If Mr. Bush wants to know where Democrats will go next, all he had to do was watch Mrs. Clinton a week ago Sunday on NBC’s “Meet the Press.” While praising Mr. Bush for his own tongue on the politics. If this team of economic team failed him. Counselor Larry Summers, who destroyed Mr. Bush’s father, Mr. Daschle wants to make Mr. Bush a one-term President. The President has left himself open to a hard times a better domestic political strategy and a stronger economic team.

That is the first time I heard the Wall Street Journal ask for a stronger economic team. The reason is we are in deep retreat. We ended up in a fiscal year, which ended just 3 months ago, on $1.5 trillion in revenue Nasdaq companies generated over the past year, saying that represented “a huge contribution to the Republican Party’s re-election.”

I ask unanimous consent to print in the RECORD editor dated August 16.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Aug. 16, 2001]

**NASDAQ COMPANIES’ LOSSES EROSE 5 YEARS OF PROFIT**

(Steve Liesman)

Mounting losses have wiped out all the corporate profits from the technology-stock bubble, but some companies were able to road back to the previous level of profitability longer and harder than previously estimated.

The massive losses reported over the most recent four quarters by companies listed on the Nasdaq Stock Market have erased five years’ worth of profits, according to figures from investment-research company Multex.com that were analyzed by The Wall Street Journal.

Put another way, the companies currently listed on the market that symbolized the New Economy haven’t made a collective dime since the fall of 1995, when Intel introduced the 200-megahertz computer chip, Bill Clinton was in his first term in office and the O.J. Simpson trial obsessed the nation. “What it means is that with the benefit of hindsight, the late ‘90s never happened,” says Robert Barbera, chief economist at Hoenig & Co.

The Wall Street Journal analysis looked at the earnings of the 150 Nasdaq companies that went back to September 1995 for about 4,200 companies listed on Nasdaq, which is heavily weighted toward technology stocks but also includes financials and other growth companies. For the most recently reported four quarters, those companies tallied $183 billion in losses. That roughly equaled the $149.3 billion in profit before extraordinary items these companies have reported since September 1995. Because companies have different quarter-ending dates, the analysis does not correspond to calendar quarters.

Large charges that aren’t considered extraordinary items were responsible for much of the red ink, including restructuring expenses and huge write-downs of inventories and assets acquired at high prices during the technology bubble.

Analyze, economists and accountants say these losses raise significant doubts about both the quality of past reported earnings and the potential future profit growth for these companies. Ed Yardeni, chief investment strategist at Deutsche Banc Alex. Brown, said the losses raise the question of “whether the Nasdaq is still too expensive.”

The extent of the losses surprised a senior Nasdaq official, who asked not to be named. “I wouldn’t have thought they were that high,” he said.

Nasdaq spokesman Andrew MacMillan, who were not disputing the losses, pointed to the $1.5 trillion in revenue Nasdaq companies generated over the past year, saying that represented “a huge contribution to the Republican Party’s re-election.”

The underwriting was very aggressive, so earlier-stage companies came to market than the kind of companies that came to market after five or 10 years. He believes there is plenty of potential profitability out there in this crop of young companies.

The data show that the very companies whose technology products were supposed to lead productivity and growth for the business cycle by providing better information have been among the hardest-hit in this economic slowdown. “Management got caught up with how smart they were and completely forgot about the business cycle and competition,” says Mr. Yardeni. “They were managed for only ongoing success.”

To be sure, some of Nasdaq’s largest star-powered companies earned substantial sums over the period. Intel led the pack with $37.6 billion in profit before extraordinary items in 1996, followed closely by Microsoft’s $34.6 billion in earnings. Together, the 20 most profitable companies earned $153.3 billion, compared with losses of $124 billion during the four quarters included in the losses was a $48.4 billion write-down of acquisitions by JDS Uniphase and an $11.2 billion charge by VeriSign, also to reduce the value on its book of companies it had bought with its high-price stock.

These charges lead some analysts and economists to believe that including these losses represents the margin of the decline. According to generally accepted accounting principles, these write-offs are treated as regular expenses. But corporate executives say they should be seen as one-time items. “It’s an accounting entry rather than a true loss,” maintains Bill Dudley, U.S. economist at Goldman Sachs Group.

Removing these unusual charges, the losses over the most recently reported four quarters shrink to $6.5 billion on a before-tax basis. By writing down the value of assets, companies have used the slowdown to clean up their balance sheets, a move that should enable them to move forward with a smaller expense base and could pump up future earnings.

“Seven the table for future dramatic growth is available,” says independent analyst Jack Ciesielski. Because of the write-downs, “when the natural cycle begins again,
the returns on assets and returns on equity will look fantastic." But Mr. Ciesielski adds that this benefit will be short-lived.

Cisco Systems in the first quarter took a $2.25 billion pretax inventory charge. This quarter, it partly reversed that write-down taking a gain of $187 million from the revaluation of the previously written-down inventory. The reversal pushed Cisco into the black.

But Mr. Barbera warns that investors shouldn't be so quick to ignore the unusual charges. For example, during good times it wasn't unusual for companies to book large gains from investments in other companies. Now that the value of those investments are under water, companies are calling the losses unusual. "If they are going to exclude the unusual losses, then they should exclude the unusual gains," says Mr. Barbera.

Mr. HOLLINGS. I read from the article:

The Wall Street Journal analysis looked at earnings excluding extraordinary items going back to September 1995 for about 4,200 companies listed on Nasdaq, which is heavily weighted toward technology stocks, but also includes hundreds of financial and other growth companies. For the most recently reported four quarters those companies tallied $148.3 billion in losses. That roughly equaled the $145.3 billion in profit before extraordinary items.

Mr. HOLLINGS. I read from the article:

The Wall Street Journal said and now as Dave Stockman, the head of President Reagan’s economic team, the Director of his Office of Management and Budget, in his book, "Triumph of Politics," talks about the Trojan horse, growth-growth, Kemp-Roth, and what we had entitled "voodoo No. 1." Now we have voodoo No. 2. Referring to voodoo No. 1 on page 342, at the end of the year in November after they passed the tax cuts, we immediately went into recession, which is exactly what has happened in the year 2001.

I quote:

[President Reagan] had no choice but to repeal, or substantially dilute, the tax cut.

Can you imagine that?

Mr. HOLLINGS. I read from the article:

What really hearkened this particular Senator because we never seem to learn. The same act, same scene 20 years ago: David Stockman, the head of President Reagan’s economic team, the Director of his Office of Management and Budget, in his book, "Triumph of Politics," talks about the Trojan horse, growth-growth, Kemp-Roth, and what we had entitled "voodoo No. 1." Now we have voodoo No. 2. Referring to voodoo No. 1 on page 342, at the end of the year in November after they passed the tax cuts, we immediately went into recession, which is exactly what has happened in the year 2001.

I quote:

[President Reagan] had no choice but to repeal, or substantially dilute, the tax cut.

Can you imagine that?

He had no choice but to repeal, or substantially dilute, the tax cut. That would have gone far toward restoring the stability of the strongest capitalist economy in the world. It would have been a great act of statesmanship to have admitted the error back then, but in the end it proved too mean a test.

In November 1981, Ronald Reagan chose not to be a leader but a politician, and in so doing he showed why passion and imperfection, not reason and doctrine, rule the world. His obstinacy was destined to keep America's economy hostage to the errors of his advisers for a long time.

That is exactly our dilemma now. For those who regret the non-passage of the stimulus bill, go to Sunday school and thank the Good Lord because—as Stiglitz said and as the USA Today said and as the Wall Street Journal said and now as Dave Stockman said 20 years ago—we ought to be removing those tax cuts, repealing that $2.3 trillion.

It is not the confidence of consumers, it is the confidence of the market. The money boys who really govern the economic affairs of this country—the $2 trillion is still going to be lost.

How much are we up? I ask unanimous consent to print in the RECORD, the deficit to the penny as included by none other than the Secretary of the Treasury. It is entitled the Public Debt to the Penny. That is the Secretary of the Treasury. I ask unanimous consent that this document be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE DEBT TO THE PENNY

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Debt Held by the Public (in billions of dollars)</th>
<th>Total Intragovernmental Holdings (in billions of dollars)</th>
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<td>Bureau of the Public Debt</td>
</tr>
</tbody>
</table>

Source: Bureau of the Public Debt.
Mr. HOLLINGS. We are already $76 billion in the red in addition to the $141 billion we ended up in the red this last fiscal year. We had to listen to Alan Greenspan say, "Oh, wait a minute; we might pay off the debt too quick."

We had $5.6 trillion and surpluses as far as the eye could see, and now what do they need to do? They need to increase the debt limit. They asked us the other day, let us increase the debt limit.

The debt limit, according to the budget and economic outlook for fiscal years at the beginning of the year, they said, and I quote: "Under those projections, the debt ceiling will be reached in 2009." That is what they told us 11 months ago, that in 2009 the debt limit was going to be reached. The first order of business when we come back in January and February is to increase the debt limit, all on account of a rosy scenario, all on account of—what do they call it?—voodoo number two.

We better sober up and start paying the bill in Washington. I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

LACK OF ACTION ON STIMULUS BILL

Mr. GRASSLEY. Mr. President, I am happy to be able to have some time to comment on the fact the Senate is not bringing up the stimulus package. It is to my chagrin, after all the hard work Senator BAUCUS and I have put into these negotiations. Albeit what we have in front of us is not a product of a conference committee, it is still a White House bipartisan compromise, a White House Centrist compromise, that would get a majority vote of the Senate if we had actually had an opportunity to vote on it.

In normal circumstances, I would not be one to say we ought to pass a House bill. These are, however, not normal circumstances. We should not discount this leadership. The President has delivered. One has to wonder, then, why are we stuck? If we can get a bipartisan majority in the Senate, action by the House and a signature by the President, why does a partisan minority of the majority party decide to thwart the will of the people? Why, especially now?

Our Nation is in a state of war on terrorism. Our President is necessarily occupied as Commander in Chief to run this economy and to look out for our economic stimulation and aid to dislocated workers, did the President have to come to the Hill yesterday to try and break a logjam? Why did the Democratic leadership give his effort the back of their hand? Why did the bipartisan objectives go by the wayside? I will take a few minutes to talk about how we got here.

Shortly after September 11, we started out with meetings with Chairman Greenspan and other economic policy-makers. For the most part, they were called by the good chairman of the Senate Finance Committee, Senator BAUCUS. In that period, right after September 11, the President took first steps and took the risk by committing to a stimulus package, fully aware we might be going in the budget "red" if we did.

We should not discount this leadership by the President. Certainly it took some tough things to do. Chairman Greenspan also took the lead and gave the "Greenspan green light" to pursue a stimulus package. It seemed everyone realized our responsibility was to heed the President's dictate and Greenspan's advice. Both of these men said Congress should address the economic slowdown. They told us the slowdown started over 1 year ago. Subsequently, the National Board of Economic Research told us the economy might have recovered but for the September 11 attacks.

The President took the lead in meeting needs of dislocated workers. He proposed extension of unemployment insurance benefits. He also proposed providing health care benefits through the National Emergency Grants.

In addition, the President proposed, as a concession to the other party, a new round of rebate collection to those who do not pay income tax.

Was there any reciprocation, any movement from the Democratic leadership? No.

President Bush, much to the consternation of many in the Republican Party, took capital gains tax off the table because it was not well received by Democrats. Was there any reciprocation on the part of the Democratic leadership? No.

This is not to say we did not agree on something. But, for instance, the AMT, for instance, was agreed to by each side. Although we did not have it in our caucus position, Republicans agreed with Democrats on liberalizing the net operating loss rules and expensing for small business. They do not also discount the ideologically based opposition to accelerating the reduction of the 27 percent bracket, but it is amazing to me that many on the other side see taxpayers in the 27 percent bracket as rich people.

A 2 percent rate cut for single folks earning between $27,000 and $65,000 is seen as a tax cut for the very wealthy by the Democrat leadership. Likewise, a married couple with incomes between $45,000 and $100,000 are considered rich. I do not believe this tax cut was difficult for the Democratic leadership to accept. After a series of bipartisan, bicameral talks, the House went its own way with a bill; too heavy for me on corporate AMT. It passed by just two votes.

The Senate Democratic leadership responded in kind. The result was a Democratic Caucus partisan position paper reduced to legislation they rammed through the Finance Committee on a party line vote. That bill dead ended in the Senate. The reason is the bill was designed for partisan point making. Its partisan design was its weakness in an institution like the Senate where one only gets things done on a bipartisan basis. That design guaranteed its failure.

We could have ended there, but the President forced us back into action. Frankly, the House also yielded on a very bad bill they first passed.

In the end, the result was a quasi-conference environment to work out differences. By virtue of this quasi-conference, my friends JAY ROCKEFELLER and MAX BAUCUS, our chairman, and I spent many long hours debating the merits of economic stimulus and aid to dislocated workers. In many ways, the discussions were vigorous exchanges of views with our House colleagues. A lot of that discussion was healthy, and some of it helped move the process along.

Little real progress was made. Once again, the President intervened and endorsed the Senate Centrist position. Eventually, the House leadership came toward the Centrist position because they wanted to find a way to get a bill through the Senate, and that can only be done if it is done on a bipartisan basis. Even with movement to the Centrist position, the quasi-conference was at an impasse. Senator DASCHELLE's edict about 3 weeks ago that one-third of his caucus would not vote for any stimulus plan came into clear focus. The sentiments of the House or White House, let alone the sentiments of Joe Six-pack out there
working every day to pay taxes, were less important than the opinion of a minority of the Democratic Senators, which would be as few as 18. The failure to obtain a super-majority in the Democratic caucus then imperiled this Central bipartisan package, this Centrist bipartisan package.

In the end, the impasse came not from tax cuts. Republicans moved far off their priorities so that tax cuts were a non-starter. The impasse was not over the amount of the health care benefit package. Republicans had largely moved to the Democratic position. The impasse was not over the amount of the health care benefit package. Again, though the benefit came in the form of a tax credit, Republicans moved toward a Democratic position on the costs of health care benefits.

Bizarre as it may seem, the whole agreement broke down over some ideological position. We have heard the Senate Republicans talk about the need for people for health insurance for the unemployed through just COBRA. The impasse came down not over whether to help these workers. The White House Centrist agreement covered these workers with a tax credit. The Senate Democratic bill covers these workers with a new entitlement. Basically, a super-majority of Democrats would not agree to let laid-off workers have the choice of where they wanted to get their health care benefits but they could still get their health care benefits with the same tax credit.

The bottom line is the White House-Centrist agreement does not meet the two-thirds litmus test set for the Centrist agreement does not meet the two-thirds litmus test set for the Democratic caucus by the leader.

One has to wonder, why leave all of these good things in the White House-Centrist agreement on the Senate cutting room floor, as just happened about an hour ago? We have heard the Senate Majority Leader say of Mr. Daschle as his junior partner.

The Senate Republicans had a caucus position move. That is in the Record. That brings us to the last and ultimate critical player. Obviously, that is the Senate Democratic leadership. I ask, where has the Senate Democratic leadership really moved? At every stage of the process, whether it is the Finance Committee action, whether the action on the floor, or even the quasi-conference, ultimately we find the leadership position always saying "no." They did not say "yes." Now there is a good game being played by the other side. They say they want an agreement. That is the elegant velvet glove they are noted for, but where is the action? The action today was "no" on unanimous consent request. But look at the whole last 3 months on this issue. Where have they moved? If you want an agreement, you have to see movement. There has been none.

One has to ask, with so many good provisions in this White House-Centrist agreement, why should the Democratic leadership want to kill it? The President has expressed that polling data, political consultants, and union officials had a big impact on the Senate Democratic leadership strategy.

I ask unanimous consent to have printed in the RECORD an editorial from the Wall Street Journal that states in depth what the consultants say.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal]

One of the more amusing Washington themes of late has been the alleged revival of the Imperial Presidency, with George W. Bush said to be wielding vast, unprecedented powers. Too bad no one seems to have let Senate Majority Leader Tom Daschle in on this secret.

Because from where we sit Mr. Daschle is the politician wielding by far the most Beltway clout, and in spectacularly partisan fashion. The South Dakota's political strategy is obvious if cynical: He's wrapping his arms tight around a popular President on the domestic front he's conducting his own guerilla war against Mr. Bush, blocking the President's agenda at every turn. And so far he's getting away with it.

Mr. Bush has asked Congress to pass three main items before it adjourns for the year: Trade promotion authority, and energy and economic stimulus bills. Mr. Daschle has so far refused to negotiate on any of them, and on two he won't even allow votes. Instead he is moving ahead with a farm bill (see below) the White House opposes, and a railroad retirement bill that is vital to no one but the AFL-CIO.

Yesterday Mr. Daschle announced that "I don't know that we'll have the opportunity" to call up an energy bill until next year. One might think that after September 11 U.S. energy production would be a war priority. In September alone the U.S. imported 1.2 million barrels of oil a day from Iraq, which we soon may be fighting, the highest rate since just before Saddam Hussein invaded Kuwait in 1990.

But Mr. Daschle is blocking a vote precisely because he knows Alaskan oil drilling has to pass to part of him who, upon he pulled the bill from Senate Jeff Bingaman's Energy Committee when he saw it had the votes. So much for the new spirit of Beltway cooperation.

We're not so naive as to think that war will, or should, end partisan disagreement. But what's striking now is that Mr. Daschle is letting his liberal Old Bulls break even the agreements they've already made with the White House. Mr. Bush shook hands weeks ago on an Oval Office education deal with Ted Kennedy, but now Mr. Kennedy wants even more spending before he'll sign on. Mr. Daschle is letting Ted have his way.

The same goes for the $666 billion annual spending limit that Democrats struck with Mr. Bush after September 11. That's a 7% increase from a year earlier (since padded by a 3% energy price increase). But Mr. Bush had endorsed this for fear some Republicans might use it against them in next year's elections. But now Mr. Daschle is using the issue against Mr. Bush, refusing to even discuss an economic stimulus bill unless West Virginia Democrat Bob Byrd gets his demand for an $15 billion added.

Mr. Byrd, a former majority leader who thinks of Mr. Daschle as his junior partner,
May even attach his wish list to the defense spending bill. That would force Mr. Bush to either veto and forfeit much-needed money for defense, or sign it and swallow Mr. Byrd's megabucks for Amtrak and Alaskan airport subsidies.

All of this adds to the suspicion that Mr. Daschle is trying to see no stimulus bill at all. He knows the party holding the White House usually gets most of the blame for a bad economy, so his Democrats can pad their next year by blaming Republicans. This is the same strategy that former Democratic leader George Mitchell pursued in blocking a tax cut during the early planning. George H.W. Bush for the recession. Mr. Mitchell's conigliere at the time? Tom Daschle.

It is certainly true that Republicans have often helped Mr. Daschle's guerrilla campaign. Alaska's Ted Stevens is Bob Byrd's bosom spending buddy; he's paved White House budget director Mitch Daniels for daring to speak the truth about his pork. And GOP leader Trent Lott contributed to the airline-security rout by letting his Members run over for cover.

The issue now is whether Mr. Bush will continue to let himself get pushed around. Mr. Daschle is behaving badly because he's assumed the President won't challenge him for fear of losing bipartisan support on the war. But this makes no political sense: As long as Mr. Bush's war management is popular, Mr. Daschle isn't about to challenge him or overact.

The greater risk to Mr. Bush's popularity and success isn't from clashing with the Daschle Democrats over tax cuts or oil drilling. It's from giving the impression that on everything about the war, Tom Daschle might as well be President. Good policy results in good politics. Not the other way around. You don't operate in the velvet glove so as to escape responsibility for your actions.

I hope this is a cynical political theory, but that it is not true. If it is, and only the Democratic leadership really knows if it is true. If it is true, it is sad and it is disappointing. If true, it is politics at its worst. I only hope the articles are not true. There is no better authority on this subject than the former distinguished Senate leader, Senator George Mitchell, he said it best in an interview with John McLaughlin. Senator Mitchell said: Good policy results in good politics. Not the other way around. You don't provide good policy because of good politics but good politics because of good policy.

I hope the Senate Democratic leadership heeds Senator Mitchell's advice here and doesn't get it backwards. I hope the press accounts and rumors around the Hill are not true. But we will have to wait and find out. Regrettably we are not taking up this consensus economic stimulus bill. That says to the workers dislocated because of September 11, at a time when we are in a war environment, that they can not have anything for Christmas. They do not have the 13 more weeks of unemployment compensation; they do not have the additional health insurance. It is good to keep these issues as separate, as separate as they can be, and I also hope it is the same way for the next year and on Republicans, particularly if the economy does not recover.

It is good to keep these issues as separate, as separate as they can be, and I also hope it is the same way for the next year and on Republicans, particularly if the economy does not recover.

I'd like to talk about some of the differences between the White House-Centrist package and the altered Democratic stimulus plan.

I want to explain why I believe our bipartisan package is better for America.

Let's start with the White House-Centrist plan's tremendous commitment to displaced workers. Our unemployment insurance proposal represents an unprecedented commitment to American workers. We would provide additional unemployment benefits to eligible workers who exhaust their regular benefits between March 15, 2001 and December 31, 2002.
An estimated 3 million unemployed workers would qualify for benefits averaging $230 a week. These benefits would be 100 percent federally funded at a cost of nearly $10 billion.

Our proposal would also transfer an additional $9 billion to state unemployment trust funds.

This transfer would provide the states with the flexibility to pay administrative costs, provide additional benefits, and avoid raising their unemployment taxes during the current recession.

The United States enjoyed a growing economy and declining unemployment for much of the previous decade. But, the economic slowdown that began last year—which was exacerbated by the terrorist acts on September 11—has resulted in substantial layoffs.

The unemployment rate has risen from 4.0 percent in November 2000 to 5.7 percent in November 2001.

By historical standards, the current unemployment rate is still substantially below the level at which Congress deemed it necessary to enact extended benefits.

Over the past 50 years, the federal government has provided temporary extended unemployment benefits only six other times. The average unemployment rate during those times was 7.3 percent.

Based on this historical record, the President originally suggested that extended unemployment benefits should be limited to those states that have a disaster declaration in effect as a result of September 11, or have a 30 percent increase in their unemployment rate.

However, a number of our colleagues on both sides of the aisle insisted that we provide immediate assistance to every state, regardless of their unemployment rate. We have agreed to do exactly that in our proposal.

Unfortunately, some on the other side of the aisle continue to insist this is not enough. They insist we should go further, and give every state the flexibility needed by the states to respond to their unique circumstances.

I would now like to discuss our bipartisan plan’s commitment to providing health care for displaced workers.

Newly dislocated workers will receive vouchers from their state unemployment offices or “one stop” centers after being laid off. These workers can then take those vouchers and submit them, along with their contribution to the premium, to their employer or insurer. Afterwards, insurers would submit the vouchers to the Treasury Department for reimbursement.

This approach works because it relies on existing systems to deliver the new benefits, and as a result delivers those benefits in a fast and reliable way.

I ask my colleagues: why would anyone insist on a mechanism that just won’t work as well? I don’t understand it.

The second prong of our proposal is $4 billion in enhanced National Emergency Grants for the States, which can be used to help all workers—not just those eligible for the tax credit—for health insurance. States have flexibility under our approach, and can use these grants to enroll their workers in high risk pools or other state-run plans, or even in Medicaid.

To address the concerns raised by Democratic colleagues, our enhanced National Emergency Grant program requires all States to spend at least 30
percent of their grant funds on temporary health insurance assistance. In addition, we’ve included protection for states: a minimum grant level of $5 million for any state that meets the grant criteria.

Finally, the third prong of the proposal responds to Democratic requests by including $4.3 billion for a one-time temporary State health care assistance payment to the States to help bolster their Medicaid programs.

As we know, the Medicaid program is an important safety net program for low-income children and families and disabled individuals. Medicaid is a joint Federal and State program and accounts for a large part of State budgets.

So, in this time of budget constraints due to the recession, States are struggling to make ends meet.

As a result of the unique and extraordinary economic situation we now face, a number of states are considering scaling back Medicaid services, including my own state of Iowa. This provision provides a one-time, emergency cash injection that will help States avoid Medicaid cutbacks.

This feature was not part of our original plan, and I recognize that many of my colleagues have concerns about it. In fact, I share their reservations, and that is why I’m emphasizing that this is not simply a garden-variety increase in Medicaid funding, but a temporary emergency payment.

The nation is calling for bipartisan compromise, and in that spirit, we’ve agreed to add this to our proposal.

Mr. President, we have made tremendous steps toward the Democratic position in order to find bipartisan compromise on health care. Those steps have not been reciprocated by the Democratic leadership.

Displaced workers deserve to be treated with respect by this body, and I believe that workers have earned a vote on this bill.

I would now like to discuss the individual income tax rate reductions in the White House-Centrist plan and the resuscitated Daschle plan.

The original House stimulus bill would have accelerated the reduction of the 27 percent rate to 25 percent which is scheduled to go into effect in 2007. The White House-Centrist package has adopted this approach.

Newly Democrats plan would reduce the 27 percent rate to 26 percent in 2002, and would not reduce the rate to 25 percent until 2006. Recall that the original Democrat plan did not provide one red cent of rate relief for working Americans.

Now, think about this. The 1 percent higher rate under the Democrat plan will operate as a 4 percent rate increase until the 27 percent rate is finally lowered to 25 percent 4 years from now. That makes a huge difference to Americans who are struggling to make ends meet. Let’s take a look at who will benefit from our plan’s rate reduction.

The reduction of the 27 percent rate will benefit singles with taxable income over $27,000, heads of household with taxable income over $36,250, and married couples with taxable income over $45,000.

These are not wealthy individuals. These are middle class working Americans.

I have a chart which shows the median income of a four person family for every State in the Nation. Median income is the income right in the middle, with half the incomes above it and half below it.

This chart shows that the average median income for a four person family in the United States is $62,098. Now, reduction of the 27 percent rate will benefit married couples with taxable income over $45,000. So it will benefit working people who earn well below the national median income level.

This chart also lists those states that have a family median income that is higher than the national average. And look at where these people live.

Connecticut, New Jersey, Delaware, Michigan, Rhode Island, California, Washington on State. These are the states where a family of four will benefit the most from our proposed tax cut.

The Democrat’s revamped alternative would impose an additional 4 percent tax rate on these incomes over the next 4 years. That should concern representatives from those states.

For example, consider that an additional 4 percent tax on New Jersey’s $78,000 median income results in more than $1,300 in additional taxes.

Michigan is the same: an additional $900 of tax. Washington State is hit with nearly $800 in additional tax.

These are significant numbers for a working family with two children. They would spend this money to meet their families’ needs, which would stimulate the economy more than a bunch of liberal Democrat spending programs.

Mr. President, I ask unanimous consent that this chart be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See Exhibit 1.)

Mr. GRASSLEY. The more surprising figures are shown in the next chart, which shows States with median income below the national average.

Recall that I said reducing the 27 percent rate to 25 percent will benefit married couples with taxable income over $45,000. Now look at the median income distributions on this chart.

There is not one State on here that has a median family income of less than $45,000. So you can see that our proposal will benefit everyone, not just an elite few, from a few selected states.

Mr. President, I ask unanimous consent that my second chart be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See Exhibit 2.)

Mr. GRASSLEY. The Treasury Department has estimated that White House-Centrist plan’s acceleration of the 27 percent rate reduction will yield $17.9 billion of tax relief in 2002 for over 36 million taxpayers, or one-third of all income tax payers.

Business owners and entrepreneurs account for 10 million, or 30 percent, of those benefitting from the rate reduction.

When you refuse to accelerate the rate cuts you harm farmers and small business persons. This is because most small business owners and farmers operate their businesses as sole proprietorships, partnerships or “Sub S” corporations.

The income of these types of entities is reported directly on the individual tax returns of the owners. Therefore, a rate reduction for individuals reduces taxes for farms and small businesses.

That is why the additional rate reductions under the White House-Centrist plan is so important. In 2002 alone, it injects $17.9 billion of stimulus into our ailing economy and small businesses.

I also ask unanimous consent that a chart be printed at the conclusion of my remarks.

I know that 80 percent of the 11.1 million new jobs created between 1994 and 1998 were from businesses with less than 20 employees.

And 80 percent of American businesses have fewer than 20 employees.

This is what I refer to as the “80-80 Rule” for supporting rate reductions.

In addition, lowering taxes now would increase a business’ cash flow during the current economic slowdown. The higher cash flow would increase the demand for investment and labor.

But don’t just take my word for it. Take it from an October 2000 report by the National Bureau of Economic Research, a very well-regarded non-partisan organization, entitled “Personal Income Taxes and the Growth of Small Firms.”

This report reaches the unambiguous conclusion that when a sole proprietor’s marginal tax rate goes up, the rate of growth of his or her business enterprise goes down.

Simply stated, high personal income tax rates discourage the growth of small businesses. And right now, that is the last thing we need.

That is why it is so important to do rate reductions the right way, and fully accelerate the 27% rate reduction. We are simply accelerating a decision this Senate made last summer.

We should have confidence in our decision. We know that tax cuts are stimulative.

When working Americans have more of their own income, they feel more financially secure and are more comfortable with spending.
EXHIBIT 1

<table>
<thead>
<tr>
<th>State</th>
<th>Median Income for 4-Person Families, 2001</th>
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<tbody>
<tr>
<td>United States</td>
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<tr>
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**Median income for 4-person families, by state, 2001—Continued**

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Source: Census (inflated from 1999 date by GDP deflator)

The PRESIDING OFFICER. The Senator from Nevada.

TO EXTEND THE AVAILABILITY OF UNEMPLOYMENT ASSISTANCE IN THE CASE OF THE TERRORIST ATTACKS ON SEPTEMBER 11

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 274, S. 1622.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk reads as follows:

A bill (S. 1622) to extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I alert the Senate that the bill from New York and the Senator from Virginia; we can get this unanimous consent if they save their speeches for much later.

I ask unanimous consent the bill be read the third time, passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1622) was read the third time and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SEC. 1. EXTENSION OF UNEMPLOYMENT ASSISTANCE.

Notwithstanding section 410(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5177(a)), in the case of any individual eligible to receive unemployment assistance under section 410(a) of that Act as a result of the terrorist attacks of September 11, 2001, the President shall make such assistance available for 52 weeks after the major disaster is declared.

TERRORIST VICTIMS’ COURTROOM ACCESS ACT

Mr. REID. Mr. President, I ask unanimous consent the Judiciary Committee be discharged of further consideration of S. 1858, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk reads as follows:

The Senator from Nevada [Mr. Reid], for Mr. Alles, proposes an amendment numbered 2691.

The amendment is as follows:

(Purpose: To clarify the requirements of the trial court)

On page 2, line 5, strike “including” and insert “in”. On page 2, line 6, after “San Francisco,” insert: “and such other locations the trial court determines are reasonably necessary.”

The PRESIDING OFFICER. Is there objection to the various requests of the Senator from Nevada?

Without objection, it is so ordered.

The amendment (No. 2691) was agreed to.

The bill (S. 1858), as amended, was read the third time and passed, as follows:

S. 1858
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE.

This Act may be cited as the “Terrorist Victims’ Courtroom Access Act”.

SEC. 2. TELEVISION OF THE TRIAL OF ZACARIAS MOUSSAOUI FOR THE VICTIMS OF SEPTEMBER 11TH.

(a) IN GENERAL.—Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crimes associated with the terrorist acts of September 11, 2001 to watch criminal trial proceedings in the criminal case against Zacarias Moussaoui, the trial...
court in that case shall order closed circuit televising of the proceedings to convenient locations, in Northern Virginia, Los Angeles, New York City, Boston, Newark, and San Francisco. Other locations that the court determines are reasonably necessary, for viewing by those victims the court determines have a compelling interest in doing so and are otherwise unable to do so by reason of inconvenience and expense of traveling to the location of the trial.

(b) PROCEDURES.—Except as provided in subsections (a), (b), (c), and (d) of section 235 of the Antiterrorism and Effective Death Penalty Act of 1996 (42 U.S.C. 18088) shall apply to the televising of court proceedings under this section.

FOREIGN OPERATIONS EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002—CONFERENCE REPORT

Mr. REID. Mr. President, I submit a report of the committee of conference on the bill (H.R. 2506) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments to the bill (H.R. 2506), making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2002, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same, as agreed to by the Senate, with an amendment, and the Senate agree to the same, as agreed to by the House, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same, with an amendment, as agreed to by the Senate, and the Senate agree to the same, as agreed to by the House, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same, with an amendment, as agreed to by the Senate, and the Senate agree to the same, as agreed to by the House, and are otherwise unable to do so by reason of inconvenience and expense of traveling to the location of the trial.

These changes reflect the realization that the September 11 terrorist attacks on U.S. soil may not be an isolated incident. At this moment, there may be people planning other terrorist acts against our homeland. We have already experienced three terrorism alerts in the U.S. since September 11. Almost daily, we hear grim predictions of what the future may bring. We are living in an age of global instability, disenfranchised and desperate peoples, and widespread proliferation of weapons of mass destruction. The volatility of the current world situation is without precedent.

And yet, in many ways, the major instrument of our foreign policy—the Foreign Operations Appropriations Act—reflects a distressing attitude of business-as-usual. I do not fault the authors of this bill. Senator LEAHY and Senator MCCONNELL have done an excellent job. The priorities of the Administration with the concerns of Congress and the needs of our allies throughout the world. They have done so with care and skill, and they are to be commended for their work.

No, the fault I believe, lies with our inability as a nation to relinquish long held conventional wisdom about foreign aid and recognize that the changing global environment requires a re-vamping of our foreign policy. We must move away from using dollars to symbolize the strength of our relations with other countries, and instead focus our energies—and our resources on promoting a new understanding of foreign policy that complements and enhances our global strategy.

Nowhere is this more true than in the Middle East, where renewed violence and antipathy have brought Israel and the Palestinian Authority to the brink of open warfare. Since September 29, 2000, the Israeli-Palestinian conflict, fueled by generations of hatred, has claimed nearly 1,000 lives. For the past 15 months, the unending cycle of violence has pitted the home-made bombs and deadly suicide missions of the Palestinian suicide bombers and missile attacks of the Israelis. Many, perhaps most, of the victims have been young people barely on the cusp of adulthood. The sad fact is that the next generation of leaders of the Israelis and the Palestinians are being sacrificed to the blood feud of their elders.

The United States, like the rest of the world, has looked on this ceaseless carnage in horror. We have expressed dismay, regret, sorrow, and anger. We have wrung our hands in despair. We have condemned the violence in the strongest terms. But we have not suited our words to any meaningful action.

In this bill, our foreign assistance to the Middle East virtually ignores the spiraling violence in the region. This bill provides $5.1 billion dollars in foreign assistance to the Middle East, primarily Israel and Egypt, a level almost identical to last year, is as if nothing has changed. There are no strings on the money. There is no requirement that the bloodshed abate before the funding is released. There is no motivation for Egypt to step up its efforts to mediate between Israelis and Palestinians, and there is no incentive whatsoever for Israel and the Palestinians to make meaningful progress toward a peaceful settlement of their differences.

In short, we are doing little more than offering a tacit acknowledgment that the United States is powerless to stop the bloodshed. We are sending the wrong signal to the Middle East. By not using our foreign assistance dollars as an instrument to effect change in the Mideast, we are inadvertently helping to fuel the continued cycle of violence. And what has this hands-off policy produced? Empty promises, escalation of violence, and a war instead of peace between Israel and the Palestinians.

Now what? Where does the so-called peace process go from here? Can we really expect the Israelis to exercise restraint following the most recent escalation of violence against their citizens? Is there any point in urging Yasser Arafat to seize and punish the terrorists within his control when he is obviously unable to live up to his promises? Is there any hope that the Israelis and Palestinians will be able to re-engage in meaningful discussions in the foreseeable future?

In the current poisonous environment, neither side has any incentive to resume peace talks. To give his expressions of dismay any credibility, Mr. Arafat will have to conduct a swift and sweeping crackdown on the leaders of the Palestinian terrorist groups. The Israelis can announce anything he has never been able to accomplish in the past. And even if Mr. Arafat could deliver on his promises, it will take masterful leadership on the part of Israeli Prime Minister Ariel Sharon to restrain his military options and to place Israel’s settlements in disputed areas on the negotiating table—two difficult but necessary prerequisites for peace.

The Israelis and the Palestinians, with generations of hatred, cannot hope to accomplish these goals on their own. It is time for Egypt—with the assistance of Saudi Arabia and Jordan—to exercise its considerable influence in the region and place long term security interests over short term internal political costs. Such leadership will not be easy. President Mubarak will have to make hard choices and steel himself and his government against the predictable political backlash from the more radical elements of his own country. But President Mubarak’s leadership is necessary to temper the emotions of his fellow members of the Arab League.
The United States has a similarly difficult task before it. Despite our clear alliance with Israel, the U.S. must regain the role of honest broker. We must stop rewarding the status quo with an uninterrupted flow of foreign aid dollars and instead use foreign assistance to leverage the cease-fire. We are certainly not doing so now. Just a few weeks ago, the State Department confirmed the intended sale of 53 advanced anti-ship missiles to Egypt. Egypt maintains that these missiles are needed to protect its borders, but the fact is, these deadly accurate missiles have the range to threaten Israel’s ports and shipping. Given the tinderbox that is the Middle East today, why is the United States contemplating sending these weapons into the region at this time?

Meanwhile, we routinely sell advanced aircraft and missiles to Israel as part of our foreign assistance package. Some of these U.S.-made high-tech weapons are used to target and assassinate Palestinian terrorists. Just days ago, we again saw television images of Israeli-operated, American-made jets and helicopters launching missiles at buildings used by the Palestinians. You can be sure those images were seen throughout the Arab world. How can we demand peace on one hand when we are providing instruments of destruction with the other?

Israel and the United States are the staunchest of allies. No one should question our support of Israel’s right to exist. But support need not translate into enabling. The United States, the Middle East, and the world would be better served if we changed our policy in the Middle East to reflect reality, not rhetoric. The Palestinians must stop the cycle of violence. The Israelis must practice restraint. The United States must back up its words with actions.

We have a road map to restart the Middle East peace process, the Mitchell Report. This blueprint, drawn up by former Senator George Mitchell and issued last April, is a step-by-step plan to end the violence and resume negotiations between the Israelis and the Palestinians. The Mitchell Report is often cited as a practical and workable solution. It has strong support in both the Arab world. How can we stand silent in the face of Israel’s sale of advanced weapons and components to China—weapons that are based on U.S. technology or developed in Israel with U.S. tax dollars? China may not be in the same category as North Korea, but it defies logic to think that the sale of advanced American weapons technology to China is in the security interests of the United States. Foreign policy decisions do not exist in a vacuum. Our support for Israel affects U.S. policies toward the U.S. The weapons systems that Israel sells to China could effect China’s capability to inflict harm on the United States. With the new urgency to protect our homeland, these are significant issues that should be dealt with honestly and openly in future foreign assistance programs.

In light of September 11, the P-3 incident of April 1 has almost faded from many memories. That was 5 months before September 11, and our service men and women were put in harm’s way by a brutal regime, which summarily executes dissidents and independent-seeking nationalists in Tibet and other occupied lands. Have the recipients of these funds voluntarily, or other friends and allies been arming this potential adversary of ours, which in turn provides chemical and biological weapon delivery systems to terrorist-sponsoring states? The answer is yes. China is a known proliferator of chemical weapons and ballistic missiles capable of delivering chemical and biological warheads, and Britain, France, Russia, and Israel have been selling weapons and transferring advanced military and dual-use technologies to China. Our record is not clean either. Our excessively profit-motivated corporations have also transferred technologies to the PRC, sometimes as the price of doing business there and sometimes even voluntarily. China is known to have provided missiles capable of being equipped with chemical and biological warheads to Iraq. Iraq is a terrorist state, a manufacturer and user of chemical and biological weapons, and a sponsor of terrorist groups. China has provided nuclear technology to Saudi Arabia, to Syria, to Iran, and to Libya. It has provided nuclear weapons to Syria, to Japan, and to Iraq. It provided chemical weapons to Syria. It provided them to Iraq.

Could these weapons be used against our personnel and our allies in the event of a future confrontation? The answer is yes. Are these weapons sales in the interests of American national security? Of course not. I was one of the initiators of the enabling legislation of the U.S.-China Security Review Commission, a bipartisan Congressional commission. One of its specific mandates is to analyze and transfer of our advanced military and dual-use technology by trade, procurement, or other means to China. The Commission is looking into technology transfers to the PRC through third parties. Another specific mandate to The Commission is to look at the proliferation of weapons of mass destruction. The basic purpose of the Commission is to assess the impact of these and other actions on the national security interests of the United States. The Commission is to report its findings and recommendations to Congress and the President in May. I look forward to the report today, the United States is embroiled in a war of its own in the Middle East. Until recently, the Middle East was largely a distant wilderness, displaced by the specter of hand-to-hand combat between American troops and Taliban forces in Afghanistan. But the importance of seeking a peaceful solution to the violence between China and the Palestinians is no less urgent than it has always been. The recent terrorist attacks against innocent Israeli citizens and the possibility that Israel will launch its own war against Palestinian terrorists is all the proof—all the proof—that we need.

If this cycle of violence continues unabated, if the Israelis and the Palestinians are unable to come to terms with themselves, then the United States and the international community must intervene to secure our future foreign assistance to the Middle East—to all the major players, including Egypt, including Israel, including Jordan and including the Palestinians—on implementation of the Mitchell Report or something very like it. U.S. interests are not served by the perpetuation of violence between the Israelis and the Palestinians. No one should be more cognizant of this fact than Yassar Arafat, who time and again has failed to moderate the extremist Palestinians who are determined to sabotage any move toward peace. No one should be more cognizant of this fact than the United States, which has spent billions upon billions of tax dollars and sponsored countless rounds of peace talks, to no apparent avail.

The Middle East is a two-way street, and like most roads in that ancient part of the world, the path is steep and the path is rocky.
and the path is difficult to traverse. But, with faith and perseverance, it need not be a dead end street. There is no ideal solution to the travail in the Middle East. There is no right answer, there is no fair solution, there is no justice for all those who have suffered. There is no solution, except through acceptance, giving ground and restraining hatred. But there is no other solution.

If the Palestinians and the Israelis continue to pursue hatred and revenge, the future of Israel will be written in blood, as the past pages are written in blood, and the dreams of a new Palestinian state will lie shattered in the dust. If the players in this tragedy cannot bring themselves to accept that fact, the United States should use its every tool—every tool—and I am including dollars, I am including the instrument of foreign assistance—to pressure the sides to negotiate a peace. To do otherwise makes us little more than an accessory to the violence.

Mr. President, these are strong words. They are intended to be. These are perilous times. This is not the time to mince words. As we saw on September 11, and as we fear we may see again in the near future, hatred and rage unfettered in the Middle East places our very homeland in jeopardy. The war that we are waging against terrorism is the first and most urgent step in protecting our homeland. But defeating the terrorists is only the first step. We must also eradicate the causes, so we can. Abandoning conventional wisdom in these unconventional times and using our foreign assistance dollars to effect change instead of making a pro forma allotment of funds is the best, and perhaps the only, means that we have at hand to help shape a peaceful future for the Middle East.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. Corzine). The Republican leader.

Mr. LOTT. Mr. President, I see the Senator from Louisiana will be seeking recognition in a moment. I will be relatively brief.

Let me say to Senator Byrd from West Virginia, I stayed on the floor because even in all the tumult here this afternoon, as we were trying to get an opportunity to speak on foreign policy issues, I have heard him speak on this subject before and found it very interesting, thoughtful, and thought provoking. That is why I stayed and listened because I wanted to hear what the Senator from West Virginia had to say in this area.

As I suspected, I found it interesting and useful. I hope the administration will review these remarks, and I hope those in the Middle East who are involved in a very dangerous situation on all sides, will take into consideration what has been said there.

For years I have been concerned that our policy didn’t always make sense. We seemed to be giving money to all sides with no assurances and sometimes not even participation by those who received that aid. I have always thought it was almost contradictory, maybe even hypocritical. This is a volatile part of the world. It is a place where hatred and revenge may reflect a conflict and bloodshed. We all hope and pray for a peaceful solution.

I do think it is going to take an extraordinary effort. First, the Palestinians have to be prepared to accept peace, to be prepared to negotiate a peace agreement. All have to be participants, including other Arab countries in the world receiving aid from America. And America has to be prepared to press these points on them.

I say to Senator Byrd. I appreciate his taking the time. More Senators should think about this subject and express themselves. We should take a look at our foreign operations appropriation process more closely, maybe consider making some changes next year.

We also need to take advantage of this time in which we find ourselves with support from countries that have not traditionally been our allies, a number of people who are working with us against whom we had been taking unilateral sanction actions. We should review all of that. The world is different now. It is an opportunity, as we are increasing our foreign aid, of completing the action in Afghanistan, and looking at where terrorism may be in other parts of the world. It is going to be an opportunity for this administration, under the leadership of President Bush and Secretary Powell and his other advisers, such as Condoleezza Rice, to change our thinking and to improve our position and our relationship with a number of countries around the world.

I thank Senator Byrd for his remarks this afternoon. I do commend them to all Senators when they have an opportunity.

Mr. BYRD. Will the distinguished Republican leader yield?

Mr. LOTT. I am glad to yield to Senator Byrd.

Mr. BYRD. I thank the leader for his comments and his observations. I thank him for remaining on the floor, and I thank him for what I accept to be an observation on foreign policy issues. I have heard him speak on this subject before and found it very interesting, thoughtful, and thought provoking. That is why I stayed and listened because I wanted to hear what the Senator from West Virginia had to say in this area.

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I thank the distinguished Republican leader.

Mr. CONRAD. Mr. President, I rise to offer for the RECORD the Budget Committee official scoring for the conference report to H.R. 2506, the Foreign Operations, Export Financing, and Related Programs Appropriations Act for fiscal year 2002.

The conference report provides $15,524 billion in discretionary budget authority, which will result in new outlays in 2002 of $5.537 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the conference report total $15.106 billion in 2002. By comparison, the Senate-passed version of the bill provided $15.524 billion in discretionary budget authority, which would have resulted in $15.138 billion in total outlays. H.R. 2506 is within its Section 302(b) allocation for both budget authority and outlays. In addition, it does not include any emergency designations.

I ask unanimous consent that a table displaying the Budget Committee scoring of H.R. 2506 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 2506, CONFERENCE REPORT TO THE FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2002

(Spending comparisons—Conference Report, in millions of dollars)

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The tragic events of September 11 were a wake-up call. The United States is not isolated from the rest of the world in a sea of invulnerable tranquility. As we stand here today, there are radicals preaching anti-American sentiments. They are saying that democracy breeds corruption, and that globalization is the reason for poverty. These radicals take advantage of the desperation of the poor and the hopeless.

Poverty and ignorance are one of the most fertile breeding grounds of terrorism. By now my colleagues are aware of the fact that many members of the Taliban, the same group of radical fiends that harbored Osama bin Laden, were refugees in Pakistan. They were too poor to afford school. They were educated in radical seminaries that they attended free of charge. Where were we and the rest of the international community with an alternative for these children? We were absent. It did not concern us. It was not our problem.

On the other side of the world in Mali, a Washington Post article dated September 30 states that Muslim mis-

sionaries have taken "hundreds of recruits" abroad for religious training. The story states that radical Islamic religious movements are gaining popularity due to corruption and rising poverty. Are we going to ignore the warning signs in west Africa as well? Why did we let Mali's democracy struggling to hold on by the skin of its teeth, become a source of turmoil, unrest and violence? The government there is trying to do the right things in terms of economic and market reform. We should be empowering the Agency for International Development and the State Department to provide the country with the ability to move the transition to democracy in such a way that all people benefit. This appropriation in no way provides enough money to adequately do so.

Those who are hopeless and disaffected swell the ranks of terrorist organizations. Autocratic politically repressive regimes, where discontent and disagreement cannot be expressed, are fertile grounds for terrorist recruitment. In countries that prohibit free speech, freedom of association and political choice, violence becomes the only means through which to affect political change. Such foreign policy apparatus has the mandate to push for change in these countries. It lacks the means to do so to the extent necessary.

I say to my colleagues that we have got to take heed. The problems in other countries are our problems. We need to engage, and it is impossible to do so on the cheap. We cannot adequately engage the world with the monies allocated in this appropriation. The United States cannot hope to participate meaningfully in the reconstruction of Afghanistan out of these meager funds. The cost of that alone is projected to be as much as $18–20 billion over the next 5 years. A cost which we must be prepared to share among the donor community.

As we speak there are students in the very schools in Pakistan that I spoke of learning to hate America. As we speak there are mosques in west Africa as well? Will we let the spread of deadly diseases before they reach our shores. Mr. President, we are doing whatever it takes for however long it takes to wipe Al-Qaida from the face of the earth. However, I strongly believe that we must do all we can to prevent ever having a right such as this. One of the ways we can do this is to invest more in preventative measures. We must foster the spread of democracy, bolster the judicial and law enforcement capabilities of developing countries and help strengthen the economies where necessary. What we have done to date is clearly not enough.

Mr. GRAHAM. Mr. President, I rise today to speak in support of adoption of the conference report on the Fiscal Year 2002 appropriation bill for Foreign Operations H.R. 2506.

The annual Foreign Operations appropriations bill is the primary legislative vehicle through which Congress reauthorizes the U.S. foreign aid budget and influences executive branch foreign policy making generally. It contains the largest share—over two-thirds—of total U.S. international affairs spending.
funding for the Andean Regional Initiative to the level which the administration had requested.

The Andean Regional Initiative represents our best strategy for fighting terrorism in this hemisphere. President Andres Pastrana and his administration have been leading a valiant fight against the narcotraffickers who have been threatening the economy, the society, the very civilization of the Republic of Colombia for more than two decades.

In 2000, Congress approved the first installment of our commitment to Plan Colombia. President Bush correctly requested $731 million for Fiscal Year 2002, which would have broadened our involvement beyond military support and expanded this assistance to Bolivia, Ecuador, and Peru.

The Senate bill would have cut this important strategic initiative by 22 percent, from $731 million to $567 million, which would endanger the progress we have made.

The conference has agreed to fund the initiative at $690 million, which represents a reduction of $71 million from the President’s request, but that is $93 million above the Senate’s level.

While I remain concerned about what the impact will be on the program at the level of funding, it is an improvement over the Senate’s position, so I am willing to vote for this conference report.

I also want to emphasize my support for other important priorities that are funded by this conference report—priorities that I too would have chosen.

They include $2.04 billion in military grants and $720 million in economic grants for Israel in Fiscal Year 2002.

We have no stronger ally in the global war on terrorism than the State of Israel, and this aid recognizes Israel’s key role in helping us protect our interests in the Middle East and around the world.

I want to recognize Chairman KOLBE, who worked extraordinarily hard to get this conference report passed in the House, and Congresswoman LOWEY, who was extremely helpful. This was a collaborative effort in every sense of the word.

Mr. President, the attacks of September 11th hold important lessons that are relevant to this conference report. They showed us how our security is directly and indirectly linked to events and conditions around the world.

With the exception of the cost of deploying our Armed Forces, the $15.3 billion in this conference report is what we have available to protect our security outside our borders.

These funds are used to combat poverty, which engulfs a third of the world’s people, and their families, and participate meaningfully in the political process, are not training to be terrorists.

For years, organizations working on the front lines in poor countries have appealed to the Congress and the administration to significantly increase our support to address the inter-related problems of population growth, poverty, political and economic instability, corruption, environmental degradation, narco-trafficking, and terrorism. Year after year, the Congress and the administration have turned a deaf ear.

Is it any wonder that Afghanistan today is a destroyed country that became a haven for terrorists? Part of the problem is misconceptions about the foreign operations budget. People think it’s some kind of give-away, when in fact, we use it to protect our security.

Mr. President, since September 11th, a large majority of the American public, and a broad, bipartisan cross-section of Members of Congress—Democrats and Republicans, liberals and conservatives—have called for substantial increases in funding to address the causes of poverty and disillusionment that persists not only in many Muslim countries, but among a third of the world’s population.

We can no longer pretend that spending 1 percent of our $2 trillion Federal budget is a serious response to these national security needs. The widening gap between rich and poor nations is the best evidence of that.

Many have made these points before. They are a call to refrain. Senators FEINSTEIN, GORDON SMITH, and I have introduced a resolution calling for tripling the foreign assistance budget. Others have proposed similar legislation. There have been numerous speeches, editorials, and other commentary.

Yet we have yet to see any effective response from the political process. Our foreign assistance budget—I would call it our security budget—has fallen in real terms since the 1980s. Rumor has it that the President’s fiscal year 2003 budget request for International Affairs will be about the fiscal year 2002 level—in other words, business as usual, despite the lessons of September 11.

That would be extraordinary short sighted. We cannot possibly deal a lasting blow to international terrorism without a multi-prong strategy—addressing the economic causes of terrorism and conflict with foreign assistance, diplomacy, and law enforcement, and when necessary, military force.

Mr. President, the security of an American citizen is worth a lot more than the price of a pair of shoes, yet that is how much we are spending on the prevention part of this strategy. It is, frankly, ludicrous.

Congress has only a few million dollars to allocate the suffering in refugee camps, which are fertile grounds for terrorist recruits. We debate about another $5 or $10 million to help the
We include several conditions on our assistance to the Colombian Armed Forces, and on the aerial spraying of chemical herbicides which are used to eradicate coca.

The conference report provides $34 million for the UN Population Fund, to encourage and support the sexual and reproductive health and rights of women throughout Latin America.

In addition, I am particularly pleased that Armenia will receive significant military financing and training assistance and it is my hope that in the long run, this balanced approach will speed the Nagorno-Karabagh process.

I also want to express my gratitude to Senators LEAHY and MCCONNELL for their hard work with regard to this bill. In addition, I would like to recognize the input of those individuals and organizations from the Armenian-American community who understand the importance of America’s efforts to combat terrorism in the aftermath of September 11th.

Mr. MCCONNELL. Mr. President, I thank my colleagues for their patience as the final negotiations on the FY 2002 foreign operations bill came to a conclusion only this week.

The conference report reflects a compromise between both sides of the aisle in the Senate, and with our House colleagues. Let me take a brief moment to underscore a few accomplishments in the bill:

Conferences accepted the Senate amendment—which was painstakingly reached with the help of Senator BYRD—permitting counter terrorism assistance to Azerbaijan, while protecting the integrity of section 907 of the FREEDOM Support Act.

This conference report is the best we could do with what we had, and we owe a debt of gratitude to Chairman BYRD and Senator STEVENS. But we need a multi-prong strategy if we are going to combat international terrorism and protect our other security around the world. I hope someone in the White House is listening, because this is what the President should be saying to America and the world.

President Bush will make a great effort to briefly mention a few of the important provisions in this conference report.

It provides sufficient funding for the Export Import Bank to support export financing well above the fiscal year 2000 level. This is of great importance to American companies who compete for markets in developing countries.

It provides increases for the Foreign Military Financing and International Military Education and Training programs.

It includes additional funding for international peacekeeping and for assistance for the former Yugoslavia, including Serbia, Montenegro, and Macedonia.

It includes $75 million for the prevention and treatment of HIV/AIDS, including $50 million for the Global Fund to combat AIDS, TB and malaria. This falls short of what our country should be providing, but it is a significant increase from last year.

The conference report also increases funding for other infectious disease and children’s health programs. These programs are desperately needed to strengthen the capacity of developing countries to conduct surveillance and respond to diseases like polio and measles. But they are equally important for combating the spread of biological agents used in acts of terrorism, like anthrax.

It includes $625 million for the Andean Counterdrug Initiative. This is in addition to the $1.3 billion for Plan Colombia that we appropriated last year. We include several conditions on our...
It is interesting to note that Mexico has never once been decertified. So this is not a U.S.-Mexico issue. This is an issue affecting our global efforts to reduce the supply of drugs to this country. Yet, little has been done because I have heard enough to be convinced. It may very well be an attempt by the opponents of the certification process to begin the process of dismantling certification altogether.

Well, let’s just say that while I am happy to work with my colleagues to consider reasonable ways to address the certification issue—especially, in cases like Mexico, where the record may warrant changes—I intend to make sure that next year’s foreign operations legislation does not reflect such a poorly conceived approach to this issue.

Mr. BYRD. While the Republican leader is on the floor, if I may change the subject, Senator PAUL ROBERTS of Kansas proposed to me earlier seeking unanimous consent to pass a bioterrorism bill.

Mr. LOTT. Yes, bioterrorism.

Mr. BYRD. At that point, I didn’t know about the bill and didn’t know anything about it. I thought he was going to remain around. But I want to say to the Senate Republican leader that I have no objection. I have had my staff look at it, and I am advised by the staff and on reading this measure and contemplating it and understanding it, I certainly have no objection if the leader wants to call it up. That is the bill in which PAUL ROBERTS of Kansas is interested.

Mr. LOTT. That is the bioterrorism legislation, Mr. President, that the Senator from West Virginia. It has been very laboriously worked through by Senator CRAIG, Senator KENNEDY, and Senator FRIST. This is an area where we need to do more. This is only authorization. It would still be subject to the appropriations process. But it does authorize a great deal more activity in very critical areas such as public health service. And, of course, Senator ROBERTS also worked to get a food aspect of that in agriculture. Agriculture terrorism is an area where we have to be concerned, too.

I think it is good legislation. I appreciate Senator BYRD’s making that observation and agreeing that we could move it. Once Senator REID returns to the floor, we will rebuke unanimous consent request at that time.

Mr. BYRD. PAT ROBERTS came to my office earlier this year and explained his interest in the Foreign Operations Subcommittee for their support of this bill. My staff and I look forward to working with Senator Saxby Chambliss for their support of this bill.

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Mr. LOTT. Yes, bioterrorism.

Mr. BYRD. At that point, I didn’t know about the bill and didn’t know anything about it. I thought he was going to remain around. But I want to say to the Senate Republican leader that I have no objection. I have had my staff look at it, and I am advised by the staff and on reading this measure and contemplating it and understanding it, I certainly have no objection if the leader wants to call it up. That is the bill in which PAUL ROBERTS of Kansas is interested.

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Mr. BYRD. I remove my objection.

Mr. LOTT. Mr. President, I do want to say on other matters that we passed this afternoon and on which we didn't get to comment too much, I am glad we did what we did with regard to victims' tax relief. I was floored to learn that we taxed charitable contributions or receipts to individuals who had been hit by a disaster such as this. I think we should say as to the funds they receive from charitable contributions, these spouses who have lost their loved ones, not only should they not have to pay taxes on the charity they receive but no American should.

I have gone back and checked on the history now and found out how that happened. Apparently there was a budget need for $10 billion. So they said, we can just do a tax on charitable receipts for 5 years and that will take care of this $10 billion hole.

So I am glad we did that. I appreciate that tax relief came from all over the country on other issues, such as Senator Baucus and the Senator from New York, who were willing to put aside very important issues to them to make sure we didn't leave this issue on the table.

Mr. LOTT. Mr. President, another issue I was very sorry we couldn't work out was the terrorism reinsurance. We should have moved that today. We should have moved it a month ago.

What happened was Senator Gramm, Senator Dodd, and Senator Sartanes came to agreement on a bill in the committee of jurisdiction, the Banking and Financial Services Committee. It had some limits on liability. But then it was basically taken away from those Senators, and they were told we were not going to do it that way.

The bill that Senator Daschle asked consent to move this afternoon did not have any prohibitions on punitive damages. And Senator McConnell then said: We should move the bill, but we should have at least a vote on whether or not there should be any limits on liabilities. That is all we were asking, not that it be included, which it should have been because that was what was in the committee, but that we have an opportunity to vote on that.

And, by the way, as an old whip, I had counted the votes, and the votes were here in the Senate to pass that bill with no punitive damages allowed and some limits on liability.

Otherwise, we would have lawsuits being settled and attorney fees and punitive damages coming out of the Federal Treasury if we had a terrorist attack that invoked this terrorism reinsurance.

So I hope we don't have a situation at the end of the year where buildings will not be able to be built because they won't get loans because there won't be terrorism insurance. Maybe too much won't happen between now and the end of January or early February, but one day we will have to address this issue. When we do, it should have some reasonable tort reform included, as the Federal tort claims law now provides.

One other brief point, and I will yield so others may speak. Mr. President, in the 28 years I have been in Congress, the House and the Senate, we have worked through a lot of difficult issues. We have committee action, we pass things in the House and Senate, we have intense negotiations in conference. I think those things bring it to a conclusion and we pass it. I have never seen an issue that more work went into than this stimulus package with no result. The President was personally involved. The President personally made concessions there.

The House and the Senate were involved. We set up a system of negotiators involving Senator Baucus, Senator Grassley, and Senator Rockefeller. We finally had a bill before us this afternoon that would provide stimulus for the economy, tax incentives for businesses, big and small, and for individuals to be able to keep a little more of their taxes, lowering the 27 percent tax bracket down to 25, helping people who make as low as $28,000 for an individual, and $40,000 for a couple—not exactly wealthy people, and not even middle income, if you get down to it—and assistance for unemployed, increased benefits for them, and a new precedent of health insurance coverage.

We could not even get it up to a vote. I believe if we would have had a vote on that issue today, there would have been 60 votes to override a point of order. I would not want to have to go back to my State and explain how I voted against a bill that provided additional unemployment compensation, health insurance coverage for the unemployed, expensive for small business employers, and tax incentives for middle-income individuals. I don't think I could have defended that. Therefore, I would have voted for it, and I believe 60 or more Senators would have voted for it. But it is here.

I hope the economy begins to show some growth. There is good news. I hope the economy begins to show continued growth. There is good news for the third week in a row. Unemployment claims are down. We have a robust, dynamic economy in America. Maybe it won't be needed. But if we come back in late January and February and do our job, it is going to come back and we are not seeing positive signs of real recovery, we are going to have to revisit this issue.

Mr. REID. Mr. President, on behalf of Senator Byrd, I yield back the 17 minutes he has. It is my understanding that Senator Lott has the authority to yield back the time of Senator McConnell on the foreign operations bill.

Mr. LOTT. Yes. I do so.

Mr. ALLEN. Mr. President, I spoke to Senator Baucus, and I know he has a measure he wants to discuss, and, without objection, I would actually direct Senator Baucus for his remarks he wanted to make if I may follow right behind Senator Baucus.

Ms. LANDRIEU. Reserving the right to object, I inquire of the Senator from Virginia and the Senator from Montana about the timeframe they are speaking of because I wanted to address the Senate on a matter different from the subject about which they want to speak.

Mr. Baucus. Mr. President, if I might answer the question period it is my intention that the matter I intend to bring up will probably consume 4, 5 minutes maximum.

Mr. REID. Mr. President, if I may ask the courtesy of my friends, Senator Lott and I have something we have been trying to do all day. It will take a short time, a unanimous consent request.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Virginia?

Mr. LANDRIEU. I do object, Mr. President.

The PRESIDING OFFICER. Objection is heard.
Mr. ALLEN. Mr. President, I say to my friend from Montana, I would have liked to yield 5 minutes, but I had better take them.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

TERRORIST VICTIMS COURTROOM ACCESS ACT

Mr. ALLEN. Mr. President, I rise to discuss a bill we just passed, S. 1858. I thank my colleagues for their support: Senator KERRY, Senator NICKLES, Senator KENNEDY, and Senators WARNER, HATCH, and CLINTON. Particularly, I thank Senator NICKLES for he was of great help in getting this measure passed.

S. 1858 deals with the upcoming trial of Zacarias Moussaoui. Moussaoui has been charged in a six-count indictment with undertaking "the same preparation for murder" as the perpetrators of the September 11 attacks, but his alleged participation had been thwarted by his arrest the previous month in Minnesota. Now this measure is one that is helpful to all of us in that it is the only suspect with any direct connection with the most vile and horrific terrorist attack in our history. There will be substantial interest in the trial of Mr. Moussaoui on the part of those who have been left behind, especially the families and loved ones of thousands who were killed on that dreadful day. By some estimates, there are as many as 10,000 or 15,000 victims who may have an interest in viewing this historic legal proceeding that will take place in the U.S. District Court for the Eastern District of Virginia in Alexandria.

The current policy of the Federal Judicial Conference does not permit the televising of court proceedings. I am supporting legislation that would give Federal judges such discretion. But until that legislation passes, we will not be able to address the interests of victims' families to view the proceedings in the Moussaoui trial.

In the past, exceptions have been made through congressional action, most notably allowing the closed circuit transmission of the trials of Timothy McVeigh and Terry Nichols from Denver to Oklahoma City, so that families in Oklahoma could witness the proceedings. That is where Senator NICKLES was especially empathetic and knowledgeable about how much this means to the victims' families.

This legislation, S. 1858, is modeled on the law that allowed the Oklahoma City victims to witness the McVeigh and Nichols trials, and this bill will extend the same compassionate recognition to benefit to the numerous victims and families of September 11.

The legislation calls for the closed circuit broadcast of the court proceedings to convenient locations in Northern Virginia; Los Angeles and San Francisco, CA; New York City; Boston; and Newark, NJ. Also "with the amendment in such other locations as the court shall determine to be desirable," to use the exact language, and other locations the court may find desirable in their discretion.

The reason for the six places is that these are the sites of the terrorist attacks: the Pentagon and the World Trade Center, and the others are the sites where commandeered aircraft either departed or intended to arrive. Unfortunately, they did not. These locations obviously would have the greatest number of interested people and have video back.

The legislation allows those who the court determines to have a compelling interest but who are unable to attend because of expense and convenience or simply a lack of space in the courtroom to witness the trial.

The courtroom in Alexandria, VA, holds fewer than 100 people, and the sheer number of victims and others who meet the standard make it impossible for them to observe in person. While there is a great, deep wound for the larger society, the wound is deepest and most deeply and painfully felt by the survivors and families who lost loved ones.

I am glad we recognize in the Senate that we owe it to those victims' families to allow them to see this open proceeding which is directly related to the horrific event of September 11 that took the lives of their loved ones. In doing so, for those who want to watch the trials—others may not—for those who want to, it will begin to help them heal.

It is a right approach that a compassionate nation wants to provide to these victims' families. I thank the Senators for their support, not of this legislation but for their support of the families of these victims.

I yield back the remainder of my time. Thank you, Mr. President.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that following my unanimous consent request the Senator from Montana be recognized for up to 5 minutes, the Senator from Louisiana for up to 5 minutes, and the Senator from Ohio for 10 minutes, as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUBLIC HEALTH SECURITY AND BIOTERRORISM RESPONSE ACT OF 2001

Mr. REID. Mr. President, with the attention of the Senate from Missisipi, Mr. President, I ask unanimous consent that the Senate now proceed to H.R. 3448, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H. R. 3448) to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.

There being no objection, the Senate proceeded to consider the bill.

Ms. LANDRIEU. I am very concerned about help for for-profit hospitals if they must deal with bioterrorist attack. Their services are critical, and they face the same challenges as other hospitals. They should be eligible for Stafford Act assistance under certain circumstances.

Mr. KENNEDY. I understand the concerns of my colleague. In many places for-profit hospitals are the only providers. I will work with her to address these legitimate needs in conference.

FOOD SAFETY

Mr. DURBIN. Mr. President, I am pleased that the sponsors of the bill recognize the importance of strengthening our Nation's protections for food safety and of addressing potential bioterrorist threats against our food supply. Among the bill's provisions are new authorities for the Food and Drug Administration to require the maintenance of food records, to inspect such records, and to detain unsafe foods.

I would appreciate clarification regarding the standard of serious adverse health consequences or death which applies to the authorities for inspection of records and administrative detention, among others. It is my understanding that some have suggested that foodborne pathogens such as salmonella, listeria, e-coli, e-coli typhus, shigella dysenteriae, and cryptosporidium parvum, which in 1993 sickened over 400,000 people in Wisconsin who drank contaminated water, may not pose a threat of serious adverse health consequences or death to vulnerable populations, such as children, pregnant women, the elderly, transplant recipients, persons with HIV/AIDS and other immunocompromised persons.

Do the sponsors intend for the standard in this bill, cited in the sections on inspection of records, administrative detention, debarment, and marking of refused articles, to enable the Food and Drug Administration to act when a foodborne pathogen presents a threat of serious adverse health consequences or death to such vulnerable populations mentioned above, even if healthy adults may not face the same risk? And do the sponsors agree that the pathogens I mentioned previously may present such a risk of serious adverse health consequences or death? I believe we must ensure that the law is fully protective of all American consumers. I hope that the sponsors share my concerns.

Mr. KENNEDY. Will the Senator from Illinois yield?

Mr. DURBIN. I am happy to yield to the Senator from Massachusetts.

Mr. KENNEDY. First, I commend my colleague for his longstanding advocacy for food safety. He has been a...
leader, both in the House of Representatives and here in the Senate, in seeking the resources, the authority and the public awareness which will reduce the yearly epidemic of foodborne illness. The CDC has estimated that foodborne illness causes approximately 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year.

I also point out that he has played an instrumental role, with our colleagues, Senator Mikulski, Senator Collins, and Senator Jeffords, in assuring that food safety is addressed in this legislation.

In response to my colleague’s inquiry, I fully concur with his interpretation of the food safety provisions in our legislation. It is precisely our intent, with respect to the food safety sections of this bill, that the standard of serious adverse health consequences or death with respect to these provisions in this bill should be understood to enable the FDA to protect all Americans, including vulnerable populations such as children and the elderly.

I agree that there are instances where foodborne pathogens, such as those mentioned by my colleague, whether accidentally or deliberately introduced into food, may threaten some more vulnerable individuals but not the healthy adult population. For that reason, my colleague is correct that the agency would be able to exercise health hazard authority to protect such vulnerable populations.

Mr. FRIST. Will my colleague yield?

Mr. KENNEDY. With pleasure.

Mr. FRIST. I concur with Senator Kennedy's remarks regarding this protect such vulnerable populations. For the agency would be able to exercise health hazard authority to protect such vulnerable populations.

Mr. FRIST. That is correct.

Mr. KENNEDY. Yes, that is correct because in the interest of time, we are unable to change the bill prior to conference.

Mr. SMITH. I too would like to thank Senator Frist, Senator Kennedy, and Senator Gregg for agreeing to work with us to ensure these two proposals are included in the bioterrorism proposal. I regret that with the end of session quickly approaching, there is no longer time to include these provisions into the underlying bill. As we all recognize in our support for these proposals, since the September 11 attacks, Americans throughout the country have become concerned about the security of our Nation’s water supply. While it is widely believed that our water supply is safe, there are a few vulnerabilities that must be addressed. Our bills would provide resources for research into security at facilities and assessment tools while also providing seed money to encourage additional spending on security measures.

Mr. JEFFORDS. Our colleagues on the House side also recognized this need by including water security provisions in the bioterrorism bill, H.R. 9448, that was passed by the House on December 12. I would like my colleagues' assurance that during conference they will press for adoption of these provisions. Mr. GREGG. I concur, and I intend to press for adoption of these provisions.

Mr. FRIST. I agree and you have my commitment to do the same.

Mr. SMITH. I again would like to thank my colleagues for agreeing to floor vote on these provisions during conference. It was with great reluctance that Senator Jeffords and I agreed to allow S. 1765 to be brought to the floor without our legislation included so that we can move forward on this important bill and continue it in the House. However, it is important that these immediate needs be addressed and that our proposals be included in the final legislation. I look forward to working with my colleagues to ensure that the provisions we agreed to that comprise the modified versions of S. 1593 and S. 1608 are included in the bioterrorism bill.

Mr. JEFFORDS. Finally, I want to commend Senators Kennedy, Frist, and Gregg and say that I am looking forward to working with them during the conference on these measures.

Mr. KENNEDY. Mr. President, I urge the Senate to approve this important bipartisan legislation to respond to one of the most severe dangers our country and the world face—bioterrorist attacks. I commend my colleagues Senator Frist and Senator Gregg for their impressive continuing leadership on this vital issue.

I am all well aware of the emergency we face. In recent weeks, a handful of anthrax cases stretched our health care system to the breaking point. A larger attack could be a disaster, and the attack of the past weeks has clearly sounded the alarm. The clock is ticking on America's preparedness for a future attack. We've had the clearest possible warning, and we can't afford to ignore it. We know that lives are at stake, and we're not ready yet.

The Department of Health and Human Services has vaccine available to workers at risk for exposure to the deadly spores, but there has been few plans to distribute the vaccine and inform workers about the risks and benefits of vaccination. In a major outbreak, our public health agencies and hospitals would be strained to the breaking point by the task of providing vaccinations against anthrax, smallpox, or other deadly plagues to thousands or even millions of Americans. Some cities have already developed plans and protocols for providing care to patients affected by bioterrorism, but too few communities are adequately prepared.

The needs are great. A summit meeting of experts on bioterrorism and public health concluded that $825 million was needed just to address the most pressing needs for public health at the State and local levels.

The National Governors Association has said that States need $2 billion to improve readiness for bioterrorism. John Hopkins Hospital is spending $7.5 million to improve its ability to serve as a regional bioterrorism resource.
Baltimore. Equipping just one hospital to this level in each of 100 cities across America would cost $750 million. The Appropriations Committee has recognized the importance of significant investments in bioterrorism preparedness. The Department of Defense conference bill provides as important down payment for the Nation’s needs for bioterrorism preparedness. I commend Senator BYRD, Senator STEVENS, Senator INOUYE, Senator HARKIN, and Senator SPECTER for their impressive leadership in this area. In particular, they have begun to address the basic issue of State and local preparedness and the readiness of hospitals to deal with bioterrorism by providing $1 billion for these purposes.

The need for help at the State and local level is especially urgent. In the first 3 weeks of October alone, state health departments spent a quarter billion dollars responding to the anthrax attack. Many departments were forced to pull aside other major public health responsibilities. Massachusetts has suspended many public health activities other than bioterrorism, and has fielded over 2,000 calls from worried residents, each one taking a half an hour of time for personnel. South Dakota has had to suspend an investigation of serious food poisoning outbreak to investigate rumors of anthrax attacks, even though no actual attack appears to have occurred. The Georgia Health Department has spent 3,000 person-hours just in 1 week on anthrax.

Hospitals across the country have immediate needs. According to the American Public Health Association, hospitals are hard-pressed even during a heavy flu season, and could not cope with a lethal contagious disease like smallpox.

The Bioterrorism Preparedness Act we are proposing will address these deficiencies and provides new resources for bioterrorism preparedness to the States under a formula that guarantees help to each State. These resources will be available to improve hospital readiness, equip emergency personnel, enhance State planning, and strengthen the ability of public health agencies to detect and contain dangerous disease outbreaks.

The need is great at the State and local level, but gaps need to be addressed at the Federal level too. So far, we have had only a handful of patients diagnosed with anthrax, but our resources have been stretched to the breaking point. We can’t afford further delays in meeting these critical needs.

Ft. Detrick, one of our two national reference laboratories, processed over 19,000 samples after the attacks began, and they are already stretched to the limit. The story was the same at CDC. Usually, a few dozen CDC experts respond to a disease outbreak. But CDC assigned nearly 500 specialists to the anthrax attacks. One out of eight employees at CDC headquarters in Atlanta is working on the current outbreak. Staffers worked round the clock and slept in hallways and only 18 cases of actual illness was known. In a recent article, CDC Director Koplan summed up the situation this way: Right now, we are working flat out. I keep thinking, if you know you’re in a marathon, you pace yourself for a marathon; if you know you’re in a sprint, you pace yourself for a sprint. But our guys are sprinting, and the sprint distance is long over. We’re sprinting a marathon.

The diversion of resources to anthrax has also led to the neglect of other important health priorities. According to a recent article in the Chicago Tribune, CDC has had to postpone programs to prevent meningitis among college students. They’ve delayed the development of vaccines urgently needed to combat diseases in the developing world. They’ve deferred activities to contain the spread of deadly infections resistant to antibiotics. Hawaii is facing a serious outbreak of dengue fever. When local health authorities asked CDC to analyze lab samples, they were told that more facilities were available due to the anthrax outbreak. Instead, the Hawaii doctors had to send their important samples to a lab in Puerto Rico for analysis.

Dr. David Satcher, the Surgeon General, recently said that the country “should be ashamed of the condition of the laboratories of the CDC.” These vital national resources, he said, were without power for 15 hours during the early days of the anthrax outbreak. Computers are covered in plastic to protect them from leaky roofs, and termites have chewed holes through laboratory floors.

Dr. Satcher is right to call this problem a national disgrace. We cannot continue to expect the CDC to do a first class job, if we provide only third rate facilities.

Clearly, our legislation is an important downpayment on preparedness. But we must make sure that our commitment to achieving full readiness is sustained in the weeks and months to come.

Since September 11, the American people have supported our commitment of billions of dollars and thousands of troops to battle terrorism abroad. But terrorists have not been made safe at home. We have an obligation to every American that we will do no less to protect them against terrorism at home than we do to fight terrorism abroad.

Federal stockpiles of antibiotics, vaccines, and other medical supplies are an essential part of the national response. We have a strategic petroleum reserve to safeguard our energy supply in times of crisis. We need a strategic pharmaceutical reserve as well, to ensure that we have the medicines and vaccines stockpiled to respond to bioterrorist attacks. Our legislation establishes this reserve, and authorizes the development of sufficient smallpox and other vaccines to meet the needs of the entire U.S. population.

The legislation will also help protect the safety of the food supply, through increased research and surveillance of diseases that could pose grave dangers to the safety of the food supply. Such acts of agricultural bioterrorism would also be economically devastating. The outbreaks of “mad cow” disease in Europe cost over $10 billion, and the foot and mouth outbreak cost billions more. We must guard against this danger.

Protecting the safety of the food supply is a central concern in addressing the threat of bioterrorism. Senator MIKULSKI, Senator HARKIN, Senator COLLINS, and Senator DURBIN have all contributed thoughtful proposals about food safety. Our bill will enable FDA and USDA to protect the Nation’s food supply more effectively.

We are grateful for the leadership of other Senators who have made significant contributions to this legislation. Senator BAYH and Senator EDWARDS contributed important proposals on agricultural bioterrorism. The legislation includes significant initiatives to provide for the special needs of children and other vulnerable populations.

The events of recent weeks have also shown the importance of effective communication with the public. Our legislation incorporates proposals offered by several of our colleagues on improving communication. Senator CARNAN has recognized the importance of ensuring that the public be informed of developments in bioterrorism. The legislation includes the provisions of her legislation to establish the official Federal internet site on bioterrorism, to help inform the public.

Senator MIKULSKI also contributed provisions on improving communication with the public. A high-level, blue-ribbon task force can provide vitally needed insights on how best to provide information to the public. Senator MIKULSKI also recommended ways to ensure that states have coordinated plans for communicating information about bioterrorism and other emergencies to the public.
The Centers for Disease Control and Prevention have a leading role in responding to bioterrorism. Senator Cleland has been an effective and skillful advocate for the needs of the CDC. Our legislation today incorporates many of the proposals in his legislation on public health authorities.

Hospitals are also one of the keys to an effective response to bioterrorism. We must do more to strengthen the ability of the Nation’s hospitals to cope with attacks. Senator Corzine has proposed to strengthen designated hospitals to serve as regional resources for bioterrorism preparedness. I commend him for his thoughtful proposals, which we have incorporated in the legislation.

We must also ensure that we monitor dangerous biological agents that can be used for bioterrorism. There is a serious loophole in current regulations, and we are grateful for the proposals offered by Senators Durbin and Senator Feinstein to achieve more effective control of these pathogens.

In a biological threat or attack, mental health care will be extremely important. We are indebted to Senator Wellstone for his skillful and compassionate advocacy for the needs of those with mental illnesses. In the event of a terrorist attack, thousands of persons would have mental health needs, and our legislation includes key proposals by Senator Wellstone to meet these needs.

Mobilizing the Nation’s pharmaceutical and biotech companies so that they can fully contribute to this effort is also critical. Senator Leahy, Senator Hatch, Senator DeWine, and Senator Kohn made thoughtful contributions to the antitrust provisions of the bill, which will help encourage a helpful public-private partnership to combat bioterrorism.

This legislation is urgent because the need to prepare for a bioterrorist attack is urgent. I urge my colleagues to approve this legislation, so that the American people can have the protection they need.

Mr. Frist. Mr. President, I am thankful to be able to come to the floor today, along with many of my colleagues, to announce the Senate passage of the Frist-Kennedy Bioterrorism Preparedness Act of 2001. Over the past several weeks, we have been working in a bipartisan manner to address this critical issue, and I am grateful for the work of Senators Gregg, Kennedy, and others. Everyone has worked very hard to get us to this point, and I will continue to work with them in conference to ensure final passage of this crucial legislation.

I am also thankful for the work of my colleagues to ensure that there is an appropriate level of funding for bioterrorism preparedness and response activities that will be available immediately. I commend Senators Stevens, Byrd, Specter, Inouye, and Roberts and others for their strong support in securing the necessary funding. With the passage of the latest appropriations bills, we have secured well over $2.5 billion for bioterrorism activities in addition to those provided for agroterrorism. I am also pleased with the level of funding for State and local important activities—at least $1 billion—which is one of my top priorities.

However, our efforts cannot end when the funding is secured. We must provide greater governmental authorities through an authorization bill, which is why final passage of a bioterrorism authorization bill is equally important. Both the House and the Senate have signaled the need for increased authorization with the passage of the Taupin-Dingell Public Health Security and Bioterrorism Response Act of 2001 and the Frist-Kennedy Bioterrorism Preparedness Act of 2001. We must work together in conference to ensure final passage.

A variety of increased authorizations are necessary to protect our food supply, prevent agroterrorism, develop appropriate countermeasures, and ensure appropriate State and local preparedness and response. For example, in the Frist-Kennedy Bioterrorism Preparedness Act of 2001, we have greatly expanded the ability to protect our Nation’s food supply by increasing authorities for the Department of Agriculture and the Food and Drug Administration.

We need to ensure that our food supply is safe. With 57,000 establishments under its jurisdiction and only 700-800 food inspectors, including 175 import inspectors for more than 300 ports of entry, the Food and Drug Administration (FDA) needs increased resources for inspections of imported food.

Our legislation grants FDA needed authorities to ensure the safety of domestic and imported food. It allows FDA to require employers from other agencies and departments to help conduct food inspections. Any domestic or foreign facility that manufactures or processes food for use in the U.S. must register with FDA. Importers must provide at least four hours notice of the food, the country of origin, and the amount of food to be imported. FDA’s authority is made more explicit to prevent “port-shopping” by marking food shipments denied entry at one U.S. port to ensure such shipments do not reappear at another U.S. port.

This bill also gives additional tools to FDA to ensure proper records are maintained by those who manufacture, process, pack, transport, distribute, receive, hold or import food. The FDA’s ability to inspect such records will strengthen their ability to trace the source and chain of distribution of food and to determine the scope and cause of the adulteration or misbranding that presents a threat of serious adverse health to humans or animals. Importantly, the bill also enables FDA to detain food for a limited period of time while FDA seeks a seizure order if such food is believed to present a threat of serious adverse health consequences or death to humans or animals. The FDA may also debar a person who engages in a pattern of seeking to import such food.

It also authorizes emergency funding to update and modernize USDA research facilities at the Plum Island Animal Disease Laboratory in New York, the National Animal Disease Center in Iowa, the Southwest Poultry Research Laboratory in Arkansas, and the Animal Disease Research Laboratory in Wyoming. Also, it funds training and implements a rapid response strategy through a consortium of universities, the USDA, and agricultural industry groups.

No one has worked harder on these agricultural provisions than my colleague Senator Roberts. I know he understands deeply the threat that we face in these areas and has helped provide real leadership in pointing the way to solutions.

Additionally, the Frist-Kennedy Bioterrorism Preparedness Act of 2001 expands our nation’s stockpile of smallpox vaccine and critical pharmaceuticals and devices. The bill also expands research on biological agents and toxins, as well as new treatments and vaccines for such agents and toxins.

Since the effectiveness of vaccines, drugs, and therapeutics for many biological agents and toxins often may not ethically be tested in humans, this crucial legislation ensures that the FDA will finalize by a date certain its regulations regarding the development and priority countermeasures on the basis of animal data. Priority countermeasures will also be given expedited review by the FDA.

Because of the limitations on a market for vaccines for these agents and toxins, our legislation gives the Secretary of HHS authority to enter into long-term contracts with sponsors to “guarantee” that the government will purchase a certain quantity of a vaccine at a certain price.

This legislation also provides a limited antitrust exemption to allow potential sponsors to discuss and agree upon how to develop, manufacture, and sell new pharmaceuticals, including vaccines, and drugs. Federal Trade Commission and the Department of Justice approval of such agreements is required to ensure such agreements are not anti-competitive. I appreciate the work of Senator Frist and his advice in crafting the antitrust language.

These FDA authorities and market incentives—which can only be provided...
by additional authorizing legislation—are critical to the rapid development of vaccines and other countermeasures. I want to thank Senators Hutchison and Collins for their important work with this portion of the bill.

Both the Senate and Senate bills also include protections, similar to those currently provided to those who join the National Guard, to help protect the employment rights of medication volunteers within the National Disaster Medical System (NDMS). The bills will extend additional liability protections to those volunteers. Senator Enzi provided beneficial advice about how to craft this portion of the legislation.

Moreover, both bills contain additional measures to assist with the tracking and control of biological agents and toxins. With respect to the control of biological agents and toxins, the Secretary of Health and Human Services is required to review and update the list of biological agents and toxins that pose a threat to public health and safety and to enhance regulations regarding the possession, use, and transfer to such agents or toxins.

Again, these needed protections will not go into effect until we pass authorizing language.

Although the “Public Health Threats and Emergencies Act of 2000” established basic grant programs to assist with strengthening the public health infrastructure, this language was based on the assumption that each year five more states would receive enough money to be prepared for a bioterrorist attack. Given the recent set of events, we cannot wait 10 more years for our public health infrastructure to be strengthened.

We must put in place a mechanism to ensure that every state has sufficient funding to improve their public health infrastructure so that they are able to respond to a potential biological attack.

I agree that we must provide resources necessary to develop smallpox and other needed vaccines, drugs, and biologics to counter potential biological agents. But it is even more important that we provide needed resources to those who will be on the front lines in responding to a potential attack. Hospitals and other medical facilities must become better prepared to respond and deal with the public health emergencies after such an attack.

And doctors, nurses, firefighters, police, and emergency medical response personnel need better training and equipment to combat biological threats and provide needed treatment.

There were two new grant programs included in the “Bioterrorism Preparedness Act”—the State Bioterrorism grant program and the Designated Bioterrorism Response Medical Center program—are essential.

Finally, our legislation would also ensure that we enhance coordination among local, state and federal agencies responsible for responding to a biologic attack, and that this response appropriately deals with the special needs of children and other vulnerable populations.

Almost half of all public health departments serve jurisdictions whose list of agents or countermeasures address incidents of bioterrorism. Agencies have not determined a single list of biological agents likely to be used in a biological attack, several agencies have not been consulted in crafting the list or developing an overall emergency response plan, and agencies have developed programs to provide assistance to state and local governments that are similar and potentially duplicative.

The Bioterrorism Preparedness Act of 2001 establishes an Assistant Secretary for Emergency Preparedness at HHS to coordinate all functions with the Department relating to emergency preparedness, including preparing for and responding to biological or chemical attacks. It also creates a federal interdepartmental Working Group on Bioterrorism that consolidates and streamlines the functions of two existing working groups first established under the “‘Public Health Threats and Emergencies Act of 2000’.”

Recent reports regarding the treatment of children during the anthrax scare, including the cutaneous anthrax case in a 7 month old boy, have highlighted the need to more fully address the special needs of children when responding to bioterrorism attacks. Within the Frist-Kennedy “Bioterrorism Preparedness Act of 2001,” numerous provisions were added to specifically address this critical issue, with the emphasis on streamlining the language so that the children’s health and welfare issues were considered in concert with the general provision of services. These provisions include a specific reference that the vaccines, therapeutics, and medical supplies within the stockpile appropriately address the health needs of children and other vulnerable populations; requiring the Working Group to take into consideration the special needs of children and other vulnerable populations; establishing the National Task Force on Children and Terrorism; and appropriating funding to the Secretary; along with other crucial additions. I want to thank Senators Dodd, DeWine, Collins, and Clinton for their assistance in crafting appropriate language to address the special needs of children and other vulnerable populations.

Along with my colleagues, I am appreciative of the steps we have taken thus far to ensure that we are prepared to respond to biological threats or attacks, and I look forward to continuing this important work to ensure that we are prepared to respond to and address the special issues of the stockpile and coordination infrastructure. I look forward to continuing to work with all of the Senators and their staff.

I must also commend Senator Kennedy again for his efforts. He has been a true partner on this bill and the Frist-Kennedy “Public Health Threats and Emergencies Act of 2000,” which we signed into law last year.

Finally, I want to thank my staff—Allen Moore, Dean Rosen, Helen Rhee, Craig Burton, Allison Winnike, and Shana Christrup—as well as the staff of other Senate offices for all of their efforts, including Vince Ventimiglin, Katy French and Steve Irizarry of Senator Gregg’s staff; David Nixon, David Dorsch, and Kim of Senator Kennedy’s staff; John Mashburn of Senator LoTS’s staff; Stacey Hughes of Senator Nichols’ staff; Abby Kral of Senator DeWine’s staff; Claire Bernard and Priscilla Hanley of Senator Collins’ office; Kate of Senator Hutchison’s staff; Raissa Geary of Senator Enzi’s staff; Laura O’Neill of Senator Session’s office; Debra Barrett and Jim Fenton of Senator Dodd’s staff; and Bruce Artim and Patty DeLoatche of Senator Hatch’s staff. Their tireless work has been essential in assisting us in getting this far.

Mr. Lieberman. Mr. President, I rise to discuss the Senate’s action this evening on bioterrorism. Today, the Senate has taken an important step toward improving the Nation’s ability to prepare for, and respond to, the threat of bioterrorism by adopting legislation, authored by Senator Kennedy and Senator Frist, and of which I am a cosponsor. The Senate bill recognizes that any meaningful improvement in this area must begin with improvements in the Nation’s public health system, a fact underscored by a series of hearings conducted by the Committee on Governmental Affairs on bioterrorism earlier this year. As a result of those hearings, I believe that there are several areas in which the Senate bill could be further strengthened especially in terms of the way the Federal Government’s efforts to combat bioterrorism are organized. In anticipation of Senate consideration, I prepared an amendment to the original Kennedy/Frist bioterrorism bill, S. 1715, to address these concerns. However, given Senate’s interest in acting on this important measure before adjournment, I agreed to defer offering this amendment at this time. I do, however, believe that the underlying issues need to be addressed.

Specifically, I would like to see additional attention given to bioterrorism within the Centers for Disease Control and Prevention, CDC. The underlying bill recognizes the need to strengthen...
CDC bioterrorism role. Currently, CDC’s bioterrorism activities are currently coordinated by the Bioterrorism Preparedness and Response Program within the National Center for Infectious Diseases. While many of the agencies involved in infectious diseases, many are not, including toxins and chemical agents. Even more to the point, many of the elements of the CDC bioterrorism program actually reside in other Programs and Centers. The program’s success and accomplishment resides within the National Center for Environmental Health. The Health Alert Network is in the Public Health Practices Program. Surveillance and detection activities are in the Epidemiology Program Office. Coordination of these activities, competition for resources, and line authority is a major problem.

The importance and unique nature of the bioterrorism mission also requires creation of a separate “intellectual” center.

The underlying bill also recognizes both the importance of expanding the role of HHS within the Government to provide leadership on bioterrorism preparedness and response. In addition, it recognizes the need to coordinate such activities within the many parts of HHS, including FDA, CDC, OEP, NIH, etc. The amendment would codify basic government management responsibilities and tools for the new Assistant Secretary position including agency performance measures, performance evaluation capability, technology verification, and technology readiness.

Detection is key to responding to bioterrorism attacks. Although health agencies have surveillance systems, they do not rely upon standard methodologies or real-time data collection. Though some States and localities have also begun to incorporate “syndromic” indicators, this practice is not widespread or standardized and they are not used in real-time for health data systems. CDC is working on development of a new internet-based system, the National Electronic Disease Surveillance System, NEDSS, but its deployment is many years in the future. The amendment establishes an accelerated deployment schedule, including the development of data collection and reporting protocols, in consultation with state and local health agencies.

CDC has initiated an internet-based Health Alert Network to provide real-time information to state and local health officials. Unfortunately, a number of States are not yet included in the network and very few county and municipal health departments are included. The amendment would establish an accelerated schedule for deployment.

Lack of interoperability of communication systems, and more recently in IT systems, is a long-standing problem in emergency response among federal agencies, much less between federal and state agencies. The underlying bill recognizes the need for better interagency coordination through the creation of an interagency working group. The amendment would specifically charge the group with addressing interoperability of IT and communication systems and give the Secretary of HHS authority to provide technical and financial support to resolve such problems.

The amendment would require the Secretary of HHS to contract with the Institute of Medicine to analyze the response of the public health system of constituent anthrax attacks and provide a “lessons-learned” report to guide improvements at the federal, state, and local level.

Finally, I would note that the House bill also recognizes the need to improve our public health surveillance and communications systems. The House bill also seeks to incorporate performance measures as part of expanded bioterrorism program in a manner similar to what I propose. Now that Senate has accepted my amendment to work with the conferees to ensure that our Nation is prepared for meeting this new threat.

I ask unanimous consent that the amendment be adopted to improve the legislation.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO.—

On page 11, between lines 19 and 20, insert the following:

(4) NATIONAL CENTER FOR BIOTERRORISM.—There is established within the Centers for Disease Control and Prevention a National Center for Bioterrorism, to develop, manage, and provide scientific and medical capabilities to prepare for, and respond to, bioterrorism attacks, including:

(a) analyzing and applying intelligence and threat assessment information to the preparation, development and stockpile of vaccines, antibiotics and other pharmaceuticals, medical procedures, and other preparedness and response capabilities;

(b) detecting biological and chemical agents, detecting and conducting surveillance, and making a diagnosis of related diseases;

(c) disease investigation and mitigation; and

(d) the provision of guidance to Federal, State, tribal, and local officials, concerning preparation for and response to bioterrorism attacks.

On page 13, strike line 3. On page 13, line 7, strike the period and insert a semicolon.

On page 13, between lines 7 and 8, insert the following:

(3) coordinate the standards and interoperability of information technology and communication systems among the Department of Health and Human Services and among Federal, State, tribal, and local health officials and health service providers to improve emergency preparedness and biological threats or attacks;

(4) develop and maintain advanced health surveillance systems to provide early warning of natural disease outbreaks or bioterrorist attacks to Federal, State, tribal, and local health officials and to aid response management; and

(5) develop and maintain a program to continuously evaluate the capabilities and vulnerabilities of the national health and emergency preparedness plans and systems to identify and respond to natural disease outbreaks or bioterrorist attacks, including the establishment of performance measures.

(3) EVALUATION GROUP.—

(1) IN GENERAL.—The Assistant Secretary for Emergency Preparedness shall establish an evaluation group of at least 10 individuals who are experts on public health preparedness and bioterrorism from both within and without the federal government to test and evaluate the capabilities and vulnerabilities of the national health and emergency preparedness plans and systems to identify and respond to natural disease outbreaks or bioterrorist attacks on a continuous basis, including the conduct of local, regional, and national-scale exercises.

(2) ANNUAL REPORT.—At least annually, the evaluation group established pursuant to paragraph (1) shall prepare and submit to the Secretary and to the Committee on Health, Education, Labor and Pensions, the Committee on Governmental Affairs, and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce, Committee on Government Reform, and the Committee on Appropriations of the House of Representatives a report concerning the results of the testing and evaluations conducted under paragraph (1).

(4) PERFORMANCE MEASURES.

(1) IN GENERAL.—Not later than 1 year after the date on which the system is established under paragraph (1), the Assistant Secretary for Emergency Preparedness shall prepare and submit to the Secretary, and to the appropriate committees of Congress, a report concerning the performance measures and evaluations developed as a part of the system.

(6) REVISIONS.—The Assistant Secretary for Emergency Preparedness, in cooperation with the Evaluation Group, shall periodically review and revise the performance measures developed under section (c)(1) and promptly report any revisions to the Committee on Health, Education, Labor and Pensions, the Committee on Governmental Affairs, and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce, the Committee on Government Reform, and the Committee on Appropriations of the House of Representatives.

(6) TECHNOLOGY VERIFICATION.—The Assistant Secretary for Emergency Preparedness shall establish a technology verification process among relevant agencies of the Federal Government, including the Department of Defense, the Centers for Disease Control and Prevention, the Federal laboratories, and the National Institute for Standards and Technology. Such group, in consultation with appropriate representatives of the private sector, shall:

(a) evaluate, test, and verify the performance of promising technologies for reducing and responding to bioterrorism threats;

(b) make recommendations to relevant Federal, State, and local agencies for the acquisition of successful technologies that can significantly reduce bioterrorism threats; and

(c) prepare and submit to the Committee on Health, Education, Labor and Pensions,
"include data on the medical nature of the emergency, recognition of disease symptoms, the possible scope of infections, recommended treatments, the sources and methods used in such data and communications deemed necessary to prepare for, identify, assess, and respond to health emergencies and bioterrorist attacks, including the National Health Surveillance System and the National Health Alert Network.

"(11) coordinate and standardize data and communications requirements to ensure the interoperability and seamless data transmission necessary to prepare for, identify, assess, and respond to health emergencies and bioterrorist attacks, including the National Health Surveillance System and the National Health Alert Network.

"(12) authorize the appropriation of $25,000,000,000 for fiscal year 2002 to carry out this subsection."
Among Sam Nunn’s recommendations for countering biological terrorism, he declared, “We need to recognize the central role of public health and medicine in this effort and engage these professionals fully as partners on the national security team.” There are many good things in this bill, ranging from the expansion of the National Pharmaceutical Stockpile to efforts to enhance food safety, but I am especially pleased that the Bioterrorism Preparedness Act should focus on domestic defenses against bioterrorism and was not the appropriate vehicle for the international programs we proposed. I strongly disagreed. It doesn’t make sense to draw artificial boundaries between “domestic” and “international” responses to bioterrorism. I have already pointed out that pathogens deliberately released in an attack anywhere in the world can quickly spread to the United States if we are unable to contain the epidemic at its source. The National Intelligence Council has concluded that infectious diseases are a real threat to U.S. national security. To ignore the international arena in favor of domestic solutions alone just doesn’t make any sense.

Therefore, when the Bioterrorism Preparedness Act was introduced in November without any provisions to enhance global disease surveillance, I decided to introduce an amendment to ensure this bill would enhance the capabilities of developing nations to track, diagnose, and contain disease outbreaks resulting from both BW attacks and naturally occurring pandemic disease. This week, the Senate leadership chose to move this bill under an unanimous consent procedure. I initially objected because I strongly believed the Senate should have an opportunity, at the very least, to vote on an amendment to incorporate global disease surveillance activities in the Bioterrorism Preparedness Act. But I understand the urgency of the moment. There is no greater vulnerability in our nation’s defenses than against the threat of bioterrorism and it is the responsibility of Congress to act quickly to correct this deficiency.

I was greatly disappointed, therefore, when the White House expressed resistance to the language Senator HELMS and I had worked out and sought to drop it from the final bill. While voicing support for our ideas, the White House believed the Bioterrorism Preparedness Act should only focus on domestic defenses against bioterrorism and was not the appropriate vehicle for the international programs we proposed.

Therefore, when the Bioterrorism Preparedness Act was introduced in November without any provisions to enhance global disease surveillance, I decided to introduce an amendment to ensure this bill would enhance the capabilities of developing nations to track, diagnose, and contain disease outbreaks resulting from both BW attacks and naturally occurring pandemic disease. This week, the Senate leadership chose to move this bill under an unanimous consent procedure. I initially objected because I strongly believed the Senate should have an opportunity, at the very least, to vote on an amendment to incorporate global disease surveillance activities in the Bioterrorism Preparedness Act. But I understand the urgency of the moment. There is no greater vulnerability in our nation’s defenses than against the threat of bioterrorism and it is the responsibility of Congress to act quickly to correct this deficiency.

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The steps we take to combat bioterrorism overseas can keep diseases from reaching our shores and will give us vital early warning of new diseases and strains for which we must prepare.

Let me again salute today’s passage by the Senate of the Bioterrorism Preparedness Act. While it does not include every essential proposal in enhancing our nation’s bioterrorism defenses, it still accomplishes a great deal. If this bill becomes law, which I have no reason to doubt, it is my hope that the Congress will follow this bill with the year with the necessary appropriations to carry out the programs authorized in this bill.

Let me close with an excerpt from the testimony by the Senate Appropriations subcommittee hearing on bioterrorism in September from Dr. D.A. Henderson, the man who spearheaded the international campaign to eradicate smallpox in the 1970’s. Today, he is the director of the newly-formed Office of Emergency Preparedness, a Department of Health and Human Services, which has the mandate to help organize the federal government’s response to future bioterrorist attacks. Dr. Henderson was very clear on the value of global disease surveillance: “In cooperation with the WHO and other countries, we need to strengthen greatly our intelligence gathering capability. A focus on international surveillance and on scientist-to-scientist communication will be necessary.”

There being no objection, the letter was ordered to be printed in the RECORD, as follows:


Hon. JOSEPH R. BIDEN, Jr.,U.S. Senate, Washington, DC.

Dear Senator Biden: I very much appreciate the important proposals contained within Title VI of the Kennedy-Frist bioterrorism legislation of the Environmental public health has a critical role to play in protecting the United States and our global partners from the threat of infectious disease. As you are aware, the Administration supports the version of the Senate bill that does not include Title VI. These issues are critical, however, and I would very much like to resolve them outside the context of the current bioterrorism bill. Your willingness to discuss these matters in the future is critical to the movement of this important piece of legislation and I would welcome the opportunity to engage in these discussions at the beginning of the next session. Thank you very much for your consideration of this request.

Sincerely,

MITCHELL E. DANIELS, JR.
Director.

ADDITIONAL BIOTERRORISM PREPAREDNESS ISSUES

Mr. FRIST. I thank the gentlelman from Utah for his comments. On behalf of myself, Senator KENNEDY, and Senator GREGG, I also want to thank him for his significant contributions to the legislation, and for his support for this measure.

Mr. HATCH. I understand that there are efforts currently underway to pass this legislation by unanimous consent before the Senate adjourns for the year, and I strongly support these efforts. Because we are trying to clear this bill in a tight time frame, I also understand that there will not be an opportunity to make modifications to the text of the legislation prior to final Senate passage.

Mr. KENNEDY. That is correct.

Mr. FRIST. My friend from Utah is correct.

Mr. HATCH. Before Congress passes a final anti-bioterrorism law, I believe there are several important issues that must be addressed. One of these matters before the Senate passes anti-bioterrorism legislation, I strongly believe that the House-Senate conference committee should: (1) permit the approval of priority countermeasures solely on the basis of data from animal studies; (2) clarify the Health and Human Service Secretary’s role and authority in distribution, and use of, priority countermeasures and other medical responses to bioterrorist attacks; and (3) provide the administration with procedural safeguards with respect to prohibiting the unlawful shipment, transportation, and possession of biological agents and toxins.

These issues have not been sufficiently addressed in the legislation before us. We must all recognize that this language the Senate is about to adopt has not been the subject of any congressional committee mark-up. While the extraordinary situation confronting our nation regarding biological attacks requires expedition, we also must ensure that there is flexibility in the conference committee to guarantee that novel and, frankly, evolving issues, concerning bioterrorism are adequately addressed. This is what happened during the House-Senate conference of the U.S.A. Patriot Act and, with diligence, we can duplicate that success again.

Mr. GREGG. I agree that the conference committee should address each of the issues that have raised. I will actively work to ensure that these provisions are included.

Mr. KENNEDY. I concur with my colleagues from New Hampshire.

Mr. FRIST. I also want to commend my colleagues, Senators FIRST, KENNEDY, and GREGG for their work in crafting the Bipartisan Bioterrorism Preparedness Act. The Act takes a significant step forward in providing the necessary tools to combat future acts of bioterrorism.

that the FDA has the authority to promptly promulgate a final rule in this area. I also believe that the Secretary of Health and Human Services should have clear authority to prioritize the distribution of scarce countermeasures in specific circumstances. Finally, I believe there is great value in considering the inclusion in a final bill of intermediate enforcement authority with respect to the unlawful shipment, transport, possession, or other use of biological agents or toxins.

Mr. FRIST. I agree with Senator GREGG. The Senator from Utah can be assured that these issues will receive my active support during conference consideration of this measure.

Mr. KENNEDY. I also agree with Senator GREGG. I thank the Senator from Utah for bringing these important issues to the attention of the Senate. I will look forward to working with him in resolving these issues during the conference.

Mr. HATCH. I also request that my colleagues support the inclusion of provisions to establish an animal ter- rorism incident clearinghouse.

Mr. GREGG. I will actively support this provision.

Mr. FRIST. I concur with my colleague from New Hampshire.

Mr. KENNEDY. I also believe that this issue should be given serious consideration.

Mr. HATCH. I thank my colleagues for their comments. I look forward to working with them during the conference to ensure that this important legislation is passed by Congress so that our nation can be better prepared to meet the threat of bioterrorism and public health emergencies.

WATER SUPPLY SECURITY

Mr. JEFFORDS. Mr. President, and my distinguished colleagues, I am pleased that we are moving so quickly on legislation to combat bioterrorism—this is certainly a timely issue.

I would like to engage my colleagues in a colloquy to clarify our commitment to another important issue—the security of our Nation’s water supply. At the end of October of this year, I was joined by the Ranking Member of the Environment and Public Works Committee in introducing S. 1593 and S. 1608. S. 1593 authorizes the Administrator of the Environmental Protection Agency to establish a grant program to support research projects on critical infrastructure protection for water supply systems. S. 1608 establishes a program to provide grants to drinking water and wastewater facilities to meet immediate security needs.

I understand that the Senator from Tennessee, the Senator from Massachusetts, and the Senator from New Hampshire support the modified provisions of these bills. Is that correct?

Mr. FRIST. That is correct.

Mr. KENNEDY. Yes, that is correct.

Mr. GREGG. Yes, that is correct because in the interest of time, we were unable to change the bill prior to conference.
December 20, 2001

CONGRESSIONAL RECORD—SENATE S13911

Mr. SMITH of New Hampshire. I too would like to thank Senator FRIST, Senator KENNEDY and Senator GREGG for agreeing to work with us to ensure that these two proposals are included in the bioterrorism proposal. I regret that with the amount of legislation quickly approaching, there is not time to incorporate these provisions into the underlying bill. As we all recognized in our support for these proposals, since the September 11th attacks, Americans throughout the country have become concerned about the security of our nation’s water supply. While it is widely believed that our water supply is safe, there are a few vulnerabilities that must be addressed. Our bills would provide resources for research into security at facilities and assessment tools while also providing seed money to encourage additional spending on security measures.

Mr. JEFFORDS. Our colleagues on the House side also recognized this need in their water security provisions in the bioterrorism bill, H.R. 3448, that was passed by the House on December 12th. I would like my colleagues’ assurance that during conference they will press for adoption of the modified versions of S. 1593 and S. 1608.

Mr. KENNEDY. I intend to press for adoption of these provisions. The security of our nation’s water supply is crucial to the health and well-being of our citizens.

Mr. GREGG. I concur, and I intend to press for adoption of these provisions.

Mr. FRIST. I agree and you have my commitment to do the same.

Mr. SMITH of New Hampshire. I again would like to thank my colleagues for agreeing to fight for these provisions during conference. It was with great reluctance that Senator JEFFORDS and I agreed to allow S. 1765 to come to the floor without the legislation included so that we can move forward on this important bill and conference it with the House. However, it is important that these immediate needs be addressed and that our proposals be included in the final legislation. I look forward to working with my colleagues to ensure that the provisions we agreed to that comprise the modified versions of S. 1593 and S. 1608 are included in the bioterrorism bill.

Mr. JEFFORDS. Finally, I want to commend Senators KENNEDY, FRIST, and GREGG and say that I am looking forward to working with them during the conference on these measures.

AMENDMENT NO. 2692

Mr. REID. Mr. President, I understand Senators FRIST, KENNEDY, and GREGG have a substitute amendment at the desk which is the text of S. 1765. I ask unanimous consent that the amendment be considered and agreed to and the motion to reconsider be laid upon the table; that the bill be read a third time and passed, the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2692) was agreed to.

(The text of the amendment is printed in today’s Record under “Amendments Submitted and Proposed.”)

Mr. REID. Mr. President, I thank Senator REID for moving this very important Bioterrorism Preparedness Act forward. I commend Senators FRIST, KENNEDY, and GREGG for their work. We intend to work with the House and get this passed quickly when we return. I thank Senator REID.

Mr. REID. I appreciate everyone’s cooperation.

The Presiding Officer (Mr. CORZINE) announced that the Senate was now adjourned, that the Senate will meet again on Monday, December 24, at 10 a.m., the Sergeant at Arms will be in the chair.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators allowed to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TERRORISM INSURANCE

Mr. DASCHLE. Mr. President, it was regrettable today that we were unable to gain unanimous consent to take up H.R. 3210, the House terrorism insurance bill, and amend it with a substitute offered by the Senator from Connecticut, Mr. DODD.

Mr. REID. The President, I thank Mr. DASCHLE. I agree and you have my commitment to do the same.

Mr. DODD. Mr. President, 3 months ago, our nation suffered devastating terrorist attacks. We are now confronted with one of the many aftereffects of the terrible events of September 11th. We are faced with the prospect that insurance protecting America’s buildings, businesses, homes and workers from terrorist acts will no longer be available.

It is generally accepted that roughly 70 percent of insurance contracts are scheduled to be renewed by year’s end. Already, many insurers have announced their intention to withdraw terrorism coverage from new insurance policies.

This is simply because primary insurers, who deal directly with policyholders, have been unable to, in the short term, purchase reinsurance from an unstable reinsurance market. Reinsurers are currently unwilling to write coverage in the face of future catastrophic losses equal in magnitude to those suffered at the World Trade Center.

Without the ability to purchase reinsurance, primary insurers cannot actuarially price policies that incorporate the assumption of catastrophic terrorist losses.

They are faced with two choices. They can seek permission from state
regulators to exclude terrorist acts from all of their policies. Or they can charge incredibly high premiums—rates are nearly certain to go up 500 to 1000 percent of what is presently required. No shareholder could be reasonably expected to allow their insurance company to suffer the seemingly immeasurable exposure of a terrorist act without drastically raising rates.

Without federal action, we risk either the possibility that our Nation’s economy will remain defenseless from a terrorist attack or the possibility that insurance companies will charge unaffordable rates to every American insurance consumer.

Several of us endeavored to draft legislation to provide a short-term remedy aimed to bring stability to the insurance market, to protect taxpayers, and to ensure that bank lending, construction, and other activities vital to our economic health would not be jeopardized.

It is deeply regrettable that this legislation will not be considered by the Senate prior to the end of this session. It is particularly regrettable because the reason that this legislation was not considered had nothing to due with the core issue of terrorism insurance; it had to do with liability reform. Deep-seated differences on the issue created an impasse. That is most unfortunate.

The legislation that Senator SARKANES, Senator SCHUMER and I offered was a straightforward approach to the problem. It is based on three principles that must be included in any bill on this subject matter.

First, it makes the American taxpayer the insurer of last resort. The insurance industry maintains front-line responsibility to do what it does best: calculate risk, assess premiums, and pay claims to policyholders.

Second, it promotes competition in the current insurance marketplace. Competition is the best way to ensure that insurance companies in the marketplace will have the entire responsibility for insuring against the risk of terrorism, without any direct government role, as soon as possible. This bill is a temporary measure only, lasting for 24 months at most.

Third, it ensures that all consumers and businesses can continue to purchase affordable coverage for terrorist acts. Without action, consumers may be unable to get insurance or the insurance available will be unaffordable.

It is the market, the markets, and the economy closely in the coming days and I am prepared to revisit this issue early next year if the need arises.

Mr. LIEBERMAN. Mr. President, I have one simple message regarding the terrorist insurance legislation. We need to act now, because adjourn, and we need to get this right. I fear that if we don’t act, or don’t get this right, we will need to return early in January to address this problem. Unfortunately, it is now obvious that we won’t enact this critical legislation. This is irresponsible.

Let me say clearly, my colleague from Connecticut, Senator DODD, should be commended for his valiant effort to secure an agreement. It is not his fault that this did not get done. He has had his eyes focused clearly on the goal line every day on this bill. He has been practical, energetic, tough, and patient. We are not able to act before we adjourn, therefore, I would like to congratulate Senator DODD for his valiant effort.

Let me explain why this issue is so important.

As part of their property and casualty insurance, many businesses have insurance that covers the costs that arise if their business is interrupted.

If we don’t pass an effective terrorist insurance bill, the government will, in effect, cause massive interruption in the business community. We will create the interruption.

We should have avoided this result by passing this legislation.

Property and casualty insurance is not optional for most businesses. Not every business owner buys life insurance, but every business buys property and casualty insurance, to protect its property, to protect it against being sued, and to protect its employees under the state workers compensation laws.

Property and casualty insurance is required by investors and shareholders. It is required by banks that lend for construction and other projects. We all know that home mortgage companies require the homeowners to maintain homeowners property insurance, and it’s the same with business lending.

Maintaining property and casualty insurance is mandated as part of the fiduciary obligation to the business. And if property and casualty insurance for major causes of loss is not available, businesses face a difficult choice about going forward with construction projects, and other ventures. If no insurance is available, banks won’t lend and the business activity that is depending on the loans will stop.

The impact on the real estate, energy, construction, and transportation sectors will be severe.

Insurance companies must be able to “underwrite” their policies. This means that they need to be able to assess their exposure or risk of a claim. They need to know if their exposure to claims is acceptable, excessive, or indeterminable.

In the case of claims for damages caused by terrorist strikes, there is no way to assess their risk and no way to underwrite the policy. There are too many uncertainties.

There is only one experience and the experience could not be more troubling.

One thing that is certain, as it was not before September 11, is that losses from terrorist acts can cost tens of billions of dollars. In fact, under worst-case scenarios, losses could easily reach hundreds of billions of dollars.

I recently introduced legislation focusing on the need to develop medicines to treat the victims of a bioterror attack. The Dark Winter exercise simulated a smallpox bioterror attack and it found that 15,000 Americans could die and 80 million could die worldwide.

This is why it is so important to develop medicines we can use to contain the infections and deaths. My point is that if we do not have health care coverage for the victims of terrorism, we will have claims much larger than we had with the World Trade Center attack.

There are hundreds of insurers in any given market. It is a highly competitive industry. These reinsurers are not renewing their contracts without terrorism exclusions, many if not most of these companies will not be able to provide terrorism coverage—at any cost.

At the business decision level, each individual insurance company considering whether to issue policies that cover terrorism must assess the costs that might result if the terrorists succeed in massive and horrific attacks, perhaps in many areas at which the insurer company may insure various businesses.

Because no one knows where the terrorists might strike, insurers must ask questions like:

How much insured property value are we covering in a given location?

How many workers are we covering under workers’ compensation laws, keeping in mind that workers’ compensation death claims vary by state but are as high as $1 to 2 million dollars per claim in some jurisdictions, including here in the District.

What would we lose on business interruption claims if damage in a metropolitan area causes a large number of businesses to be shut down by the civil authorities?

What about multiple attacks in different locations—keeping in mind the coordinated events on September 11.

Unfortunately, at the individual insurer level, capital is finite, and the companies that commercial businesses have already taken a major hit due to the September 11 losses, as well as having lost their reinsurance for terrorist acts.

Even a hypothetical good-sized company, one that would be in the top half dozen or so commercial insurers in the U.S., with perhaps 5 percent of the commercial lines market and capital of $7 or $8 billion, would have to ask, do we want to roll the dice on our very survival by writing terrorism coverage?

Because that is what they would be doing absent this legislation, particularly if they incurred a disproportionate share of the losses.

For example, if 100 more events cam in, even $100 billion in insured losses, not that much more than the WTC, and they were lucky enough to have only 3-5 percent of the losses, they’d be severely crippled but might survive. But if their share of the losses were 8-9 percent, they’d be out of business.

That is not a risk that an insurance company can reasonably take. If we do
not pass this legislation, therefore, insurers will be forced to take whatever steps they consider necessary to ensure they do not drive themselves into bankruptcy.

Make no mistake about it. The insurance industry can protect itself by reducing its exposure to terrorism going forward.

There is nothing we can do in the Congress, within the limits of our Constitution, to require insurance companies to write policies.

They don’t have to write policies.

If they don’t write policies, the companies may not be as profitable in the short run, but they will at least be protecting themselves against insolvency, as any business has to do.

State regulators are already considering terrorism exclusions, as they must do, consistent with their responsibilities to oversee the solvency of the insurance industry.

And absent exclusions, in states where they might not be approved for one reason or another, the insurers will have no choice but to limit their business.

If insurance companies are permitted to write policies with no coverage for claims connected to terrorism, then businesses will have to decide if they will self-insure against these losses. Many of them will conclude that they cannot accept this exposure.

It is clear, therefore, that when we fail to pass this legislation, it will be both the insurance industry and everyone who insures that loses. Insurance companies can protect themselves by not writing policies, or writing only policies without any coverage for acts of terror. But companies that need insurance coverage may have even harsher options.

What will be the effect on individual businesses and ultimately the economic recovery if we do not pass this legislation?

At the individual company level, if a business that appears to be a potential target area can only buy insurance with a terrorism exclusion, the owners would have to consider whether they want to commit new capital or even sell their current equity interests.

Banks would have to ask whether they could make new loans or perhaps even default existing loans and mortgages, based on their determinations that insurance without coverage for terrorism was unsatisfactory.

If this was not possible, terrorism would be forced to reduce their writing generally, the problem could be even worse, at least in whatever areas or for whatever types of business were considered most at risk.

Co-ops would find that they could not get coverage for their properties or their liability exposure or their workers’ compensation liabilities, because insurers were no longer able to provide it.

This is why the real estate industry and a cross section of the business community have been pushing for this legislation.

So, the issue is how we enable insurance companies to determine that the risk of terrorist claims is a risk that they can assume.

That is what this legislation is all about, defining the risk so that insurers can assess and put a price on it.

This legislation is about facilitating insurance companies’ ability to continue to write property and casualty insurance policies.

It is about providing business owners with the opportunity to buy insurance against terror claims and doing so in the private market to the extent that is possible.

This is, of course, not the first time we have faced this kind of an issue. The Federal Government has a history of partnering with the insurance industry to provide coverages for risks that are too big, too uninsurable, for the industry alone.

Current examples are the flood, crop, and nuclear programs, and in the past we’ve seen partnerships on vaccine liability and riot reinsurance.

From an insurability standpoint, it is beyond dispute that these risks are far more insurable than terrorism, yet we continue to struggle on this bill.

First, the programs cover fortuitous or accidental events, unlike terrorism, in which the risk is managed, with the perpetrators measuring success by how much damage they can cause and how many people they can kill. Similar exposures are far less under the existing programs.

Average annual losses on these programs, flood, crop, and nuclear liability, are probably only about $5 billion combined, a full order of magnitude lower than the losses on September 11 alone.

Some might debate whether we should have passed the existing programs, or whether they are operated efficiently. But there should be no debate about the terrorism program.

And we have structured this one the right way, with retentions and loss sharing by the industry so the incentives are there for efficient operations.

This legislative effort has failed in part because there are some who would use this legislation as an opportunity to enact wide-ranging reform of the tort claims system. While I have supported tort reform in the past, it is clear that these reforms are not possible now. If they are attached to the bill, as was the bill in the House-passed bill and as proposed in the Senate, the bill will die. This is what has happened.

This legislative effort has failed in part because there are some who would use this legislation as an opportunity to enact a wide-ranging and unprecedented venture in Federal regulation of the insurance industry. Some would, for example, seek to impose Federal control on the property and casualty insurance policies.

If such controls are added to this bill, it is clear that the bill will die. Price controls are obviously unacceptable to many in the Senate and clearly unacceptable to the other body.

A vote for price controls is a vote to collapse the property and casualty insurance market.

For controls in this sector would distort markets, create incentives to vacate the marketplace, and stifle competition.

We do know that the cost of property and casualty insurance will rise.

The current rates do not contemplate claims for acts of terror. Like it or not, there will have to be price increases to cover the risk of terrorism. The World Trade Center attack was the biggest manmade casualty loss in history. It was the biggest by a multiple of 40 or 50.

The previous biggest manmade loss was the LA riots, which cost less than a billion dollars. The current estimates are that WTC will cost $40 to $50 billion or more.

The WTC losses exceeded the insurance industry’s total losses for combined commercial property & liability coverage, general liability, and workers’ compensation combined for the entire 2000 year.

Insurance companies cannot now cover these losses and restore reserves, without price increases.

Insurance industry is one of the most competitive industries in the U.S. If rates are rising too high, companies will be falling all over themselves to enter or re-enter the market.

But so far, all signs point in the opposite direction, with insurers and reinsurers running as fast as they can from this—hardly an indication that they’re gouging and planning on realizing egregious profits.

There’s a state regulatory system in place that can clamp down on rates if insurers overreach—and the bill leaves the state regulators with the full authority to disapprove rates that are excessive.

I can’t think of a better way to do the opposite of what we want to do, to prevent the return of a terrorism insurance marketplace, than to impose price controls.

It is clear that the price of terrorism insurance will be less because of the Federal guarantee. If insurance companies were forced to write terror insurance without this guarantee, they would have to set a worst-case-scenario price.

They would have to protect the company from insolvency. It is clear that these rates would make the insurance unaffordable.

Again, however, the problem is that companies would not be able to set a price because of the indeterminate nature of the risk.

This legislative effort has failed in part because there are some who would use this legislation as an opportunity to require the insurance companies to repay the government for its expenditures. This is the case in the House-passed bill.

While requiring payment is intuitively attractive, the financial assistance and payback mechanism in their
One of our most important objectives is to encourage the return to the marketplace of insurers and reinsurers. The problem with the House bill's financial assistance and payback approach is that it mutualizes the losses throughout the program itself, reducing incentives for private innovation in the development of pooling and reinsurance mechanisms. If we're going to sunset this program, we can't provide for mutualization of losses throughout its duration and then expect that there will be a healthy reinsurance market to the day after it terminates.

Even if we did not adopt the other body's first dollar mutualization concept, our objective of building a healthy marketplace, real work practicality considerations, and public policy all argue for not requiring industry payback.

First, a payback requirement would be contrary to our objective of developing a healthy marketplace. A payback requirement would, from day one, raise the specter that in the event of substantial terrorism losses, insurers would not only have to pay their share of the costs but also have to go to their regulators for substantial rate increases to repay the government—with no guarantees that such rate increases would be allowed. That is not the way to facilitate a healthy marketplace.

Second, from a practical standpoint, let's also recognize that under our bill any government payments would not really go to insurers, that any repayments would not really come from insurers, and that it is the public in either event that will bear the cost of this program.

The government payments are all keyed to amounts paid to claimants, and any repayments would or at least should be made directly to policyholders, either directly through subsequent rate increases or directly through policyholder surcharges.

Therefore, as long as an insurer's rates for terrorism coverage are based only on its deductible and quota share, government payments would not give a windfall to the insurers. That is of course how rates should be determined, since the state insurance commissioners will have the authority to disapprove excessive or unfairly discriminatory rates.

It is of course the public that will also bear the cost of this program whether or not we require insurers to pay back the government. The costs of any such repayments would ultimately be paid by commercial businesses, which would in turn pass the costs back to the customers, employees, and shareholders, which is to say back to the public.

Finally, from a public policy standpoint, I would refer you to the very simple fact that it is losses caused by terrorist attacks on our country that we are talking about here. It is the responsibility of the government to protect the people against attacks from without and within, and to the extent that terrorists succeed in causing losses that exceed our bill's insurance industry retentions, it is because the government has failed in this most fundamental duty of all the various programs through which the government and the insurance partner together to provide coverage for risks thought to be uninsurable, this one stands out as presenting the best case for a return to the public.

In terms of price, we know that every cent of any funds the Federal government contributes to pay claims will go to the insured, not to the insurance companies.

There is no Federal payment to any insurance company that does not go through to the victims. This makes it very hard to understand the arguments some have made in the other body about the insurance company's role in the amounts that the Federal government might contribute.

If the government contributions are passed through to the victims, what is the benefit to the insurance companies that need that?, etc.

Do the companies then increase their rates to cover the cost of the repayment? If repayment is required, it would have to come, directly or indirectly, from the victims, not the insurance companies.

There are some who would seek to add provisions to the legislation focused on "cherry-picking," that is, seeking to reduce the risk of the portfolio of clients and load it with lower risk clients.

Insurance, like other financial services, is a very competitive business—and there are a variety of opportunities for large and small businesses to get coverage with hundreds of insurers operating in any given market.

For the largest businesses, which are probably most at risk due to the staggering workers' compensation exposures they present, in addition to traditional insurers, there are sophisticated offshore, excess and non-admitted markets they can tap into, as well as other risk-spreading devices.

For the smaller companies, if coverage isn't available from standard private markets that exist, the government may step in, and there are legislatively mandated market plans to provide workers' compensation and property insurance.

The insurance industry also has a long history of working together to form pools and reinsurance arrangements to spread risk. All of these can be handled as they've been done for aircraft, including those that were hijacked on September 11.

They can do this if we pass this bill to provide them the financial backstop they need. The fact is that we do not have the expertise to step into this complex arena and set the controls to determine how coverage should be provided and to whom.

Since insurance regulation began, it's been the states that have done the job, and until such time as we're ready to change that and enact a federal regulatory scheme, we should be very careful to keep regulation.

At the state level, insurance departments in each state are much closer to their markets, and they have the expertise and the leverage to assess the availability of insurance and to take adequate steps to prevent problems.

I am very disappointed in the failure to enact this legislation. I have supported my Connecticut colleague, Senator Dodd, and will continue to work with him to enact this legislation as soon as possible in January. That we have failed to act in this session and may well see unfortunate consequences.

NEXTWAVE SETTLEMENT

Mr. HATCH. Mr. President, I rise to address the issue of wireless spectrum and the importance of its availability and utilization in stimulation of the economy. On November 28, 2001, the Administration forwarded proposed legislation to Congress to codify a proposed settlement in the NextWave wireless spectrum bankruptcy litigation. We needed to pass this legislation before December 31st in order to avoid nullifying the agreement. Unfortunately, it appears we will not be able to address this settlement before the end of the year because members of this body have expressed their intention to block its consideration on the floor. It is not certain that a similar settlement can be arranged next year—which leaves a significant financial return to the U.S. Treasury in doubt and denies viable industries access to wireless spectrum which could be a vital tool in jumpstarting the economy.

This is not the first time I have voiced my concerns about the NextWave spectrum controversy. In a letter to then Chairman Kennard of the Federal Communications Commission in October of 2000, I warned him that a premature re-auction of the NextWave licenses would be imprudent while litigation was still pending in the D.C. Circuit. The legal questions went directly to the ownership interests of the spectrum and the validity of the FCC’s action to automatically cancel NextWave’s licenses upon filing for bankruptcy. The FCC ignored my warning and, in so doing, created undefined First Amendment problems and a myriad of legal liability issues.

On June 22 of this year, the D.C. Circuit ruled in favor of NextWave, holding that the FCC violated Section 525 of the Bankruptcy Code. This order essentially nullified Auction 35 in which the FCC promptly awarded the spectrum licensed to NextWave. Presently, both sides have filed for certiorari with the Supreme Court to ask for
the final disposition of this case. However, there is no certainty that the Supreme Court will agree to review the case, or if it does, when or to whom it will ultimately award the licensing rights to the spectrum. In fact, given the D.C. Circuit’s opinion and legal reasoning, the likelihood that the FCC will not prevail, which may be why they were able to reach the settlement of this issue.

After extensive negotiations, the interested parties, including the Office of Management and Budget, the U.S. Department of Justice, and the FCC, reached a comprehensive Settlement Agreement to govern the disposition of the licenses in question and provide for their release into the marketplace and financial return to the Treasury.

This proposal is a chance to bring closure to litigation that has dragged on, and which, in all likelihood, could result in a net loss to the government if it were to continue. We have an opportunity to finalize this settlement, and we certainly hope that the now, in my view would be a mistake, allowed unnecessarily. To continue it help this struggling economy.

The current litigation has been prolonged unnecessarily. To continue it result in a net loss to the government and our rural businesses as well. The bill that we passed by the Senate Agriculture Committee includes a Rural Development Title that would have provided rural economies with much needed support.

If, as we hope, it will provide stability for our agricultural producers and our rural economies. Lenders in Montana and across the country are getting nervous as the lean years of production are starting to add up. Their mandate is now to move money around now that we failed to act this year.

The time has come. We can no longer wait to repair the current farm bill. The health and stability of our producers, of our rural communities, and of America is up to us. Our Nation depends upon our agricultural producers for a safe, affordable, and abundant food supply. Now our producers are depending on us to provide them with a safety net they can rely upon. The time is now. We must dedicate ourselves to getting back to work on the farm bill in January. We must work together to pass a strong, stable, and comprehensive farm bill quickly.

Mr. VOINOVICH. Mr. President, over the past 2 weeks, the Senate has engaged in what is probably a first in the history of this body: it has worked to complete a task before a deadline. Even as appropriations bills remained unfinished 3 months into the fiscal year, work has, for the past couple of weeks, debated on the farm bill. We must all dedicate ourselves to getting back to work on the farm bill in January. We must work together to pass a strong, stable, and comprehensive farm bill quickly.

Mr. BAUCUS. Mr. President, I rise today to share my disappointment about the farm bill with you. It is vital that we get a strong bill passed before we adjourn this year and, unfortunately, that isn’t going to happen. To put it simply: Our farmers and ranchers deserve more from their representatives. As long as I have been in the Senate, I have never seen the agricultural community more united than they were yesterday in invoking clout and getting the Senate farm bill passed the floor this year.

The farm bill we passed out of committee is a good bill. It is not a great bill. But it’s a good step in the right direction. We had the opportunity to work together to make this bill as comprehensive, full of common sense, and strong as possible. We have worked hard and we have worked long and we have worked together. This bill needs to be improved and it needs to be strengthened and it needs to be passed. We have an opportunity to do that now.

Mr. VOINOVICH. Mr. President, over the past 2 weeks, the Senate has engaged in what is probably a first in the history of this body: it has worked to complete a task before a deadline. Even as appropriations bills remained unfinished 3 months into the fiscal year, work has, for the past couple of weeks, debated on the farm bill. We must all dedicate ourselves to getting back to work on the farm bill in January. We must work together to pass a strong, stable, and comprehensive farm bill quickly.

As admirable as it is to work ahead of schedule, this has been an unnecessary exercise. There is no reason that the Senate has had to debate the farm bill when these programs don’t expire until the end of the fiscal year.

I joined in the successful effort here in the Senate to postpone debate on the farm bill until next year. It is my hope that we will do a better job at writing a bill that will address the needs of our farmers in a fiscally responsible way, rather than rushing a bill through Congress for the sake of passing a bill.

The only reason we have debated this bill a year ahead of schedule is because some fear that the fiscal year 2003 budget resolution won’t have enough room in it to load up whatever farm bill the Senate agrees on with all the spending the majority desires.

Indeed, according to an article in the December 8th edition of Congressional Quarterly, “lobbyists fear that if Congress can’t get the current authorization bill approved by December 11 that, ‘Proponents of the bill, S. 1731, fastening on to a budget resolution adopted earlier this year, said they have pinned down over 10 years, $73.5 billion over baseline, over the normal expenditures that have been occurring year by year in the agriculture bills . . . and others have pointed out that [the money] really is not there.’”

Now, I take a back seat to no one in terms of my concern for the American farmer. When I was governor of Ohio, agribusiness was my number one economic development initiative. Every single dollar that we put in agribusiness, don’t realize that food and agribusiness means more than $73 billion to Ohio’s economy each year. In fact, one in six Ohioans is employed in one aspect of agriculture or another.

I gave agriculture more attention and priority than any governor in memory, and I continue my close relationship with Ohio’s agribusiness community.

Nevertheless, I could not support the majority’s farm bill as written, and honestly, I am disappointed at the apparent lack of respect some of my colleagues seem to have for the American farmer.

Every farmer worth his salt knows that if he or she wants to stay in business, they have to be fiscally responsible and make tough choices. They know that the United States has to do as well. They understand that the majority’s farm bill did not focus on proper planning and making the right choices, but rather “getting while the getting is good.”

Some here in Washington think that viewpoint epitomizes the American
farmer, but for anyone in this body to think that the American farmer is only concerned about “what’s in it for him,” is an insult to their patriotism and their own understanding of fiscal responsibility.

Let me make it abundantly clear, this bill was written and has been debated without any regard for the other obligations our nation now faces. It is hearse of America’s national security edge and does nothing to acknowledge our long-term fiscal responsibilities of our Nation. Instead, the Majority’s Farm Bill really just helps the nation’s agricultural conglomerates.

When Congress passed the last farm bill in 1996, it was so with the intention that it would gradually phase out the heavy reliance on subsidies characteristic of previous farm bills and move towards a more market-oriented approach. That bill was named Freedom to Farm.

However, had S. 1731 passed, it would have increased federal spending over by $70 billion over ten years, putting us back to where we were prior to Freedom to Farm, when farmers were more dependent on federal government. I remain supportive of market-based farm policies, but I believe important improvements must be made to the current system that will allow our farmers to adapt to a global marketplace. Unfortunately, that same marketplace has kept U.S. prices and income low for the past three to four years due to ever increasing world supplies coupled with low export demand.

The outrageous, with the Cochran-Roberts Amendment appropriating more than $32 billion in emergency spending since Fiscal Year 1999 to offset low prices and assist farmers who suffered losses due to natural disasters, I have to ask: What happened to Freedom to Farm?

I have opposed these emergency measures, not only because they were not offset, which has added to our current budget crisis, but also because they are so-called emergency measures only meet the temporary need, and do nothing to help the long-term outlook for the American farmer.

Unfortunately, the majority, in their bill, attempted to rectify this situation by making these emergency payments essentially permanent.

In an article that appeared in the December 18 edition of the Financial Times, former U.S. Secretary of Agriculture Mike Espy, noting Congress’ apparent willingness to abandon a market-based approach to agriculture, stated “It’s very awkward. Here we are being involved in a full-scale effort to reduce subsidies, and this [bill] flies in the face of that effort.”

Current Agriculture Secretary, Ann Veneman, said in the same article that the legislation would “exacerbate overproduction and price as commodity prices,” which would undermine our ability to expand into new foreign markets.

That’s because the majority’s farm bill would put in place counter-cyclical payments, which pay farmers a subsidy as the price of their commodity falls. This approach most assuredly would run afoul of the WTO treaty.

What’s more, the subsidies under the majority’s proposal would go to millions of wealthy individuals and even some Fortune 500 corporations.

Again, the Financial Times article references an organization known as The Environmental Working Group, which has on its web-site a compilation of more than 2.5 million farmers who receive subsidies. Of that total, the largest farms get the most amount.

To quote the news article, “just 1,290 farms have each received more than $1 million in a just past five years: Tyler Farms of Arkansas, which grows cotton, rice and soybeans, led the list at more than $23 million. In addition, 11 Fortune 500 companies, including Chevron and International, also received farm subsidies. In contrast, the average farm in the bottom 80 percent got just $5,830.’’

While I would have voted against the bill proposed by the majority, the Cochran-Roberts Amendment that was considered yesterday provided a workable alternative.

Instead of creating a counter-cyclical program, the Cochran-Roberts Amendment would have created farm savings accounts for producers to participate in on a voluntary basis, with matching funds provided by the USDA. This money would help farmers make ends meet during the lean years and would be a great improvement over the current practice of relying on touch-and-go so-called “emergency” supplemental farm spending bills.

While I am still concerned with the expense of the Cochran-Roberts Amendment, it evenly divides its spending over the first and last five years, and is thus more fiscally responsible than the Majority’s proposal which frontloads $45.3 billion of their $73.5 billion bill in the first five years. Unfortunately, the Cochran-Roberts amendment was defeated along party lines.

So we were left with the bill pushed by the majority with a price tag we cannot afford. It will most assuredly exceed the $73.5 billion, 10-year spending increase allowed by the fiscal year 2002 Budget Resolution.

As we near the end of this year, we find ourselves facing challenges that could never have been predicted a year ago. An economic slowdown that began in the spring of 2001 has now been dubbed a full-blown recession; a recession that was exacerbated by the events of September 11.

As Americans have responded generously to the needs of the victims and their families, the federal government has responded quickly and efficiently as well. We’ve passed a $40 billion emergency supplemental bill, as well as $5 billion in grant funding to help prevent the collapse of the airline industry. In addition, we could spend another $100 billion for an economic stimulus package soon after we return from recess.

Add all that to the $25 billion that Appropriators and the White House agreed this summer to spend over and above the fiscal year 2002 budget resolution that Congress passed, and we could spend some $170 billion over the budget resolution.

To put that in perspective, $170 billion represents 30 percent of all the regular discretionary spending Congress enacted in fiscal year 2001.

Given this amount of spending, the Senate is poised to spend every last tax dollar, all of the Medicare surplus and the entire $174 billion projected Social Security surplus. Even that won’t be enough.

To cover all of this spending, including the spending in the majority’s farm bill if it passed, the federal government would have to issue tens of billions of dollars in new debt this fiscal year depending on the size of the stimulus bill, any additional defense spending we pursue, plus the inevitable emergency supplemental Congress will pass between now and the end of the fiscal year.

It’s amazing that a few months ago, people here were worried we would run out of debt to repay. Now, we are in a far different situation.

In fact, “Treasury Secretary O’Neill sent a letter to the Majority Leader last week requesting that the government’s debt ceiling be raised. The Secretary indicated that the current borrowing limit of $5.95 trillion will be reached by February and that the administration requests that the national debt ceiling be raised to $6.7 trillion.”

As recently as August, the administration projects that the current borrowing limit would not be reached until September 2003. This is disturbing.

I am pleased we are not going forward with a farm bill that we cannot afford at a time of fiscal crisis, and that we are not going forward with a bill that is frankly not in the best interest of our farmers and definitely not in the best interest of the American people. It is unfortunate, though, that we spent two weeks debating the majority’s farm bill, when there are three
other pieces of legislation that I believe we should have been considering instead.

Our number one priority should be an economic stimulus bill, or “jobs bill” as it should be called.

Just last week, I was part of a six-member bipartisan group of senators who were invited to the White House by the President to discuss the stimulus bill and the package that the Centrist Coalition has been working on for the past seven weeks. After the meeting, President Bush announced his support for our stimulus package; a package that responds to the needs of those who are currently unemployed by extending benefits and health care coverage.

It also provides rebate checks to those Americans who pay Social Security taxes but who did not qualify for rebate checks earlier this year. It would truly be a wonderful holiday present for the working men and women who need it as well as the nation itself since people would receive extra cash to help pay their holiday bills, and their spending would help spur the U.S. economy.

The bill also contains other stimulus functions, such as 30 percent deprecation bonuses to encourage investment; a reduction in the 27 percent tax rate to 25 percent; and tax incentives to encourage small business owners to increase investment.

I want to underscore the fact that it will take a lot of money to jumpstart our $10 trillion economy, and our approach may cost up to $100 billion. However, I believe that it is necessary to get our nation out of the recession we’re in.

That’s why I am somewhat dismayed that the Majority Leader did not bring the stimulus bill to the floor for consideration during these past couple of weeks. Early this morning the House passed a responsible bill based on the Centrist package, which the President has agreed. It’s a compromise package that reflects much of what the Majority Leader has said he wanted. However, that wish list seemed to shift when it became clear that a genuine willingness to compromise existed. The American public have expected us to pass such a bill, and I am disappointed that we have not yet done so.

The second bill we should consider is a terrorism reinsurance bill. This legislation would provide government backing to help cover the costs of damages incurred in the event of an act of terrorism. Without it, we are going to see many businesses with enormous increases in their insurance costs. And that’s for companies that can get insurance.

As a result, projects that are on the table or in the planning process will not go forward and the economy will suffer.

There is a bipartisan proposal that is being worked on, and I can see no reason why we should not have pushed to get this bill onto the floor of the Senate before the end of the year.

The third bill is a comprehensive energy bill, one that will help our economy and harmonize our energy needs with our environmental needs. While national energy policy is being held hostage to the demands of environmental groups, the United States must continue to rely on energy sources in the Middle East. Surely I don’t have to remind my colleagues of the political instability that exists in this area of the world.

The most glaring example of how the lack of an energy policy is affecting us is the fact that we currently rely on Iraq for more than 750,000 barrels of oil per day. As my colleagues know, Iraq is a hotbed of terrorism, and I have no doubt the manufacturer of weapons of mass destruction, run by a man who would dearly like to inflict pain upon the United States if given the ability.

We have to put the interests of the American people in front of politics and special interest groups. I say to my colleagues that we will not be able to know that we can rely upon ourselves to meet our energy needs than to rely on Saddam Hussein. We need to stand up and do the right thing and pass a comprehensive energy policy now. And I’m confident that the Majority Leader placed it on the back-burner in favor of a farm bill that we can consider later this fiscal year.

Our farmers understand the need to enact these three bills because they use energy, because they feel the pinch of a soft economy, and, because farmers know the right thing to do.

It is my hope that we will be able to address these three issues quickly when we return next year and that we will do a better job of prioritizing all of the necessary work this body undertakes.

There was no compelling reason why we needed to consider the Farm Bill one week before Christmas. In fact, we have almost all of 2002 to work on this legislation.

When we return next year, and after we take up the critical issues like energy, stimulus and terrorism insurance, we should follow the President’s suggestion and sit down with real numbers and put together a farm bill that is fair to America’s farmers, the men and women who really need help; fair to the American taxpayer; and fiscally responsible. I also would encourage my colleagues to take a look at other farm bill alternatives, such as Senator Lugar’s proposal, and the proposal put forth by Senators Cochran and Roberts. I believe they are on the right track.

Right now, we are facing tough times that affect all Americans, including farmers, and the Senate needs to make tough choices because that is what our constituents have come to expect us to do.

The majority’s farm bill, S. 1731, was passed by the Senate earlier this year these counter-cyclical payments—subsidies that rise as crop prices fall. The Senate has tried to persuade farmers that their future lies in opening up markets for farm products abroad.

But instead, US exports fell sharply following the 1996 Asian financial crisis which caused commodity prices plummeted. This led Congress to approve billions of dollars in emergency payments to US farmers over the past three years. “We have seen that export markets do not serve as a reliable safety net in and of themselves,” said Tom Harkin, the Iowa senator who is the chief sponsor of the Senate bill. The new farm bill will entrenched that philosophy by institutionalizing so-called counter-cyclical payments—subsidies that rise as crop prices fall.

These subsidies, which have the perverse effect of encouraging increased production when prices are falling, run directly counter to what the US has tried to achieve in the WTO. The Bush Administration has tried earlier this year these counter-cyclical payments fall into the so-called amber box of
subsidies that must be reduced under WTO rules. If crop prices continue to fall, automatically increasing government payments to farmers could run up against the Dollar 19.1bn per year that is the maximum allowed under these restrictions.

The administration and some critics in Congress have been hoping to delay final passage of the bill until next year when the government will produce new budget numbers. Those figures, which will show the federal surplus vanishing as a result of recession, tax cuts and the war on terror, would create pressure to curb farm spending.

The bloated farm bill legislation has indeed cast an embarrassing new light on rural America’s dependency on the federal government. The Environmental Working Group, a nonprofit organisation, last month posted on its website a comprehensive list of the subsidies received by more than 2.5m American farmers.

The data, obtained under US freedom of information laws, shows that a small number of large farmers gets the vast majority of federal payments. Just 1,290 farms each received more than Dollars 1m in the past five years. Tyler Farms of Arkansas, which grows cotton, rice and soybeans, led the list at more than Dollars 23m.

In addition, 11 Fortune 500 companies, including Chevron and International Paper, also received farms subsidies. In contrast, the average farm in the bottom 80 per cent got just Dollars 5,830.

The new bill would only increase that trend by linking payments firmly to production, thereby rewarding the country’s largest farmers.

Other agricultural exporting countries like Australia and many Latin American nations are dismayed by the direction of US farm policy. Warren Truss, Australia’s agriculture minister, last week said that a new package would be ‘‘a blight’’ on international trade. Mr. Truss noted that the US farms of the future would get higher payments in exchange for lower produce prices abroad.

The White House has said that US farmers will get higher payments in exchange for lower produce prices abroad. Mr. Truss noted that the US farms of the future would get higher payments in exchange for lower produce prices abroad.

Mr. DASCHLE. Mr. President, unfortunately, during this holiday season there has been a decline in charitable donations. In the land of plenty, having children going hungry during the holi-
day season is simply heartbreaking. But today too many charitable organizations are facing new funding constraints and cutting back on items like food vouchers. Many of us in Congress have been interested in looking for ways to resolve these problems and strengthen the partnership between charities and the Federal Government.

Senators Lieberman and Santorum have been working throughout the year to develop just such a solution. Throughout the process they have consulted with my staff and the White House to ensure that the final product would be a consensus bill that would enjoy bipartisan support. I am pleased that the outlines to an agreement are now within reach. Had the Senate had more time, I would be very interested in seeing the package that has emerged and debated by the full Senate.

The Lieberman-Santorum package is comprised of two limited components: one, a tax and technical assistance section; and two, a social services section that includes a title on equal treatment for non-governmental providers, authorization for a capital compassion fund, a program on mentoring for children orphaned or abandoned during the cold war, and the increased funding for Social Services Block Grants and Maternity Homes.

I am pleased that Senators Lieberman and Santorum were able to resolve most of the problems that caused some analysts to oppose a compromise package eliminated privatization and the voucherization of federal social service programs, as well as preemption of state and local civil rights laws. Their package also remained silent on Federal funding of pervasively sectarian organizations and expansion of the Title VII exemption.

I also support many of the tax and spending provisions that have been proposed. In particular, research shows that programs that target food and book donation provisions are effective in inducing new charitable giving. Additionally, increased funding for the Social Services Block Grant is an important provision to ensure that at long last we fulfill our commitment to providing adequate resources for community programs.

While much hard work has already been done on all sides to get a bill that can pass, some concerns remain with House Republicans. For example, the slowing economy and OMB Director Daniels’ statement that the budget will be in deficit this year and for several years to come, the Senate must be careful about any new tax and spending measures that are not in deficit.

Therefore, while I strongly support increasing funding to charities, the changing economic outlook demands that fiscal responsibility be adhered to when enacting new tax cuts. As we face the new fiscal year, I look forward to working with Senators Lieberman and Santorum, as well as the White House, to identify workable offsets.

It is my hope that the work that Senators Lieberman and Santorum have done will not go to waste. I believe that next year we can build on the bipartisan process that Senators Lieberman and Santorum have created to resolve these outstanding issues. Once we are able to move the consensus bill, we will be able to quickly move a consensus bill. Finally, let me applaud Senators Lieberman and Santorum for their work and dedication to this important issue.

JUDICIAL NOMINATIONS

Mr. BIDEN. Mr. President, as a former Chairman of the Senate Judiciary Committee, I would like to shed a bit of the light of history on the Committee’s record this year with regard to judicial nominations. The first year of an Administration is always difficult, with a new Administration setting up and the need to confirm a host of non-judicial officials to serve in that new Administration. As a result, the Senate’s duty to “advise and consent” in judicial nominations is all the more difficult to fulfill. I was privileged to serve as Chairman of the Judiciary Committee last year when two times a new Administration came into the White House. In 1993, when President Clinton arrived, we worked hard and confirmed 28 judges that first year, with the White House and the Senate and the President and the same party. In 1989, when the first President Bush took office, with an opposing Senate, we managed only 15 judicial confirmations in the first year.

This year, the White House got a late start on its executive branch nominees, due to the election battle. For this and other reasons, no judges were confirmed while the Republicans held the Senate this year. Since June, when the Democrats took control of the Senate, the White House and the Senate have been controlled by different parties, normally a recipe for stagnation on judicial confirmations. Still, by the end of this year, if all goes as expected, we will have confirmed more judges—more than twice the number confirmed in 1989, and even more than we accomplished in 1993, when the White House and the Senate were held by the same party. And as the guy who was running the Judiciary Committee in 1989 and 1993, I can tell you that we were not short on our time. And clearly the Committee has not been dawdling this year.

Now, some people would come back and say “well, what about appeals courts? Appellate judges are far more important than district court judges.” As a matter of fact, we have confirmed more nominees to the appeals courts since June than were confirmed in all of 1993 or 1989.

Some people will come back and say “but Joe, you know what really matters is whether the number of vacancies is growing or shrinking. Are we filling the slots?” That’s true—what
real matter is not the whole number of judges confirmed, but whether we are making progress on filling the vacancies that have opened up on the federal bench. Again, let’s look at the numbers. In 1993, with the White House and Senate in the same hands both the Republicans and the Democrats, the number of vacancies grew over the course of the year by 14 slots—the White House could keep pace with the retirements and resignations of federal judges. (It’s worth noting as well that, during the entire recent period when the Committee was chaired by the Republicans, judicial vacancies grew by 65 percent). By contrast, this year, we will have reduced the number of vacancies by 20, or 18 percent. And that’s only since June. With the White House and the Senate controlled by different parties. And with the September 11 attacks happening right smack in the middle of that period!

I should point out that another hurdle was thrown into the Senate confirmation process this year, which was not there in previous years. The White House announced that it would no longer vet potential nominees with the American Bar Association’s Standing Committee on the Judiciary. As a result, the ABA’s evaluation of nominees must happen as part of the Senate confirmation process, after the candidate nominated by the White House. This step adds weeks to any confirmation.

I should also point out that, not only did September 11 disrupt just about everything that was happening in this country, but it particularly affected the Senate; we had to turn immediately to legislation necessary to authorize the war on terrorism. Moreover, the arrival of anthrax on Capitol Hill displaced many Senators and staff, including my own Judiciary Committee staff. My own Judiciary Committee staff has not had access to their judicial nominations files—not to mention their office—for the past two months.

Despite all of these disruptions and delays, which I did not face when I chaired the Committee, and which the Republicans did not face during the past 6 years when they controlled the Committee, we will have confirmed more judges by the end of this year than in any year of the Clinton Administration, and more than twice as many as in the first year of the first Bush Administration. And we will have significantly reduced the number of judicial vacancies from just 6 months. So, let my friends on the other side of the aisle tone down their rhetoric, and consult their history books.

TECHNOLOGY AND TERRORISM

Mr. HATCH. Mr. President, it is becoming increasingly clear that American technological supremacy will be an invaluable asset in our efforts to combat international terrorism and protect our citizens from further attack. The technological advantages we now enjoy—in weapons, in communications infrastructure, and in detection systems—must be both aggressively pursued and fully exploited.

For example, the recent anthrax attacks in this country highlight the need for the prompt deployment of effective technology to track the origins of the dangerous substances that threaten our security. This lack of important information hampers our ability to track down, capture, and punish terrorists and their supporters. The technology to accomplish that goal exists, and can be quickly and inexpensively modified to law enforcement and public safety requirements. However, the government needs to make this a priority.

Although we have long held concern for the global position of hazardous materials on the public, the terrorist attack of September 11 and subsequent attacks require a heightened response. The weaponization of Chemical, Biological, Radiological and Nuclear ("CBRN") materials is concerning all of these high-risk materials, particularly as they accumulate at seemingly innocent locations. Tracking CBRN materials is an important step in anticipating and preventing their misuse and thereby thwarting terrorist activity.

We currently have the capability for sophisticated materials management that connects people, places, processes, and products in a manner critical to security. The federal government should work to put in service high-risk material tracking systems that provide the basis for powerful, instantaneous decision making. The government control centers can observe these high-risk materials, particularly as they accumulate at seemingly innocent locations. Tracking CBRN materials is an important step in anticipating and preventing their misuse and thereby thwarting terrorist activity.

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I believe that we can prepare a defense for our critical infrastructure that will be preventative and significant in both the physical and cyber attacks on our critical infrastructures, including especially our cyber systems.

The Policy on Critical Infrastructure Protection: Presidential Decision Directive 63 ("PDD–63") provided a starting point for addressing cyber risks against our Nation. This directive identified the critical sectors of our economy and assigned lead agencies to coordinate sector cyber security efforts. This directive presents the vision that "The United States will take all necessary measures to eliminate swiftly and significantly any threat to the physical and cyber attacks on our critical infrastructures, including especially our cyber systems."

For example, the recent anthrax attacks highlight the need to reconfigure our security posture in the face of new threats. The federal and local governments must make certain that our technological infrastructure is protected from attack. To that end, critical infrastructures should undergo automated electronic testing of their internal and external network assets on a frequent and recurring basis. The testing should include written or electronic reports detailing the methods of testing used and the results of all tests performed, so that trend-line analysis of network security posture can be conducted.

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Mr. CONRAD. Pursuant to section 311 of the Congressional Budget Act, I hereby revise the 2002 budget aggregates included in the concurrent budget resolution in the following amounts.

**TABLE 2.—REVISED BUDGET AGGREGATES, 2002**

<table>
<thead>
<tr>
<th>Budget Authority</th>
<th>Outlays</th>
</tr>
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<tbody>
<tr>
<td>Current Allocation: Budget Resolution</td>
<td>1,519,719</td>
</tr>
<tr>
<td>Revised allocation: Budget Resolution</td>
<td>1,498,525</td>
</tr>
</tbody>
</table>

**Adjustments:**
- Emergency funds, Sept. 11: 0
- Revised allocation: Budget Resolution: 13,397

Mr. LEAHY. Mr. President, I want to take a few moments to discuss the deteriorating situation in Zimbabwe. Over the past several months, we have watched as President Mugabe has placed his desire to remain in power above the best interests of his own people. In the process, Mr. Mugabe’s government has destroyed the rule of law, contributed to food shortages, committed violations of human rights, and wrecked the economy—causing unemployment to rise to more than 60 percent.

The issue has received most of the attention is land reform. There is no question that land reform is badly needed to ensure long-term prosperity in Zimbabwe. As late as 1999, the process appeared to be moving in the right direction: Zimbabwe had presented a detailed plan for the inception phase of a land reform effort, the World Bank had made a $5 million pledge to assist with the resettlement of poor farmers, and several bilateral donors, including the United States, made pledges of assistance.

However, in an attempt to deflect attention from a failing economy, a misguided military intervention in the Congo, widespread government corruption, and a host of other domestic problems, President Mugabe decided to support the sudden occupation of large farms. In the wake of this ill-conceived policy, several farmers have been killed, the independence of the judicial system has been seriously undermined, and agricultural production has been sharply reduced, contributing to widespread food shortages throughout the country.

As the land seizure crisis continues, other forms of harassment and political violence in Zimbabwe—carried out primarily by members of the ZANU–PF party against members of the Movement for Democratic Change (MDC), journalists, and other critics of the government—have steadily escalated. A number of recent events clearly indicate that the situation is a risk of spiraling out of control: the MDC office in Bulawayo was invaded and burnt down with a petrol bomb, as the police stood by and watched; there are reports that MDC members have been illegally taken into custody and tortured; the government announced the humanitarian organizations permitted to distribute food aid in rural areas where it is acutely needed; and after two journalists were arrested, the minister of information compared the international media to terrorists and boasted that journalists that they would not be allowed to work in the country for the foreseeable future.

There are also serious concerns about the upcoming Presidential election scheduled for early next year. As a Gallop poll shows President Mugabe running behind MDC candidate Morgan Tsvangirai, many outside observers believe that Mr. Mugabe and ZANU–PF will stop at nothing to remain in power, and are engaged in activities to undermine the democratic process and illegally alter the outcome of the election. In addition to the campaign of harassment and violence against MDC supporters, the government has prevented non-governmental organizations from carrying out voter education campaigns and has refused to allow observers from international organizations, including the European Union, to monitor the elections. Moreover, the government is pushing through electoral reforms that will effectively withhold absentee ballots from Zimbabweans living abroad, with the exception of diplomats and soldiers, and require voters to present proof of residency. These are measures that could eliminate thousands from the voter rolls.

Because of the serious situation in Zimbabwe, I have joined with Senator FEINGOLD and sponsored a provision which was included in FY 2002 Foreign Operations Appropriations Conference Report that requires U.S. executive department officials to international financial institutions to vote against loans, except those for basic human needs or democracy-building purposes, to the Government of Zimbabwe, unless the Secretary of State determines and reports that the rule of law has been restored.

I would also like to point out that earlier this session the House and Senate passed S. 494, the Zimbabwe Democracy and Economic Recovery Act of 2001, and I look forward to President Bush signing it into law, as soon as possible. S. 494 contains several provisions similar to section 560 in the Foreign Operations Conference Report, although section 560 does not provide waiver authority.

Mr. President, I continue to strongly support the Administration’s request for assistance to Zimbabwe for health care programs, strengthen the human society that is not affiliated with the ruling party, peace corps activities, and humanitarian purposes. However, the...
request for funds to restart the International Military Education and Training is premature, and would send the wrong message at this critical juncture.

BANKRUPTCY OF AMERICAN CLASSIC VOYAGES AND THE FAILURE OF ‘PROJECT AMERICA’

Mr. MCCAIN. Mr. President, I want to bring to the attention of my colleagues a short article that appeared in Sunday’s New York Times that points out just how awry a project based on pork barrel politics can go. The article, titled “A Venture in Ships Is a Rare Zell Flop,” gives a short chronicle of the rise and fall of American Classic Voyages (AMCV), its largest shareholder, and the government support for American Classic Voyages that has now left the taxpayers holding the proverbial bag for a whopping $386.9 million in defaults on title XI maritime loan guarantees.

On October 19, 2001, American Classic Voyages (AMCV) voluntarily filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. The petition lists total assets of $373.7 million and total liabilities of $452.8 million. The cruise line’s reorganization petition indicated it has more than 1,000 creditors, including the Department of Transportation. The Department of Transportation in this case, means the American taxpayer whose exposure on a total of six title XI maritime loan guarantees made to AMCV totals $386,897,000. The loans cover five vessels that were in service in Hawaii, the East Coast, and the Northwest Coast and the partially completed “Project America” vessel at Northrop Grumman’s Ingalls Shipbuildings in Pascagoula, Mississippi.

In order for my colleagues to fully understand what this article in the business section of the New York Times represents, we really need to look back at the brief history of the American Classic Voyages rise and the political push for AMCV’s “Project America.” The “Project America” initiative included building two 1,900 passenger cruise ships that were to enter service in Hawaii in 2004 and 2005. These were to be the largest cruise ships ever built in the United States. To help push the program, the U.S. Maritime Administration (MARAD), which provided the federal political support for the project, approved a $1.1 billion title XI loan guarantee for the construction of these two vessels on April 8, 1999.

The New York Times article reports just how that political pressure was felt at MARAD when it quotes a former top MARAD official who insisted on anonymity saying, “We were supported to be promoting shipbuilding.” “The maritime trade unions wanted jobs. So there was a lot of political support.” “Project America” did indeed receive considerable political support over the last several years as noted further in the New York Times article: “In 1996 and 1997, American Classic executives met with members of Congress, labor leaders and shipyard owners in an all-out effort to promote the project in Washington.” My colleagues may recall that this promotion paid off in the form of political support which translated into being included in the Fiscal Year 1998 Department of Defense Appropriation Bill granting a legal monopoly for American Classic Voyages to operate as the only U.S.-flagged operator among the Hawaiian islands.

My colleagues may recall that I questioned the merits of the “Project America” at the time the special legislation was considered and went as far as to introduce an amendment to the fiscal year 1998 Department of Defense appropriations bill to remove the monopoly language. Based on the information available at the time, I believed that the project was more likely to fail than to succeed and I called the bill a “regretable example of porkbarrel spending,” and asked “How many times has the U.S. Senate so blantly set up a monopoly set-aside for any individual or business?” I would ask now, how many times will we do this in the future?

There were early warnings signs that something was going seriously wrong with the project. During the first year of construction, “Project America” fell far behind the re-schedule. Both American Classic Voyages and Ingalls Shipbuilding were crying foul over construction problems and months of non-binding mediation over contract disputes led to no resolution. Accusations of default came from both sides. However, on September 21 of this year a resolution was announced. Yet, here we are three months later and it is still unclear who was at fault as both sides have refused to discuss the dispute. This is important since, the settlement agreement between Ingalls and AMCV, which was reviewed and agreed to by the U.S. Maritime Administration, kept the American taxpayer holding all the risk.

To highlight just how critical the problems with Project America were at the time this agreement was reached, I want to read from a two-page summary on the status of the project at that time that was representing American Classic Voyages inadvertently faxed to my office. It highlights the lagging construction schedule, the claims for additional payments by Ingalls, and the problems of dealing with a yard used to doing work under the typically higher-cost DOD procurement standards.

One statement in the summary hints at AMCV’s recognition that a shipyard accustomed to dealing with the U.S. Navy was ill-prepared for the commercial project, is very telling of how the customer views the shipyard’s ability to meet the demands of commercial work. The faxed summary reads, “For U.S. shipyards to succeed in commercial construction, they must use commercial procedures to maintain costs and ensure timely delivery schedules. Cost increases and schedule delays have significant impact on commercial customers—increased capital costs, high operating costs, and long-term revenue from employment of the vessel, and market uncertainties.”

In March 1999, the contract for Project America was signed with great fanfare in the rotunda of this very building and now we have one of the ships under construction calling into question the shipyard’s ability to succeed at commercial ship construction. If a customer of the shipyard is questioning Ingalls Shipbuilding’s ability to meet its obligations, shouldn’t MARAD also have raised this question before it approved the settlement agreement that allowed for the continuation of the project?

We all know the answer now.

In signing off on the Settlement Agreement between AMCV and Northrop Grumman’s Ingalls Shipbuilding, MARAD, on behalf of the taxpayer, agreed to assume the outstanding Title XI debt of $185 million on the first of the two cruise ships under construction at Ingalls in the event of an AMCV bankruptcy and complete the vessel, after the issue of the remaining Title XI debt of $350 million. Fortunately, MARAD had the funds to complete the vessel before the remaining debt was issued. Otherwise, MARAD would have been legally obligated to complete the vessel at an additional loss to the taxpayers.

On October 29, MARAD formally announced that it was not legally required to fully fund the construction of the first ship at Ingalls Shipbuilding. However, in a sign of just how deep the political support of AMCV is, and despite the overwhelming evidence that the project was in serious trouble and was unlikely ever to be completed, 14 members of Congress, including the then Secretary Mineta, urged Secretary Mineta to reconsider and move to complete construction of the Project America vessel. This would involve an additional $350 million in Title XI loan guarantees and the vessel, upon completion, would be sold by MARAD.

It is important to note, that with more than 80,000 new cruise ship berths coming on line in the next four years, MARAD expects that the vessel would sell for $150 to $200 million less than it would cost the American taxpayer to build.

This week, MARAD will pay out $267.4 million in the first of several payments to be made to American Classic Voyages’ creditors. The remaining $105.7 million will be paid off in the next 30 days as required waiting periods expire. I note for my colleagues here that this is a loss of almost $105.7 million of the American taxpayers’ money. And what do we have to show them for these expenditures? A growing U.S.-flagged cruise

As a matter of fact we have just the opposite. We have a smaller U.S.-flagged cruise ship fleet, struggling shipyards, a decimated merchant marine and a proud maritime history. I fear our maritime industry is jeopardized due to a dependence on a tough world market.

Let me provide some background for the record: Title XI of the Merchant Marine Act of 1936 authorizes the Secretary of Transportation to make loan guarantees to finance the construction, reconstruction, or reconditioning of eligible vessels. The program has modernized and improved shipyards. Under regulations governing the Title XI loan guarantee process, applicants must meet certain economic soundness criteria before receiving a commitment. The Maritime Administration, through the Maritime Administration Inspector General (IG), has directed such investigations to appropriately protect the taxpayer in the event of loan guarantee defaults, including AMCV's guarantee defaults, including AMCV's guarantee defaults, including AMCV's guarantee defaults, including AMCV's guarantee defaults.

I am sure my colleagues know I oppose any program that unnecessarily burdens the American taxpayers and subsidizes the industry. But, I am not alone in this view. I encourage my colleagues to look at the Administrations FY 2002 budget request and its “Explanation of Program Changes” for Title XI Loan Guarantee Program. It states, “In an effort to trim corporate subsidies, the President’s Budget seeks no new funding for the Maritime Guaranteed Loan Subsidy Program.”

I wrote to President Bush in June to express my support for his proposal to zero-out the title XI program. In a response to my letter prepared for the President by Mitchell Daniels, Director of the Office of Management and Budget, Mr. Daniels stated: “The Administration concurs with your view that the Maritime Administration’s Maritime Guaranteed Loan Program constitutes an unwarranted corporate subsidy.”

The problems with AMCV's loan guarantees raise serious questions that should be answered before we allow additional taxpayer funding to be committed in the form of loan guarantees. I have written to the Department of Transportation Inspector General (IG), Kenneth Mead, twice this year requesting his office look into Title XI loan guarantee defaults, including American Classic Voyages, and MARAD’s oversight of the title XI program.

I understand that the Inspector General has investigations to get underway. I hope he will be able to determine if MARAD has acted appropriately to protect the taxpayer in these matters. We need to learn if Ingalls, Northrop Grumman, and American Classic voyages fully and accurately presented the difficulties they faced in building Project America to MARAD while seeking to both secure and restructure the title XI loan guarantee for this project.

I want to close by making one last point on the New York Times article, it quotes AMCV’s largest investor saying, “Everyone talks about taxpayers’ losses. But they never mention the fact that others lost significant amounts of money as well.” That may be true; however, unlike investors who chose to put their money at risk on American Classic Voyages, the American taxpayer did not have a choice. They depend on us to do the right thing, but instead they are saddled with an expenditure $366.7 million. I do not personally know all of AMCV’s investors, but I would be willing to bet they won’t make this same mistake again. The question then becomes, “will we?” I await the Inspector General’s report to the New York Times article in the Record. There being no objection, the material was ordered to be printed in the Record, as follows:


(Sam Zell may have the Midas touch when it comes to investing in real estate. But his efforts on the high seas—with cruise ships—have ended in a $109 million loss. That’s very unfortunate.”

Mr. Zell is the chairman and largest shareholder of American Classic Voyages, which filed for bankruptcy protection in October. This came after the failure of an ambitious project by Mr. Zell to build two 1,900-passenger cruise ships, the first that was to be constructed in this country in 40 years. It also came despite a boatload of government aid to Mr. Zell, including $1.08 billion in federal loan guarantees. When it came to playing the Washington game, Mr. Zell walked away a big winner in the mid-1990s. His cruise ship plan—called Project America—wrapped up patriotism and allowed him to construct his two huge ships by putting government money, not his, at risk. He also secured a 30-year monopoly on all cruise-ship traffic within the Hawaiian islands.

Helping him get this sweet deal were Senator Trent Lott, the Republican minority leader, who wanted to land a big project for the Ingalls shipyard in his home state of Mississippi, and Senator Daniel K. Inouye, the Hawaii Democrat, who engineered the exclusivity pact. Mr. Zell’s ships, American-made and with American crews, would be the only ones allowed to sail port-to-port within Hawaii; others must stop at foreign ports first, eating up time.

“Obviously, I lost a lot of money,” Mr. Zell said. “Everyone talks about the taxpayer losses. But they never mention the fact that others lost significant amounts of money as well. Shareholders lost a lot of money, and that’s very unfortunate.”

Last year, with American Classic shares trading at $36, Mr. Zell’s 3.8 million shares were worth $137 million. This fall, the shores were delisted from Nasdaq when they were worth about 45 cents, chasing Mr. Zell’s stake to $1.7 million. The government, meanwhile, is looking at losses of $367 million from American Classic, which also operates four paddlewheel steamboats through its Delta Queen Steamboat subsidiary.

The failure has incurred the wrath of Senator John McCain, Republican of Arizona, who called for an independent investigation with the inspector general of the Transportation Department has undertaken.

Freeman, a staff member of the Senate Commerce Committee, where Mr. McCain is the ranking Republican, said: “It was a bad idea. The taxpayer took all the risk.” Mr. Zell got such government largesse by being the right person in the right place.
when the United States Maritime Administration wanted to revive the domestic shipbuilding industry, which had been beaten down by lower-cost foreign competitors. Without an American shipbuilding shipyard owner in an all-out effort to promote the project in Washington. That effort was backed by campaign contributions from Mr. Zell and American Classic to Mr. Lott, Mr. Inouye and other crucial members of Congress.

It paid off. The $1.08 billion loan guarantee was the largest the Maritime Administration had ever approved, and it allowed American Classic to enter debt markets that would otherwise have been paraparable to government debt. American Classic was also allowed to buy an old foreign-made ship and use it for Hawaii cruises while the new ship was under construction, given the company an exemption from a law prohibiting foreign carriers from that route.

But the souring economic picture of 2001 halted these ambitions. By last summer, the company had cash-flow problems, and the downturn in tourism after the terrorist attacks pushed it over the edge. "Sept. 11 just put it away," Mr. Zell said. http://www.nytimes.com

THE JUSTICE DEPARTMENT'S DETENTION OF OVER 1,100 INDIVIDUALS IN CONNECTION WITH THE SEPTEMBER 11 INVESTIGATION

Mr. FEINGOLD. Mr. President, I was pleased to hear the Attorney General's announcement of the first indictment of a co-conspirator to the terrorist attacks on September 11, Mr. Zacarias Moussaoui, who was detained by the FBI for carrying a false passport before September 11 and has been in custody since that time, has been indicted by a federal grand jury in Virginia. I commend the Justice Department, the FBI, and our intelligence services, for their tireless work in seeking to bring Moussaoui and other terrorists to justice.

We have known about Mr. Moussaoui since a few short days after September 11, but we still do not know the identities of hundreds of other individuals still held in detention, the vast majority of whom have no link to September 11 or Al-Qaida.

And so I rise today to speak about the Justice Department's detention of these individuals in connection with its investigation of the September 11 attacks and the administration's continued refusal to provide a full accounting of who these people are and why they have been detained.

On October 31, along with Senator LEAHY, Senator KENNEDY, Representative CON蚕ERS, Representative NADLER, Representative SCOTT, and Representative JACKSON-LEE, I sent a letter to Attorney General Ashcroft requesting basic information about the detention of over 1,100 individuals in connection with the investigation of the September 11 attacks. We wanted to know who is being detained and why; the investigations to which they are linked or who have been cleared of any connection to terrorism; and the identity and contact information for lawyers representing detainees. We also wanted information regarding the government's statements about its charges and its legal justification for doing so.

I thank and commend Senator LEAHY, the distinguished Chairman of the Judiciary Committee, for his efforts and leadership. Chairman LEAHY held four oversight hearings on the Justice Department's actions, including one hearing that I chaired focusing on the Department's detention of individuals. Those hearings culminated with the testimony of the Attorney General before the Committee. I come to the floor today because I remain dissatisfied with the Administration's response to our request for information about the detainees. Seven weeks after our letter, the Department of Justice has yet to respond.

In addition, the Department has not yet provided any information on perhaps hundreds of additional people who have been detained. These people might still be being held on state or local charges, or without charges, or they might have been released. Nor has the Department given definite information on the number of individuals held as material witnesses.

After our hearings last week, I am more convinced than ever that Congress and the American people are entitled to this information to assess the Justice Department's assertions that everyone in custody has access to legal counsel and is being treated fairly. In the days and weeks after the attacks, the Department made announcements about the status of the investigation, including tallies of the number of individuals detained. In fact, on October 25, the Attorney General announced that "[t]o date, our anti-terrorism efforts have resulted in the arrest or detention nearly 1,000 individuals as part of the September 11 investigation."

In early November, however, the Department reversed course and decided it would no longer publicly release comprehensive tallies of the number of individuals detained in connection with the September 11 investigation and that it would limit its counts to those held on federal criminal or immigration violations. Thus, it would no longer keep track of those held on state or local charges or who would it indicate how many people have been released after being detained or have been held without charges being filed.
American people to decide whether the Department has acted appropriately and consistent with the Constitution. It is not disloyal to view the government’s assertions with skepticism. It is the American way.

Just before Thanksgiving, in response to our October 31 letter, the Department provided copies of the complaints or indictments for about 46 people held on federal criminal charges. It also provided similar information on about 21 people held on immigration violations, but edited out their identities. Then, three weeks ago, the Attorney General announced the number and identities of all persons held on federal criminal charges and the number, but not the identities, of persons held on immigration charges. The total number of detainees is roughly 600 individuals. But the Department continues to refuse to identify the over 550 persons held for immigration violations, or provide the number and identity of persons held on state or local charges, the number and identities of persons held on state or local charges, or even the number of material witnesses.

In statements to the press and in the Attorney General’s and his associates’ testifying before Congress, the Justice Department has cited a number of reasons for its refusal to provide additional information.

Very troubling is the Department’s assertion that those being held for immigration violations are not entitled to the habeas law and therefore “do not belong in the country.” Without full information about who is being detained and why, we cannot accept blindly this suggestion that each and every immigration detainee does not deserve to be in the country. Do all of these immigration violations merit detention without bond and deportation? I doubt it, as the hearing on detainees the Judiciary Committee held showed that some are very serious offenses, which under normal circumstances can be cleared and talk to him. Unfortunately, there could be many more cases like these three I have mentioned.

The Department has also said that it is prohibited by law from disclosing the information. But when I questioned both Assistant Attorney General Chertoff and later the Attorney General himself, they admitted that there is no law that provides for a blanket prohibition on the disclosure of information about individuals who have been detained.

The Attorney General cited a section of the Privacy Act, as justification for not providing this information. The Privacy Act, however, only applies to citizens and legal permanent residents. It does not apply to aliens who are not legal permanent residents. From the information provided by the Department thus far, we know the vast majority of the detainees are not permanent residents.

Moreover, case law under the Freedom of Information Act explicitly allows the government to release private information about citizens and legal permanent residents where that information reflects on the performance of the agency.

And that’s exactly why this information has been requested. There are serious questions about whether individuals have been detained have been denied their constitutional right to due process of law. And the kind of information we seek will help Congress evaluate whether the Justice Department has deprived any detainee of his or her constitutional rights. We seek this information not to embarrass or harass the detainees but to provide information to the Judiciary Department’s treatment of them.

To make matters worse and further thwart public or congressional scrutiny of the Department’s actions, we also learned during the oversight hearings that the Attorney General has taken the extraordinary step of closing all immigration proceedings involving about 550 of the 1,100 or more individuals who have been detained. This means no visitors, no family and no legal counsel are allowed. As Mr. Al-Maqtaari’s attorney Michael Boyle has said, this secrecy taints the proceedings, even when, in cases like Mr. Al-Maqtaari’s, the FBI has cleared the immigrant of any link to terrorism whatsoever. This should give us all pause. People innocently being branded terrorists and being evaluated in secret proceedings. This is not right.

In sum, the various reasons cited by the Department for not disclosing information about immigration detainees is that he does not want to aid Osama bin Laden in determining which of his associates we have in custody. Yet, the Attorney General and Assistant Attorney General Michael Chertoff have said nothing new about the laws that prohibit self-identification and would not have released the names of the 93 individuals who have been charged with Federal crimes.

Nur would the Department have released the name of Zacarias Moussaoui and the basis for his detention. The public has known about Moussaoui and his alleged role in September 11 and al-Qaida since shortly after the attacks. The Department never tried to keep his identity or why he was being detained secret or try to prevent its disclosure.

Moreover, the claim that detainees can self-identify rings somewhat hollow, since we heard during the hearing that some individuals have been denied access to lawyers or family, for days or weeks at a time. Ali Al-Maqtaari, a Yemeni national married to a U.S. citizen, testified that for most of the nearly two months he was detained, he was allowed no more than 15 minutes, per week. He was never charged with perpetrating, aiding or abetting terrorism or with any crime whatsoever, and was eventually released on bond.

Dr. Al Bader Al-Hazmi was held incommunicado—denied access to his lawyer or family—for seven days. After nearly two weeks in detention, Dr. Al-Hazmi was released with no charges filed against him.

Tarek Mohamed Fayad is an Egyptian national and dentist residing in California. He was picked up by the FBI on September 13 and then transferred to the Brooklyn Detention Center in New York City, where he remained without any connection to the Wall Street Journal, it took his lawyer one month before she was able to locate and interview him.

Unfortunately, there could be many more cases like these three I have mentioned. The Department will not tell the public who is in detention, we can never know the circumstances of their cases.

It is apparent that the option of ‘self-identification’ is not a real option. Indeed, it borders on the fanciful to suggest that all the detainees are in a position to self-identify. Rather, there are serious questions about whether the Department has denied those detained their due process rights, including access to counsel.

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Furthermore, case law under the Freedom of Information Act explicitly allows the government to release private information about citizens and legal permanent residents where that information reflects on the performance of the agency.

By denying Dr. Al-Hazmi access to his retained counsel, Federal law enforcement officials not only violated my clients rights,
they deprived themselves of valuable information and documentation that would have eliminated many of their concerns. Their obstructionism prolonged the investigative process, wasting valuable time and precious resources.

I was gratified that a number of my colleagues expressed concern about the treatment of Mr. Al Maqtari and Mr. Al-Hazmi, and particularly about the difficulties they had in communicating with counsel. We have focused in recent weeks on the issue of access to counsel because I believe this issue is at the center of how our justice system is treating these detainees. This is the issue that takes the concern over the fate of the detainees from an abstract debate over civil liberties versus security to a very specific and very important inquiry about how our government actions affect the lives of hundreds of people.

What happened to Mr. Al Maqtari and his wife Tiffany had a severe impact on their well being. What has happened to hundreds of other detainees has similarly affected them. We are not just engaged in a hypothetical law school exam question or a mock crisis where our actions are merely about taking the liberty of real people, with real families and real lives. It is not enough to say that some liberties have to be sacrificed in these difficult times. Rather, we must be able to determine whether the actions of the Department have been reasonable, and whether the sacrifices that are being requested are justified.

That is where lawyers come in. With a lawyer, a detainee can much more readily answer concerns about his behavior, provide documents to show his whereabouts during crucial periods, and generally provide information to show that he is not a terrorist. Lawyers can help determine whether the extraordinary detention without bail is warranted. And they can explain what is going on to the detainee and the public. I asked the Attorney General at our hearing to take steps to ensure that everyone under detention who wants a lawyer can obtain one. And I asked him to determine how many of the detainees are not represented by counsel. I hope he will follow through on our discussion. It is essential that anyone who is being held have counsel and be able to communicate with that counsel.

The Attorney General has said reasoned discourse should prevail. I agree. But in order to have that reasoned discourse, the Justice Department should provide Congress and the American people with necessary information without withholding that information without withholding it. We are talking about taking the liberty of real people, with real families and real lives. It is not enough to say that some liberties have to be sacrificed in these difficult times. Rather, we must be able to determine whether the actions of the Department have been reasonable, and whether the sacrifices that are being requested are justified.

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The legislation was passed by the Senate on December 20, 2001, and must still be signed by the President. Thus, the industry will have at most only a few days to comply with the law. I have been informed by some market participants that this may not allow them adequate time to re-program and test their computer systems to accommodate the transition. The effective date for the reduction of transaction fees for a brief period as may be reasonably necessary in order for market participants to comply with the new law fully and without disruption.

Mr. GRAMM. I believe that the commission can and should alleviate this problem. When the Senate passed its version of fee reduction legislation in March, the bill, S. 143, provided for a delay of 30 days in the effective date for transaction fee reduction in order to provide securities firms and markets the necessary time to adjust their computer systems to accommodate the rate change. This language was changed when the bill was passed by the House in June, in order to comply with budget-scoring requirements. At that time, it was envisioned that congressional action on the bill would be completed well before the start of the new fiscal year in October, and that the effective date provision would not cause administrative problems for the securities industry.

It is not our intention to impose an administrative requirement that would be impossible for industry to meet. In order to comply with congressional intent to make this provision workable, I hope that the commission will consider using its general exemptive authority under Section 36 of the Securities Exchange Act of 1934 to extend the effective date for reduction of transaction fees.

Mr. KERRY. Mr. President, I speak today on S. 1499, the American Small Business Emergency Relief and Recovery Act of 2001. This legislation provides help to small businesses hurt by the terrorist attacks of September 11 and to small businesses suffering in the weakened economy. Senator BOND and I have spent months trying to uncover who is behind the serial holds that have been placed on this emergency legislation and work out disagree-

ments.

This bill hasn’t been “hustled through,” as some contend. It was drafted with the input of small business organizations, trade associations, and even the SEC. The Senate passed its version of fee reduction legislation in March, the bill, S. 143, provided for a delay of 30 days in the effective date for transaction fee reduction in order to provide securities firms and markets the necessary time to adjust their computer systems to accommodate the rate change. This language was changed when the bill was passed by the House in June, in order to comply with budget-scoring requirements. At that time, it was envisioned that congressional action on the bill would be completed well before the start of the new fiscal year in October, and that the effective date provision would not cause administrative problems for the securities industry.

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I say let’s bring this bill up for a vote. Small businesses have a right to know exactly who is working against them and who is working for them.

So what happened? On October 15th, when this legislation had cleared both chambers, the Administration had the Republican cloakroom put a last-minute hold on the bill so the Administration could announce its approach the next day. The next morning, the Administration lifted its hold, but a new hold was immediately placed by the junior Senator from Arizona, which stated that the press was on behalf of the Administration. Last week, the Senator from Arizona lifted his hold, and I thank him for that, but unfortunately, we then learned that there was one or more anonymous Republicans hold on the bill. This approach makes it very difficult to try to work out objections. Two other Republican senators told me that their objections were solely based on the Administration’s problems with the bill. There was one or more anonymous Republican hold on the bill. This approach makes it very difficult to try to work out objections. Two other Republican senators told me that their objections were solely based on the Administration’s problems with the bill. They did not blame the Republican cloakroom for passing legislation.

Unfortunately, we then learned that there was one or more anonymous Republicans hold on the bill. This approach makes it very difficult to try to work out objections. Two other Republican senators told me that their objections were solely based on the Administration’s problems with the bill. They did not blame the Republican cloakroom for passing legislation.

The administration can not go further in providing an incentive to small business lenders by reducing the lenders’ loan fee by more than one-tenth of one percent. Despite numerous articles in reputable newspapers such as the New York Times, it is the Administration’s view that lenders do not need incentives to make small business loans. In this regard, we are asking Senator Bond and I, as well as the 61 other cosponsors of S. 1499 believe that both lenders and small business borrowers need a break to encourage these loans to be made. With this capital, small businesses can afford the costs of business and continue to employ people. Without it, we can expect greater business failures and bankruptcies.

Senator Bond and I asked them to meet us halfway, and they said no. We asked them to give us alternatives, and they didn’t give us any. We spent more than 20 hours negotiating on this bill and it appears as if the Administration never had any intention of finding common ground. It appears as if it was a bluff.

Let me describe briefly where I disagree with the administration about how to help small businesses battling bankruptcy and employee layoffs triggered by the terrorist attacks and economic administration’s approach costs almost $1 billion. Despite numerous articles in reputable newspapers such as the New York Times, it is the Administration’s view that lenders do not need incentives to make small business loans. With this capital, small businesses can afford the costs of business and continue to employ people. Without it, we can expect greater business failures and bankruptcies.

Specifically the Administration’s representatives said: “We cannot work with you on Section 6.” That is the entire stimulus portion of S. 1499. As such, we were asked to eliminate the provision that would require public and private lenders to make these loans. We were told that, in their view, it was a “loophole” and would cost too much. Senator Bond and I have concluded that small businesses would be better served through a combination of disaster loans and government guaranteed loans. Government guaranteed loans are almost five times cheaper than what the administration has proposed, have less exposure for the taxpayer, and can reach more small business owners because they are delivered through more than 5,000 private sector lenders who know their communities and have experience making SBA disaster loans. The private sector’s job is to ensure small businesses receive the maximum amount of assistance.

We will never agree on each other’s approach, mostly because the administration has told us in meeting after meeting that it does not believe there’s a credit crunch and that small businesses are not having difficulty in accessing credit. They don’t acknowledge articles, surveys and testimonial that show it has become harder and more expensive for small businesses, particularly minority and women-owned small businesses, to get loans over the past year.

They ignore the surveys by the Federal Reserve that say, “40 percent of domestic banks reported tighter standards when lending to small businesses” over the past three months, up from 32 percent in August.” Please keep in mind that this survey was released in October and can not capture the affects of September 11.

They ignore articles from economic authorities such as the Wall Street Journal. I read this last week on the floor but think it is absolutely worth repeating. Wall Street Journal, Tuesday, November 6th, 2001. Here are the words of Mr. John Rutledge, Chairman of Rutledge Capital in New Canaan, CT, and a former economic advisor to the Republican Administration.

Interest rate reductions alone are not enough to jump-start this economy. We need to make sure cheaper credit reaches the companies that need it, by cutting interest rates—but the money isn’t reaching capital-starved small businesses because Treasury regulators are cracking down on disaster loans. Credit interest rates, is the real problem with the economy. This problem didn’t start on September 11th. For more than a year U.S. banks have been closed for business lending. Unless the current Bush administration takes steps to restore bank lending to small businesses and ease the asset markets now, the economy will stay weak.

They ignore surveys published in the American Banker. On October 31, a survey of 80 lenders of all sizes by Phoenix Management Services found that 42 percent “would be less likely to lend to small businesses, viewing them as more risky because they foresee no improvement in the economy until late 2002 at the earliest.” The article from November validated what before was characterized as “less likely to lend to small businesses...” by reporting lenders had actually “tightened their standards” to small firms by more than 40 percent.

Still, the administration maintains that there is no credit crunch and that provisions in S. 1499 to provide improved access to credit are too expensive and unnecessary.

The administration has also raised concerns about the cost of the legislation, which has been unofficially scored by Congressional Budget Office at $850 million. Let me be clear, that’s billion, not billion. $860 million to help all of our Nation’s small businesses. Yet the administration objects to the House’s approach when they have sent up requests for billions in tax cuts for a select few large corporations, and when the administration’s approach costs almost five times as much to help fewer small businesses. The bill’s $860 million cost is too much to invest in the nation’s small businesses, according to the administration’s position.

I regret very much for small businesses and their employees that their needs are being taxed. I admire Senator Bond and the Chairman of the House Committee on Small Business for showing leadership in their party to help small businesses. I am very glad that we can work in such a strong bipartisan fashion to fight for small businesses. I thank the 62 members of this body who have come together in a bipartisan fashion to support this legislation and our nation’s small businesses. Let me note here that the White House said in our meetings that 62 co-sponsors of this bill have come together so that happens all the time up here.” I find that cavalier considering that, according to the Congressional Research Service,
only 13 out of 1,839 bills introduced in the 107th Congress have more than 60 cosponsors.

The support for this bill is strong and bipartisan. I am very sorry that those Senators supporting S. 1499 have not had the opportunity to debate the ratification of this emergency legislation before they go home for the holidays and visit with the small businesses in their states. Small businesses deserve some good news. As for right now, we can only tell them what I told the administration in our meetings last night: When we come back in January, we intend to file cloture on this bill and take a vote.

In closing, let me thank the many groups who have fought so hard on behalf of New Jersey citizens to get this legislation enacted. They have demonstrated all that is great about grassroots action and active involvement in the political and legislative process.

In addition to including for the record the groups and organizations that have supported the ratification of the small business loan assistance provisions of S. 1499 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1499 SUPPORTERS

Airport Ground Transportation Association, American Bus Association, American Subcontractors Association, Associated General Contractors of America, Association of Women's Business Centers, CDC Small Business Investment Companies, HUBZone Contractors and other provisions of S. 1499 be printed in the RECORD.

and nondefense aerospace firms, followed through October were commercial airlines... default. The most likely borrowers to be assessed the sharpest drop in industrial output... Not only, therefore, must the economy be... The slowdown in lending activity, evident... the White House should make it, clear to Congressional Democrats that the price for support of their huge spending projects is fast action on a lower capital... The slowdown in lending activity, evident... The slowdown in lending activity, evident... The slowdown in lending activity, evident... The slowdown in lending activity, evident... The slowdown in lending activity, evident... The slowdown in lending activity, evident...
closely by travel and leisure-related businesses such as hotels and restaurants. The survey of the chief credit officers of 57 domestic banks and 22 U.S. branches of foreign institutions found that most U.S. banks tightened their underwriting standards for commercial loans, and that commercial borrowers, for their part, were less willing to go into credit. Several conditions for consumer loans tightened slightly, the survey found, and demand for consumer loans fell.

The survey, taken four to six times a year, typically asks a number of specific questions in addition to standard queries about loan terms, conditions, and demand. The survey, which also deals with typical issues, focused on the recent downgrade of commercial credits and the changes in the loan market as a result of the Sept. 11 terrorist attacks on New York and Washington.

After noting that debt rating agencies “have revised their ratings for a substantial number of firms” recently, the survey asked banks what portion of their commercial loan portfolios, by dollar volume, had been downgraded in the past three months.

Among domestic institutions, 10.5% said they had downgraded less than 1% of their portfolios, while 40.4% reported downgrading between 1% and 5%. Banks that downgraded between 6% of commercial loans made up 42.1% of the total, and an additional 7% of respondents reported downgrading between 21% and 30%.

The standards of the survey, which deal with underwriting standards and loan demand, found that 56.9% of banks had tightened their standards for large and midsize firms. For loans to small firms, 40.4% reported higher standards.

The tightening of standards most frequently resulted in premiums charged for making risky loans, and higher interest rates. Loans to large firms were also likely to have higher loan covenants, while loans to small firms were likely to carry higher collateralization requirements.

The main reasons for the tougher underwriting standards were a “less favorable or more uncertain economic outlook” and a “worsening of industry-specific problems.”

While banks were tightening their standards, commercial loan originators were reducing their demand for loans, the survey found. Loan demand from large and middle-market firms was down at 72% of banks in the survey, while small business demand was down 55.4%. The most common reason reported for the decreased demand was a reduced investment by customers in their plants and equipment.

After noting that, in the aftermath of the attacks, the Securities and Exchange Commission had relaxed its rules on standard queries, “I’m not selling necessities. I’m selling things people buy with their disposable income. And everyone’s sitting on their disposable income now,” she said.

The consumer response to the attacks was immediate and nationwide, she said.

“People are pulling back, retrenching—waiting is a good word,” she said. “They’re spending money on things they have to have, food and basics.”

The U.S. Chamber of Commerce is a strong supporter of the measure. Giovannini Coratolo, director of the Chamber’s Office of Small Business Policy for the Washington, D.C.-based group, was careful not to criticize Kyl but did not say the chamber would work hard to get the bill through the Senate.

“While he opposes the small-business bill, Kyl has a travel incentive bill going through that’s $10 billion, but he says our bill is too expensive. Understanding how important small businesses are to the economy, we are not denying that travel is important as well, but we do need to get these small businesses some assistance,” said Dayna Hanson, Kyl’s press secretary for the small-business committee.

Kerren Vollmer, who owned Nava-Hopi Tours in Flagstaff with her husband, Roger, agreed. The couple closed their tour bus business Oct. 26 because so many people canceled their travel plans after Sept. 11. The couple owned 10 tour buses, which operated charter tours as well as regular trips to Phoenix and the Grand Canyon from Flagstaff.

“You still have to run regular schedules,” she said. “You can’t quit just because you have only three or four people.”

Vollmer is a lifelong Republican who voted for Kyl, ran for county superintendent, and has worked in the voting precinct. She tried to contact Kyl’s office but received no response.

“I’ve sent e-mail, I’ve sent him a fax, begging him, offering to talk with him or any of his staff, this is what’s going on,” Vollmer said. “And it’s not just us. A lot of these businesses need help. Because I don’t feel like he even recognizes what’s going on under his own nose.”

Vollmer said the company tried to get a disaster loan but couldn’t even get the application, even with the help of the Arizona Department of Revenue and the local community college’s small business development center. Whether the latest measure will make it through the Senate is very much in the air, Coratolo said.

“I’m optimistic. It’s about a 50-50 chance, and if it does, it will be by the skin of its teeth,” he said. “Sen. Kyl has been very, very effective at blocking it.”

THE NATIONAL ASSOCIATION OF GOVERNMENT GUARANTEED LENDERS, INC.

HON. JOHN KERRY, Chairman, Senate Committee on Small Business and Entrepreneurship, Russell Senate Building, Washington, DC.

DEAR SENATOR KERRY, On behalf of the members of the National Association of Government Guaranteed Lenders, Inc. (the “SBA’s”), we are creditors, lenders, and guarantors of the SBA’s 7(a) lending programs, and thank you for your continuing efforts to improve capital access for small businesses in this time of shrinking capital needs. We strongly support your efforts and the efforts of Senator Bond to enact S. 1499.

It is clear, especially in light of events of September 11, that banks continue to plunge. According to a November 30 article in the Washington Post, “Earnings for the nation’s banks dropped nearly 10 percent in the third quarter because of the largest increase in expected loan losses in more than a decade.” The report goes on to say that “the dip in earnings can be partly attributed to provisions for Sept. 11-related loan losses, with more expected to be reported in the fourth quarter.”
This drop in profits has resulted in an every-tightening credit crunch, as can be inferred from just the headline of a November 14 Wall Street Journal article that reads, "Bankers, Loan Stan- dar ds, In Past Months Amid Uncertain Outlook." This article cites a Federal Reserve study that "alerts fuel to growing concerns that an unwillingness among banks to lend is threatening to choke off investment, hampering chances of a quick economic recovery."

In this economic climate, it has become exceedingly difficult for even the most qualified small businesses to access the capital they need for survival, and to help spur the American economy to recovery and renewed prosperity.

This is why the passage of S. 1499 is so important. While the SBA’s Disaster Loan Program is a necessary ingredient of economic recovery, it cannot possibly provide the sweeping help that the 7(a) program can, and S. 1499 addresses this problem. S. 1499 creates a more attractive 7(a) program for cautious lenders, and a more affordable 7(a) program for hurting borrowers for one year’s time—when both of them need it most. And it utilizes private sector lenders that are already in place to easily to provide necessary capital immediately.

We encourage you and your Senate colleagues to pass S. 1499 while it is still possible to help small businesses and the American economy in their time of greatest need.

Sincerely,

ANTHONY R. WILKINSON,
NAGGL President & CEO.

A PLEA FOR SENSIBLE GUN SAFETY LEGISLATION

Mr. LEVIN. Mr. President, on April 27, 1999, we paused in the Senate to observe a moment of silence in tribute to those who died at Columbine High School and to express our sympathy for their loved ones. Since the Littleton tragedy, over 60,000 people have been killed by guns, criminals continue to gain easy access to guns and, according to the Brady Campaign, there is an unlocked gun in every eight family homes. Several strong pieces of gun safety legislation have been introduced in the 107th Congress to address these problems. None, however, has been adopted. In fact, none has even been voted on in the Senate.

In 1994, the Brady law established the National Instant Criminal Background Check System, NICS. This check system allows federally licensed gun sellers to determine whether a person is allowed to buy a gun. Since its inception, NICS checks have prevented more than 156,000 felons, fugitives and others not eligible from purchasing a firearm without informing upon any law-avoiding citizen’s ability to purchase a gun. However, a loophole in the law allows unlicensed gun sellers to sell guns without conducting a NICS check. A 1999 study by the Bureau of Alcohol, Tobacco and Firearms found 314 cases of fraud at gun shows, involving 54,000 guns. Felons and suspected terrorists have reportedly used gun shows to purchase firearms and smuggle them out of the United States. On April 24, 2001, Senator REED introduced the Gun Show Background Check Act. I cosponsored that bill because I believe it is an important tool to prevent guns from getting into the hands of criminals and foreign terrorists. This bill, which is supported by major law enforcement organizations including the International Association of Chiefs of Police, simply applies existing law governing background checks to persons buying guns at gun shows. We should stand with our Nation’s law enforce- ment community and take this commonsense step to reduce violence.

In January, regulations issued by the Department of Justice directed the FBI to retain NICS check information for a 90-day period. This 90-day period allows local law enforcement and the FBI to check NICS for illegal guns sales, identify purchasers using fake IDs and screens for gun dealers misusing the system. However, in June, the Attorney General proposed reducing the length of time that law enforcement agencies can retain NICS data to 24 hours. This is simply not a sufficient amount of time for law enforcement to audit and review the NICS database for patterns of illegal activity. This change will create another potential loophole for criminals to purchase guns.

I was greatly concerned by the Attorney General’s action and I was pleased to cosponsor the “Use NICS in Terrorist Investigations Act” introduced by Senators feinstein and SCHUMER. This legislation would reinstate the 90-day period for law enforcement to retain and review NICS data. The need for this legislation was highlighted just a couple of weeks ago when the Attorney General denied the FBI access to the NICS database to review for gun sales to individuals they had detained in response to the September 11th terror- or attacks and refused to take a position on an amendment which would authorize that access. I believe it is im- portant to give American law enforcement the authority to review the NICS database.

The Brady law has been effective in keeping guns out of the hands of crimi- nals, but the number of children killed in suicides, unintentional deaths and school violence remains unacceptably high. This is the case because kids still have all too easy access to guns. Young children are more likely to die or severely injured because adults do not store their firearms properly. A recent National Institute for Justice survey found that 20 percent of all gun-owning households had an unlocked and loaded gun in the home. To prevent easy ac- cess to guns, Senator DURBIN intro- duced the Children’s Firearm Preven- tion Act. Under this bill, adults who fail to lock up a loaded firearm or an unloaded firearm with ammunition will be held liable if the weapon is taken by a child and used to kill or injure themself or another person. The bill also increases the penalties for selling a gun to a juvenile and creates a gun safety education program that includes parent-teacher organizations, local law enforcement and community organizations. This bill is similar to a bill President Bush signed into law during his tenure as the Governor of Texas. I support this bill and hope the Senate will act on it during this Con- gress.

We know kids and criminals should not have access to guns, but there are certain types of guns that simply do not belong on the streets. One example is .50 caliber sniper guns. These weap- ons are among the most powerful weap- ons legally available. In fact, according to one rifle catalogue, a .50 caliber manufacturer touted his product’s ability to wreck “several million dollars, worth of jet craft with one or two dol- lars worth of cartridge.” This is a dis- turbing assertion, particularly in the wake of September 11th. Even more disturbingly, there are fewer restrictions placed on purchases of long-range sniper rifles and illegal sniper rifles where there are on handguns. In fact, according to a 1999 GAO report, since the end of the Gulf War, .50 caliber sniper guns have ended up in the hands of many sus- pected terrorists, including al-Qaeda. Senator Feinstein’s Military Sniper Weapon Regulation Act would change the way .50 caliber guns are regulated by placing them under the require- ments of the National Firearms Act. This is a necessary step to assuring the safety of Americans. More than 2 years ago, two young men brought terror to Columbine High School. Of the four guns used by the two Columbine shooters, three were re- portedly acquired at a gun show. The teenage shooters took full advantage of the gun show loophole, which allowed their friend to buy them two rifles and a shotgun without ever submitting to a background check. The tragedy in Littleton, Colorado struck a chord for getting into the hands of criminals and .50 caliber military sniper guns remain uncontrolled. It is long past time to adopt sensible gun safety legislation.

LEGISLATION IN BEHALF OF VETERANS

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on legislation acted upon during the first session of the 107th Congress which will make a dramatic difference in the lives of hundreds of thousands of...
service members and veterans, and in the lives of every American. Four bills relating to veterans benefits now await the President's signature. These bills, coupled with another major piece of legislation adopted by the Congress immediately prior to Memorial Day of this year, will substantially enhance veterans' benefits in the areas of health care, education, home assistance, disability compensation, and other areas. They are a testament to the spirit which can animate when House and Senate, Republicans and Democrats, come together to achieve a common end.

The first bill now awaiting the President's signature, the "Veterans Compensation Rate Amendments of 2001", H.R. 2540, provides a 2.6 percent increase in the rates of veterans' disability compensation and survivors' compensation. The increase, effective December 1, 2001, reflects inflation which occurred during the preceding 24 months, and is the same percentage increase Social Security recipients most recently received. H.R. 2540 will ensure that the purchasing power of compensation and survivor benefits is not compromised by inflation.

A second bill, the "Veterans Education and Benefits Expansion Act of 2001", H.R. 1291, is a comprehensive bill which enhances education, disability compensation, housing, burial, and other benefits earned through service to the Nation. The education provisions of H.R. 1291 build on legislation, S. 1114, which I introduced earlier this year, by increasing the Montgomery GI Bill, "MGIB", monthly educational assistance benefit from $672 to $985, a 47 percent increase, over the next 3-year period. With the opportunity to "buy-up" an additional $150 per month in benefits as a result of legislation I authored during the 106th Congress, veterans the potential will now have the opportunity to purchase benefits beyond the current $1,100 per month for veterans attending school in the Fall of 2003. Such a benefit level will pay the average cost of tuition, fees, books, room and board, and travel expenses at a 4-year public college or university. These improvements are not just good for veterans; they are good for the Nation.

The national security dictates that the services attract well-qualified, highly motivated men and women to serve. As was recognized by the United States Commission on National Security/21st Century, enhancements in Montgomery GI Bill benefits are necessary to attract such recruits.

The "Veterans Education and Benefits Expansion Act of 2001" will further enhance educational assistance benefits by providing needed flexibility to students by allowing veterans to claim benefits on an accelerated basis so that they can pay the significant "up front" expenses of high-cost technology courses. It will also expand distance learning and independent study benefits. Further, this legislation incorporates provisions from a bill authored by Senator Thompson to allow certain Vietnam-era veterans the ability to use benefits, and it expands work-study opportunities available to veterans while they're attending college. And it will provide increased educational assistance to the children of service members killed in the line of duty or who are permanently disabled as a result of service. Finally, this legislation preserves the suspended education entitlement of service members reservists who had to leave school as a result of being called to active duty, such as a call to active duty participation in Operation Enduring Freedom.

In addition to these improvements in educational assistance benefits, the "Veterans Education and Benefits Expansion Act of 2001" keeps faith with veterans who served in past conflicts by expanding the eligibility of Vietnam and Gulf War veterans for presumptive compensation based on exposures and experiences which occurred during those conflicts. A Persian Gulf War veteran will now be eligible for compensation if he or she has a medically unexplained, chronic, multi-symptom illness associated with chronic fatigue syndrome or irritable bowel syndrome, in addition to undiagnosed illnesses already covered in law. Further, this legislation gives VA explicit authority to compensate Gulf War veterans for any illness, injury, or condition which the Secretary's December 10, 2001, announcement of the increased prevalence of Lou Gehrig's disease among Gulf War veterans, this provision is particularly timely.

For veterans who served in the Vietnam war, the "Veterans Education and Benefits Expansion Act of 2001" will repeal the 30-year limit on the time period during which a Vietnam veteran must have contracted a respiratory cancer if he or she is to be presumed eligible for pension benefits due to Agent Orange. According to a recent National Academy of Science/Institute of Medicine report, there is no scientific evidence which suggests an upper limit can be placed on respiratory cancer latency. Given this, I believe the formerly-existing 30-year limit was arbitrary; this bill removed it. I owe thanks to Mr. Joseph R. Mancuso, a Vietnam veteran from Pennsylvania who was stricken by, and died of, lung cancer for bringing this legal anomaly to my attention. This provision is a memorial to him. I just wish the Congress might have acted while Mr. Mancuso was still alive.

I should mention a second provision of this legislation's other important provisions. It increases VA's home loan guaranty to enable veterans living in high-cost regions of the country to afford a home with little or no down payment. It increases burial benefits available to the survivors of service members who die due to a service-connected cause, and it increases grants provided to severely disabled veterans so they may purchase an automobile or make modifications to their homes to accommodate disabilities. The legislation also expands outreach and information services for departing service members, veterans, and family members, and it streamlines the eligibility determination process for low-income, disabled veterans seeking non-service-connected pension benefits.

A third major piece of veterans' legislation which now awaits the President's signature, the "Veterans Comprehensive Assistance Act of 2001", H.R. 2716, is an additional step toward achieving the goal of ending chronic homelessness among America's veterans. This legislation would authorize VA to provide grants and per diem payments of up to $60 million in 2002, rising to $75 million in 2003, to entities which provide outreach, rehabilitative, vocational counseling and training, and transitional housing services to homeless veterans. It would expand mental health services, and direct each VA primary care facility to develop and carry out a plan to provide mental health services to veterans who need them. This legislation would also extend the provision of vocational rehabilitation to homeles veterans by VA in recognition of the fact that such care is a necessary prerequisite if a homeless veteran is to gain, or regain, meaningful employment. Finally, this bill would advance the provision of care to homeless veterans by VA by permanently authorizing the Employee Incentive Scholarship Program, a program which allows VA to provide up to $10,000 per year, for up to three years, to employees engaged in full-time academic studies. Additionally, this legislation reduces the minimum period of employment required for eligibility in the program from two years to one year, and extends authority to increase the award amounts based on federal national comparability indices in pay. Further, in an effort to encourage nurses who have already completed school to come work for VA, the bill would permanently authorize the Employee Debt Reduction Program, EDRP, extend to five the number of years that a VA employee might participate in the EDRP, and increase the gross award limit to any participant to $44,000. The EDRP program allows VA to assist employees with the repayment of education debt, and it allows VA to compete with private sector and other similar programs. Finally, this legislation creates the National VA Commission on Nursing, which will consist of experts
in the nursing profession as well as economists and education professionals. The Commission will report findings and recommendations relating to nurse recruitment and retention and other nurse employment issues within two years.

The "Department of Veterans Affairs Health Care Programs Enhancement Act of 2001" also contains elements of a bill, S. 1188, which I introduced earlier this year to provide priority access to VA care for veterans residing in relatively high cost areas like Philadelphia or Pittsburgh. Currently, VA provides priority access to care, and it waives co-payments, only for veterans whose incomes are below a nationally-determined annual amount. This "one-size-fits-all" formula does not take into account local variations in the cost of living. As a consequence, veterans in high-cost areas, typically urban areas who are poor by most standards, do not qualify for priority access for VA care. And they must pay the full amount of co-payments charged to other, much better off, veterans. This legislation would relieve much of the burden of co-payments on, and raise the relative priority for VA health care of, these near-poor veterans.

The "Department of Veterans Affairs Health Care Programs Enhancement Act of 2001" also addresses other important health issues. It provides service-dogs, trained to accomplish tasks such as opening doors and retrieving clothing, to disabled veterans. It directs VA to focus its attention on the maintenance of special programs in each geographic region of the country, and it creates a program for chiropractic care in the VA. Finally, this legislation authorizes the construction of a power plant in Miami, FL, that was destroyed over one year ago by a fire that left two employees critically injured.

Finally, I note the enactment of the "Veterans' Survivor Benefits Improvements Act of 2001." Public Law 107-14, which was signed by the President on June 5, 2001. This legislation retroactively increased insurance benefits provided to, and guaranteed additional health care coverage for, the survivors of service members killed in the line of duty. This legislation also expanded health care coverage to the spouses of veterans who have permanent and total disabilities due to military service and to disabled veterans who were died as a result of wounds incurred in service. Further, this Act extended life insurance benefits to service members' spouses and children, and authorized, and directed, VA to conduct outreach efforts with surviving spouses and other eligible dependents, to apprise them of the benefits to which they are entitled. Finally, the "Veterans' Survivor Benefits Improvements Act of 2001," made technical improvements to Montana veterans education benefits, and make other purely technical amendments to title 38, United States Code.

This first session of the 107th Congress has produced five outstanding bills benefitting veterans. The enhancements contained within them send an unmistakable message to Americans that this Nation values their service, honors those who risk their lives so that we may be free. I complement all those who worked so hard to make these legislative accomplishments a reality.

THE EQUAL PROTECTION OF VOTING RIGHTS ACT OF 2001

Mr. TORRICELLI. Mr. President, when the Voting Rights Act was signed into law over 30 years ago, many thought it was the end of a long journey to recognize that the ideals on which this country was founded were more than just abstract notions. The Voting Rights Act and before it the 14th amendment were definitive expressions by our Nation’s government that liberty and equality in theory is only as meaningful as liberty and equality in practice. As my colleague from Connecticut noted yesterday in this Chamber, Thomas Paine captured the essence of our Nation’s democracy when he said that a free vote is "the primary right by which all other rights are protected."

The immediate consequence of the 2000 elections and its unsettling aftermath was a realization that even 30 years after the Voting Rights Act became law, the Nation’s election system was not what people thought it was. The election brought to light many problems with the Nation’s voting systems, including the impact that outdated voting machines, undertrained poll workers, and poorly-designed ballots can have on an election.

Throughout the past year, Congress and the Nation have evaluated how best to ensure that future elections are ones in which Americans can have faith in the results. I have spent countless hours devoted to the subject. A year ago last week, Senator MCCONNELL and I introduced one of the first bills seeking to improve election systems and procedures. Others soon followed with their own ideas about how to best bring about change to what we had learned was a clearly flawed system.

With so much at stake, the process has not been without disagreement and at times it seemed that little would be changed. Both the House of Representatives and the Senate, however, have finally made progress in crafting bipartisan legislation seeking to make elections more fair for all Americans. The House of Representatives has passed legislation supported by a majority of both parties. Yesterday, Senators DODD, MCCONNELL, BOND, SCHUMER and I introduced bipartisan legislation to modernize the Nation’s election procedures.

The Equal Protection of Voting Rights Act of 2001 represents a balance between establishing national standards for voting and giving States the flexibility to make improvements tailored to their State’s needs. First, this bill creates a permanent Federal system of analysis and assistance. This legislation establishes an Election Administration Commission, consisting of two commissioners from each party who will serve 4-year terms. The commission will bring expertise to modernizing elections and provide States and localities with advice for their enhancing voting procedures. This permanent commission was the cornerstone of election reform legislation that Senator MCCONNELL and I introduced over a year ago and I am extraordinarily pleased to see it included in this landmark legislation.

Second, this legislation establishes three minimum national requirements for voting procedures to ensure that voting across the Nation is uniform and nondiscriminatory. These minimum national standards include requiring States and localities across the Nation to utilize voting systems that enable voters to verify how they voted and ensure accessibility to language minorities and individuals with disabilities, requiring States and localities to provide for provisional balloting, and requiring States and localities to establish a statewide voter registration list with the names and addresses of eligible voters.

Perhaps most importantly, however, this legislation provides $3 billion in Federal grants for States and localities to update voting systems, improve accessibility to polling places, and train poll workers, among other things. States and communities must show that they comply with the three national requirements to be eligible for the grants. An additional $400 million is authorized for providing early funds so that States and localities can implement some improvements quickly; $100 million of the bill is expected to provide grants to make polling places physically accessible to those with disabilities. This funding ensures that for the first time in our Nation’s history, the Federal Government will contribute our share to the cost of administering elections for Federal office.

I hope that this legislation completes our Nation’s journey to ensuring that all eligible Americans are able to cast their vote fairly, accurately, and without interference. To some, this legislation may not be perfect, but I can assure my colleagues that it is the result of reasoned compromise and is a balanced response to all that our Nation has learned from the 2000 elections. I hope that when my colleagues and I return in January, we can work with the Senate leadership to ensure that bringing this legislation to the Senate floor is one of our top priorities.
This raises the prospect that some of the 35,000 TAA recipients around the United States will receive a very nasty Christmas present—the unexpected halt of the benefits on which they depend to rebuild their lives and support their families.

Mr. President, I believe Congress is sometimes criticized unfairly. Sometimes, however, the rush of events diverts attention from some of the glaring errors we make.

The stubborn obstinance of some of the other body to extend TAA is, in my view, a shameful example of playing politics with the interest of those citizens that can least afford it. I hope this example is not lost on journalists, editorial writers, and, ultimately, voters. Someone should be held accountable.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in May 1995 in West Palm Beach, FL. A gay man was robbed and brutally murdered. The attacker, Robert St, was convicted of first-degree murder, armed robbery, and a hate crime in connection with the incident.

I believe that government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

THE NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE PRESIDENTIAL COMMISSION

Mr. CLELAND, Mr. President, I rise today to discuss legislation that establishes the National Museum of African American History and Culture Presidential Commission. On Monday, December 17, 2001, the Senate passed, with my support, the legislation that establishes the National Museum of African American History and Culture Presidential Commission. The Presidential Commission will develop and recommend a legislative plan of action for creating a national museum honoring African Americans. The Commission will decide the structure and make-up of the museum, devise a governing board for the museum, and among other action items, will decide whether to place the museum within the Smithsonian’s Arts and Industries Building, which is the last existing space on the National Mall.

This museum will commemorate and honor the 400 years of African American history from slavery to full and equal rights. Despite this history, legislation was introduced just about every session of Congress between 1919 and 1929 to create a memorial building to house exhibits demonstrating the achievements of African Americans in art, science, invention and all aspects of life. I am both proud and pleased to be associated with this project and look forward to seeing this legislation signed into law by the President in the near future.

THE POLICE CORPS PROGRAM

Mr. LOTT. It is my understanding there are concerns with the Police Corps program. It is my understanding from within the current fiscal year is not being made available to certain States.

Mr. GREGG, I appreciate the minority leader’s concerns with Police Corps. I understand that the OMB and the Department of Justice have rectified this situation. Both organizations have agreed that any funds available for Police Corps in fiscal year 2002 and unexpended balances from prior fiscal years will be made available for new programs if currently eligible participants have not used the funding provided for their State.
Chairman HOLINGS, Ranking Member GREGG and others to assure that the Police Corps program is treated fairly by the Office of Justice Programs this year and in future years, and to insure that this important program receives adequate funding in the future.

BIOTERRORISM

Mr. NELSON of Florida, Mr. President, I rise to recognize the important achievement of the Senate this year—particularly today—in defending our homeland. Just over two months ago, my state of Florida was the site of the first in a series of bioterrorist attacks on our Nation that culminated here in Washington, DC. While the repercussions evolving out of the anthrax attacks on our mail systeem pale in comparison to the enormous tragedy of September 11, the families of those who suffered tragic deaths after being exposed to anthrax need our help as well. We must continue to displace on Capitol Hill the very real dangers associated with the elusive threat of bioterrorism.

In the wake of the anthrax attacks, we, as a Nation, began to realize that we were not fully prepared to effectively and comprehensively respond to biological threats. The attack in Boca Raton, FL elicited an array of missteps and symptoms of inadequate preparation at all levels of government. Because Floridians, and Americans, had never faced such a threat before, the necessary communication lines had not been formed and many emergency responders were not properly equipped to handle this new type of crisis. The Bioterrorism Preparedness Act of 2001, passed by the Senate today, is an important first step at increasing our ability to contain disease and prevent future biological attacks at the Federal, State, and local levels. It will enhance emergency preparedness by improving disease surveillance systems and public health laboratories. It will improve our ability to treat victims of an attack by increasing hospital capacity for disease outbreaks. It will also enhance our ability to contain an attack by expanding pharmaceutical stockpiles and accelerating the development of new treatments. Finally, this bill seeks to target future bioterrorist threats in a comprehensive manner by protecting our food sources and other potential targets.

I would like to take this opportunity to highlight a portion of the bill that I believe is essential to our Nation’s coordinated prevention and response initiative. Recently, the Florida Department of Health and the Florida Department of Agriculture and Consumer Services, working with the Florida Department of Health and the Florida Department of Agriculture and Consumer Services, working with the Florida Department of Agriculture and Consumer Services, worked in concert to establish a comprehensive surveillance system for Florida’s bioterrorism defense. The Center focuses on full spectrum of programs and projects, ranging from research and development to education and training. The Center for Biological Defense has laboratory programs that are dedicated to improving surveillance systems, developing early detection capabilities, rapidly identifying pathogens, and fully understanding the factors that affect the toxicity of biological agents. Moreover, the Center concentrates on efforts to enhance health care preparedness, to strengthen hospital hygiene and containment capabilities, and to coordinate vital educational and training programs for emergency management and health professionals, which has proven to be a crucial component of the response efforts to the anthrax contamination occurring over the course of the past 2 months.

While the preeminent focus of the Bioterrorism Preparedness Act of 2001 is on our government agencies and their crucial missions, a portion of this bill recognizes the importance of higher educational institutions as a critical component of the United States bioterrorism defense plan. Centers across the Nation, like Florida’s Center for Biological Defense, do critical bio-defense work at the local, State, and national level every day. In fact, it is these programs that have coordinated first responder training programs, developed products capable of identifying biological contamination on site, and developed new techniques for containing disease and preventing the spread of contagious pathogens. I am delighted that the Senate has been proactive in acknowledging the tremendous value of these programs in an effort to encourage their receipt of additional Federal grants in the future.

I am pleased that I was able to be part of the effort to draft and pass the Bioterrorism Preparedness Act of 2001 and I am thankful to my fellow Senators for ensuring the passage of this vital bi-partisan legislation prior to the holiday recess. I look forward to passing a final version of this bill at the conclusion of the conference between the House and Senate, and I believe that implementation of this bill will not only ensure our preparedness for any future biological threats, but will also quell the concerns and fears of the American people.

MTBE

Mr. SMITH of New Hampshire, Mr. President, for the third day this week, I have come to the floor to speak about MTBE.

This is the gas additive that has become a huge concern for millions
across the Nation because of the contamination it has caused.

That is certainly true of many communities throughout New Hampshire where it has become a crisis. And the crisis will continue to escalate unless it is dealt with immediately.

I was pleased last week when the majority leader made a commitment to me that the Senate will vote on MTBE legislation before the end of February.

Until the day of that vote arrives, I will continue to come to the floor to remind Senators of the terrible impact that MTBE is having on the Nation. And remind them why it is important that we act now.

In 1990, the Clean Air Act was amended to include a clean gasoline program. That program mandated the use of an oxygenate in our fuel—MTBE was one of two options to be used.

The program with MTBE is that when it is leaked or spilled, it moves through the ground very quickly and into the water table.

Many homes in New Hampshire and across the nation have lost use of their water supply because of MTBE contamination.

Many others have had to install expensive water treatment systems in order to drink the water or even shower.

According to the New Hampshire Department of Environmental Services, there may be up to 7,000 private wells with MTBE contamination. Of those, up to 8,000 may have MTBE contamination over state health standards.

So far this week, I have talked about the problems faced by families and small businesses throughout the regions of New Hampshire.

Today I want to talk about the Sojka family who have a home on Cobbetts Pond in Windham.

The water supply for the home is a deep, public on-site well.

Just about two years ago, the Sojkas began noticing that the water had a strange odor and that it left a residue on their hands.

So they did a little test of their own to see if there really was anything unusual with their water. Their son Brian filled up a bowl full of tap water and let it sit overnight. They were horrified with their finding next morning.

The water had a slick oily film floating on top—contaminated water that the family had been drinking, bathing in, and cleaning their food with.

As a result, the Sojkas had their water tested. The test revealed MTBE contamination at a level twice as high as the State standard.

They contacted the State of New Hampshire for help—by now, it had become quite common for the state to get this type of request.

The state began providing bottled water for the family. Just like the Miller family, the Sojkas had been drinking the same water that the family had been drinking, bathing in, and cleaning their food with.

Within a few months of the initial tests at the Sojka home, the MTBE contamination levels in the well jumped up by almost 8,000 percent.

Unbelievable contamination!

Last summer, the State installed an elaborate and cumbersome water treatment system on the Sojka's property. Unlike the Millsers that I spoke of yesterday, who had a system installed in their home, the system needed for the Sojka's was too large to fit in the home.

The State had to build a shed separate from the house for the commercial water treatment system. The system consists of an enormous commercial air stripper and two 6 cubic foot carbon units.

Such a system costs in the neighborhood of $20,000.

Fortunately for the family, the state is providing the system and cost of operation and maintenance to the tune of an additional $5,000 per year.

Can you imagine having a large chuck of your back yard being occupied by a commercial water treatment system?

It is terrible that this has to happen to any family. And it is horribly wrong for federal mandate to cause such pain.

This problem isn’t unique to New Hampshire—it exists in Maine, California, Nevada, Texas, New York, Rhode Island, and on and on.

We would be delinquent in our duties as United State Senators if we were to sit back and do nothing about this.

We must act soon.

I have a bill that has been reported out of committee two years in a row that will address these problems.

Mr. President, the time to act is now—it is time to help out the families who have fallen victim to a Federal mandate.

Mr. CLELAND. Mr. President, the far-reaching education package before us today makes significant strides toward meeting three of America’s most important education goals: improved student achievement, increased accountability, and enhanced teacher quality. I am very pleased that the conference report includes two of the amendments I offered to the Senate BEST Act—my Immigrants to New Americans amendment and my amendment to the National Center for School and Youth Safety. I thank the distinguished managers of the Senate bill, Senator KENNEDY and Senator JEFFORDS, for their support and their willingness to assist me. I also want to express my appreciation to the staff of the Senator from Massachusetts for the courtesies and counsel they showed to me and to my staff.

Finally, I want to thank the “education team” on my own staff, led by Lynn Kimmerly, my superb deputy legislative assistant. And I would also like to thank John Turner, my outstanding chief staff counsel, who helped not only in developing and winning support for my amendments but in analyzing and advising me on all of the details of this landmark legislation. They have served our State and our Nation well, and our country’s children will be the beneficiaries.

My amendment to New Americans language addresses the explicit and implicit employment of immigrants coming to this country over the past decade. Information from the 2000 Census shows that the impact from this wave of immigration is having a dramatic impact on communities across America, including non-traditional immigrant communities in states like Wisconsin, Iowa, Nebraska, Oklahoma, Georgia and the Carolinas.

My amendment will provide resources to these communities to help ensure that these children—and their families—are being served appropriately. Specifically, it would expand the use of funds under the Emergency Immigrant Education set-asides to immigration-granting communities in order to improve reading and math skills for children.

My second amendment incorporated in this landmark legislation addresses the deeply troubling issue of violence at Columbine and Portage High and in other schools across the country. My School Safety Enhancement Amendment, based on the best research in the field of school violence prevention, would create a National Center for School and Youth Safety tasked with the mission of providing schools with adequate resources to prevent incidents of violence. The National Center would offer emergency assistance to local communities to respond to school safety crises, including counseling for victims, assistance to law enforcement to address short-term security concerns, and advice on how to enhance school safety and prevent future incidents. It would also create a free, anonymous nationwide hotline for students to report criminal activity and other high-risk behaviors, such as substance abuse, gang or cult affiliation, depression, or other warning signs of potentially violent behavior. Finally, the National Center would compile information about the best practices in school violence prevention, intervention, and crisis management. The goal of the National Center for School and Youth Safety would be to protect the entire community—parents, school officials, community leaders, and school and government agencies—to make them aware of the resources, grants and expertise available to enhance school safety and prevent crime.

In closing, I would like to quote former British Prime Minister Benjamin Disraeli, who once said: “Upon the education of the people of this country, the fate of this country depends.” One of the best investments this nation can make is an investment in the education of its future leaders. It is my fervent hope that
Members of Congress, on both sides of the aisle, will see the wisdom in investing adequate dollars to carry out the worthy goals of this critically important piece of legislation—improved student achievement, increased accountability, and enhanced teacher quality. It is the foremost in the future of America, and the future, after all, is in very small hands.

ON REAUTHORIZATION OF THE PROMOTING SAFE AND STABLE FAMILIES PROGRAM

Mr. GRASSLEY. Mr. President, the Senate recently passed legislation re-authorizing an important child welfare program known as Promoting Safe and Stable Families. Under the auspices of this Social Security Act grant program, States are able to provide services to at-risk families to prevent the need for children to enter the foster care system.

Four types of services are included in the program: family preservation; community-based family support; time-limited family reunification; and adoption promotion and support. In addition, the program provides funding for state court improvement projects. I cannot proceed without praising Iowa's court improvement project which, under the leadership of Judge Terry Huitink and Judge Stephen Clarke, has produced valuable research to streamline the court process for children waiting to be adopted. The Iowan project also provides training for judges in order to increase understanding of the needs of children in the foster care system.

The reauthorization passed by the Senate ensures that money will be available for the next five years at an annual minimum of $305 million per year. An additional $200 million is authorized to be spent from discretionary funds determined annually by Senate appropriators. I am also pleased the 2002 Senate Labor, Health and Human Services, and education appropriations legislation included $70 million in discretionary spending for the Safe and Stable program, for a total funding level of $375 million in fiscal year 2002. In fact, I and some of my Senate colleagues are sending a letter to President Bush tomorrow requesting that full funding of $565 million for the program in the Administration's fiscal year 2003 budget.

The Promoting Safe and Stable Families program is a valuable weapon in the fight against child abuse and neglect. The Federal Government spends billions of dollars each year to provide services to children who have already been placed in the foster care system. Much less money is spent on providing services before removal from the home is necessary. In fact, the Congressional Budget Office estimates that between 1999 and 2002, national spending on removing children from their homes and placing them in foster and adoptive homes will exceed by nine times the amount of money spent on services and prevention. Furthermore, annual spending during this period for removal and placement is expected to increase by thirty-five percent, from $4.8 billion to $6.5 billion, while annual spending for prevention and services is expected to increase by only nine percent, from $0.57 billion to $0.62 billion.

More than one hundred thirty thousand children are waiting to be adopted out of foster care in the United States, and at least 4,500 children live in Iowa. Each child deserves a loving family and a safe environment. Promoting Safe and Stable Families grants provide critical services to vulnerable families and children, and I am pleased the Senate fulfilled its duty and acted to reauthorize the program.

Ms. CANTWELL. Mr. President, I rise today in support of the Enhanced Border Security Act of 2001. We must take the long term steps to strengthen the security at our borders. I want to commend Senators KENNEDY and FEINSTEIN, BROWNBACK and KYL, for their tireless work to address border security issues.

The bill we will be voting on today, the Enhanced Border Security Act of 2001, was a product of the thoughtful merging of two bills. As an original co-sponsor of Senators KENNEDY and BROWNBACK's initial version of this bill, I have worked closely with the four principal sponsors to integrate the best ideas from each of these two pieces of legislation, and have been very pleased with the outcome of this effort.

This bill addresses what I consider to be one of the most important issues in our fight against terrorism—how we can effectively secure our borders from terrorists. This bill address border security by increasing the number of border patrol and immigration personnel at the borders; improving the quality and sharing of identity information; improving the processing and naturalization of persons seeking to enter the U.S. on visas; and improving awareness of the comings and goings of these foreign nationals as they enter or exit our country.

As a member of the Judiciary Committee, I have been honored to work closely with Senators KENNEDY and FEINSTEIN to find ways to better protect our borders and provide necessary support to the men and women who work for the Department of Homeland Security, the Immigration and Naturalization Service and the U.S. Customs Agency.

I, along with many of my colleagues, am currently pressing for funding to triple the number of Immigration and Naturalization Service and U.S. Customs personnel on our northern border and improve border technology, the authorization for which was included in the USA Patriot Act. In the past, a severe lack of resources at our northern border has compromised the ability of law enforcement officials to carry out their duties. I am pleased that Congress made the tripling of these resources a priority for national security, and I will continue to fight for full funding of this measure. This bill also addresses these needs by increasing INS inspectors and border patrol staffing each by 200 persons per year for the fiscal year 2002-2006. The bill also authorizes $150 million in spending for improving technology and facilities at our borders.

The Enhanced Border Security Act of 2001 addresses several other critical issues. In hearings this session before the Immigration and Border Security Subcommittee, the Technology and Terrorism Subcommittee, as well as the full Judiciary Committee, we heard repeated calls for better sharing of law enforcement and intelligence information as it relates to admitting aliens into the United States. The bill addresses this problem by mandating INS and Department of State access to relevant FBI information within one year. I am pleased that the authors of the bill have included provisions to protect the privacy and security of individuals, and require limitations on the use and repeated dissemination of the information.

Two of the most important provisions of this legislation address international cooperation on border security. Protecting U.S. borders requires the assistance and cooperation of our closest allies. Indeed, we share an interest in protecting our respective borders. Citizens of several countries, including most European countries, Japan and Canada, can enter the U.S. without visas. And this is as it should be. But the U.S. must, with new urgency, continue to engage Canada, Mexico and other countries that may be interested in sharing law enforcement and intelligence information to protect our respective borders. We must improve information sharing, and must improve the technology to make sure information is shared with the right people and in a timely manner.

In October, we passed a major antiterrorism bill that contained a number of provisions that will enable our law enforcement community and the intelligence community to obtain and share vital information, regarding persons who are a threat to the U.S. One of the most important new tools I was pleased to have had included in USA Patriot Act is a requirement that State and Justice develop a visa technology infrastructure to help secure U.S. borders and make certain each individual who seeks entry into our country on a visa is the person he or she claims to be and there is no known reason to keep that person out.

We must work with our allies to take advantage of this technology standard to improve interoperability on an international scale. We should do what we can to eliminate technological barriers to information-sharing regarding dangerous individuals and to address our concern for border security. To this end, this bill requires the Department of State to report to Congress within six months on how best we
can undertake “perimeter” screening with our partners, Canada and Mexico. Further, the bill requires the Department of State, the Immigration and Naturalization Service and the Office of Homeland Security to report to Congress within 90 days on how best to facilitate sharing of information that may be relevant to determining whether to issue a U.S. visa. Our borders are only as secure as the borders of those countries whose citizens we allow into our country without a visa.

The provisions we have achieved in the USA Patriot Act laid the foundation for more specific provisions to assure the best use of technology to improve the security at our borders. This bill fulfills the promise of the USA Patriot Act to assure information sharing will be thoughtfully implemented in short order.

With the enactment of the USA Patriot Act of 2001, the federal government is developing a technology standard that would facilitate the sharing of information related to the admissibility of aliens into the United States. I proposed this language recognizing that, for many years, the U.S. law enforcement and intelligence community maintained numerous, but separate, non-interoperable databases. These databases are not easily or readily accessible to front-line federal agents responsible for making the critical decisions of whether to issue a visa to admit an alien into the United States.

To build on and fulfill the goals of establishing this standard, this bill will do three things. First, it will require technology be implemented to track the initial entry and exit of aliens travelling on a U.S. visa. We know now that several of the terrorists who attacked America on September 11th were travelling on expired visas. We have had the law in place for several years, but due to concerns about maintaining the flow of trade and tourism across our borders—concerns I share—the provisions of Section 110 have not been fully implemented. Technology will address those concerns, allowing electronic recordation and verification of entry and exit data in an instant.

Second, I believe it is necessary to require the Department of State and Justice to work with the Office of Homeland Security to report to Congress on how best to implement a real-time sharing of information, to the line-front government agents making the decisions to issue visas or to admit visa-holding aliens to the United States.

Keeping terrorists out of the U.S. in the wake of the terrorism within the U.S. in the future, Aliens known to be affiliated with terrorists have been admitted to the U.S. on valid visas simply because one agency in government did not share important information with another department in a timely fashion. We must make sure that this does not happen again.

Until now, we had hoped that agencies would voluntarily share this information on a real-time and regular basis. This has not happened, and although I know that the events of September 11 have led to serious rethinking of our information-sharing processes and procedures, I think it is time to mandate the sharing of fundamental information.

Advancements in technology have provided us with additional tools to verify the identity of individuals entering our country without impairing the flow of legitimate trade, tourism, workers and diplomats. It is time we put these tools to use.

Improving our national security is vitally important, but I will not support measures that compromise America’s civil liberties. The bill we are voting on today includes a number of safeguards to protect individuals’ rights to privacy. The bill provides that where databases are created or shared, there must be protection of privacy and adequate security measures in place, limitations on the use and re-dissipation of information, and mechanisms for removing obsolete or erroneous information. Even in times of urgent action, we must protect the freedoms that make our country great. I urge a favorable vote.

TRIBUTE TO COMMISSIONER JOHN F. TIMONEY

Mr. BIDEN. Mr. President, I rise today to pay tribute to the long and distinguished career of one of our Nation’s top police executives, Philadelphia Police Commissioner John F. Timoney.

Commissioner Timoney will leave the Philadelphia Police Department in early January, and I want to highlight some of his achievements. I believe John’s record of achievement will benefit America’s police officers for years to come.

John Timoney immigrated to the United States from Ireland at the age of 13. In 1969, after graduating from high school, he joined the ranks of the New York Police Department. He spent the first twelve years of his career as a patrol officer and later a narcotics investigator in the streets of Harlem and the South Bronx. As his reputation for integrity, innovation, and perseverance grew, he rose through the department’s management structure, eventually assuming the position of Chief of Department, the highest ranking uniformed position in the department. It was during Mr. Timoney’s tenure in the upper echelons of the NYPD that New York’s crime rate began to drop precipitously, due in large part to the management structure he instituted, merging the Housing and Transit Police Department with the NYPD. In 1996, upon his departure from the NYPD, then-Chief Timoney had accrued over 65 Department of the Year Awards, including the prestigious Medal of Valor.

After retiring from the NYPD, John entered the world of private security consulting, and offered his expertise and advice to law enforcement authorities all across the country and around the world. He served as Vice Chairman of the Irish Commission on Domestic Violence, and he advised Britain’s Patriot Commission, which focused on policing Northern Ireland.

In March of 1999, Philadelphia Mayor Ed Rendell appointed John Commissioner of the Philadelphia Police Department. His tenure in that position was marked by the same commitment to excellence and improvement which characterized his career in New York. John brought the innovative Compstat system to Philadelphia, and helped to reinvigorate the department. Running a department of 7,000 officers and 900 civilian employees is no easy task, and Commissioner Timoney’s efforts to modernize the department have been rewarded by a decline in Philadelphia’s crime rate.

While I thank John profusely for what he has done to make the streets safer for millions of New Yorkers and Philadelphians, I rise today for another reason: to thank Commissioner Timoney for the lessons that his expertise and experience have taught the entirety of the law enforcement community.

While his achievements on the beat deserve our thanks, I want to make special mention of the contribution he has made to our understanding of how police departments can better employ their resources to combat crime across the country.

Commissioner Timoney’s career in the upper echelons of law enforcement have been marked by two major paradigm shifts. Without them, law enforcement would not be nearly as successful as it is today.

First, Commissioner Timoney was at the forefront of efforts to get both the New York and Philadelphia Police Departments to embrace Compstat, a high-tech system which allows police departments to monitor and analyze crime data better, empowering them to re-deploy resources as needed.
Comstat was revolutionary policing in both New York and Philadelphia, contributing to dramatic crime reductions in both cities.

Second, Commissioner Timoney has been an outspoken proponent of community policing, which was an integral part of 1965's crime bill. The Commissioner has set a high standard in the practice of policing multi-ethnic and multi-racial communities by empowering precinct captains and other officers in local areas to develop constructive relationships with members of the communities they police. I've always believed that the more integrated cops are with the communities they serve the better. Commissioner Timoney has lived that principle, and the great accomplishments of his career are due in no small part to his promotion of community policing.

I am grateful to be able to call John Timoney a friend. The people of Philadelphia will miss his law enforcement expertise, the police officers of his department will miss his extraordinary leadership, and the nation's law enforcement executives will lose one of their brightest lights. Good luck in your future endeavors John. A grateful and safer nation thanks you for your service.

WHISPERS OF LIBERTY

Mr. HATCH. Mr. President, I would like to take a minute to bring to the attention of this great body the words of Rachel Bennett. Rachel is a 13-year old constituent who has written "Whispers of Liberty," a moving poem about the events of September 11. These terrorist attacks had a profoundly sobering effect on most of the world. As Americans we were forcefully reminded of the ideals and principles which unite us as a nation. I have read and heard many explain the significance and aftermath of September 11, but few have done so as well as Rachel. She poignantly reminds us of the dreams that were shattered by the terrorists, while at the same time she reminds us of the values and ideas that have rallied Americans to help one another deal with these tragedies. I would like to read this poem for the record:

WHISPERS OF LIBERTY
(By Rachel Bennett)

How could a moment
So change everything?
A speechless nation
Cried out in despair
In unison as one.

How could in a moment
So many lives be put out,
Like a field of flowers
Closing in the mid of summer
Never to bloom again?

And in that moment,
How many chances
Of being a grandfather,
A husband, a mother
Of knowing the joys
Of life and love
Be gone?

Like a candle
Doused with tears of despair,
Our nation wept.
For the twin brothers
Who know lie in a Silent reverie
As two lions
Suddenly tamed
A ghastly graveyard
Of pride and greatness.
Of those we have lost.
The solid and proud
Red, white, and blue
Of American pride.
A stoic symbol
Of freedom and unity
In a world
Of stricken terror.
Its red, the blood of
The innocent whose
Lives were stolen from them;
Its white,
Purity and strength;
And its blue, the melancholy tears
Of sadness.
These bands of red
And white
Bring us together
As one,
A single
Voice declaring freedom
And a fearless life
For all the world.
Strength resonating
From the richness
Of the colors
Bind us together
In a single dance
Of peace and love
A single whispered word—
Liberty.

WHISPER OF LIBERTY

Williamson, West Virginia

Mrs. CLINTON. Mr. President, I rise today to express my deepest gratitude to and admiration for the citizens of Williamson in Mingo County, West Virginia for their generosity and sacrifice on behalf of others. Their donation of approximately $26,000 to the "Families of Freedom Scholarship Fund," to aid the children of those lost in the terrorist attacks on our country over three months ago, is symbolic of the tremendous compassion and unity of the American people. I would like to thank the citizens of Williamson on behalf of all the families who will be able to take advantage of this scholarship fund. They have reached deep into their hearts and pockets to send the children affected by the September 11 attacks a truly beautiful gift.

Earlier this month, I met with Williamson Mayor Estil "Breezy" Bevins, Fire Chief Grover "Curt" Phillips and Police Chief Roby Pope when they presented $26,000 in donations in Senator BYRD's office. Shortly after September 11, the City Council voted to donate $5,000 to the victims of the attacks on the World Trade Center. Over $15,000 was collected on September 14 through a "boot drive" where police officers, firefighters and others took to the streets to stop cars to collect money. As I told Mayor Bevins, Williamson's tremendous efforts and energy symbolize the spirit of "small-town America."

I suggested that the town consider sending their donations to the "Families of Freedom Scholarship Fund," which former President Clinton and former Majority Leader Bob Dole chair together. The Fund provides educational assistance for the children and spouses of those killed or permanently disabled in the terrorist attacks of September 11. I would like to thank my friend and colleague Senator ROCKEFELLER for contacting my office to seek guidance on directing the donations.

I am very grateful to Senators BYRD and ROCKEFELLER for joining me in receiving the people of Williamson's donation earlier this month.

This small town in southern West Virginia, thousands of miles away from the Twin Towers, has experienced its own share of adversity, including a devastating flood in 1977. Perhaps Williamson's struggle to overcome its own set of hurdles has made the citizens there especially sympathetic to the tremendous obstacles that the people of New York City are facing. At the same time as Williamson has reached out to those affected by the terrorist attacks in New York City, they are working to tackle financial difficulties in their own backyard and I applaud their efforts. An aggressive economic development effort is underway to secure a wood products park, most aquaculture and a stronger market for coal.

Many Americans have felt a personal need in their everyday lives to reach out to their neighbors, coworkers or even strangers to offer assistance, both large and small. We saw it in New York with people standing in line for hours to donate blood, and with families donating food to rescue workers who were toiling around the clock, or companies who wanted to contribute funding and resources. "What can I do to help?" is a common, if not universal refrain that Americans have spoken, or thought quietly to themselves, since the attacks. The people of Williamson have matched those noble words with action, and New Yorkers thank them from the bottom of our hearts for their outpouring of compassion.

Winston Churchill once said, "We make a living by what we get. We make a life by what we give." During this time of tremendous grief and anxiety that's being felt in all corners of the world, the citizens' of Williamson efforts to ensure that children who have been affected by these terrible attacks are not forgotten will provide comfort to many and inspiration for us all.

RETIREMENT OF U.S. ATTORNEY JAMES TUCKER

Mr. COCHRAN. Mr. President, one of the best and most respected attorneys to have ever served in our State as an assistant U.S. Attorney is retiring. James Tucker has served the U.S. Department of Justice in the Southern District of Mississippi for 30 years.

I have an enormous amount of respect and appreciation for the way James Tucker has carried out the important responsibilities of his job.
was a true professional in every re-
spect. He was completely honest and
trustworthy, and he was tenaciously in
bringing to justice those who violated
the laws of the United States.
I commend him for a job well done and
wish him much continued success and
satisfaction in the years ahead.
I ask unanimous consent that an ar-
ticle from the Clarion-Ledger of De-
cember 17, highlighting his illustrious
career, be printed in the RECORD.

There being no objection, the article
was ordered to be printed in the
RECORD, as follows:

**Top Corruption Fighter Leaving Post**

Mississippi’s top corruption fighter over the past 30 years—Assistant U.S. Attorney
James Tucker—is leaving the U.S. attorney’s office to go into private practice.

“If you could combine honor, integrity, courage and expertise in the same person,
you’d have James Tucker,” Attorney General Mike Moore said “they don’t make ‘em
that way anymore. He is the ultimate professional.”

Jon Wilk will mark Tucker’s last day of work at the U.S. attorney’s office, where he has
worked since 1971. After that, he’ll join the Butler Snow law firm in Jackson, where he’ll
be part of the litigation division.

Tucker said he is sad to be leaving on one
hand but is enthused about his new job.

“After almost 30 years with the Department of Jus-
tice, it hurts a little to cut the string, but I’m
looking forward to a challenging new career.”

A non-tenured retired Naval Reserve offi-
cer, Tucker has shunned the limelight, de-
spite taking on very public prosecutions of Mississippi politicians, including Operation
Pretense, which led to convictions of 43
county supervisors and 11 vendors on corrup-
tion charges.

His long list of those prosecuted has in-
cluded members of the Mississippi Senate,
the Highway Commission, the Public Service Commission and the Jackson City Council.

His work also helped put former Biloxi
Mayor Pete Halat behind bars on federal
charges in connection with the 1997 killing of
Halat’s partner, Vincent Sherry and his wife,
Margaret.

“I’ve always had strong feelings about pub-
lic officials violating the trust,” Tucker said.
“I always felt if I had the power to right those kinds of wrongs, I ought to do it.”

In 1983 and 1998, the Provine High School
graduate received the highest award an as-
sistant U.S. attorney can receive from the Justice Department—the Superior Perfor-
mance Award.

“That’s one of my great honors,” Tucker said,
“winning that award twice.”

Perhaps better than an award was the com-
ment he said he received the other day from a
current county supervisor: “He said, ‘You don’t
need to do what I had to do for what I’m doing,
but Pretense has helped us honest supervisors for
years and years and will for years to come.
Because of that, we can threaten people
with the threat of a defense lawyer, who doesn’t
realize it until his head is in his lap.’

Now that Tucker’s gone, he joked, “I’m going
to start trying all my cases in federal
court.”

What may say the most about Tucker is
that he has taken not only the defense bar,
but judges as well, Colette said.

“He’s probably the most competent pros-
ecutor I have ever heard,” former U.S. District
was lucky to have him for so many years.”

Even as Mississippi has changed U.S. attor-
neys in the Southern District, Tucker has re-
mained as the chief of the criminal division.

Former U.S. Attorney Brad Pigott said he
relied on Tucker during his tenure.

“He’s an ideal public servant,” Pigott said.
“He’s personally modest and quiet. I’ve spent
some time with him in the foxhole, I can vouch for his integrity in every way. He de-
serves a very wonderful reputation.”

Defense lawyers say Tucker helped provide
continuity to the sometimes revolving door of
the U.S. attorney’s office, serving once as interim U.S. attorney.

“Many people, including me, felt that with
him there, we had someone to talk to,” said defense lawyer John
Colette of Jackson.

“Perhaps better than an award was the com-
ment I received that Denis Sweet of Jackson.

“I’ve always felt if I had the power to right those kinds of wrongs, I ought to do it.”

Mr. GRASSLEY. Mr. President, I rise
to ask unanimous consent that an ar-
ticle that Denis Galvin has continued in
that great tradition. As he embarks
on a new chapter in his life I would like
to take this opportunity to thank
Denny for all of his assistance to me
and to other members of the Senate,
and extend my best wishes upon his
retirement.

**ADDITIONAL STATEMENTS**

**RECOGNIZING THE CAREER OF
DENIS GALVIN UPON HIS RE-
TIREMENT FROM THE NATIONAL
PARK SERVICE**

Mr. BINGAMAN. Mr. President, I would
like to take a moment to recog-
nize and thank Denis Galvin, the Dep-
uty Director of the National Park
Service, who will be retiring at the end
of this year after a career of almost 40
years with the Park Service. The Com-
mittee on Energy and Natural Re-
sources has jurisdiction over national
park issues, and we have been fortu-
nate to have had the opportunity to
close with Mr. Galvin over the
years.

Since beginning his tenure with the
Park Service in 1963 as a civil engineer
at Sequoia National Park, Mr. Galvin
has held several positions with the
Park Service throughout the country,
including a period in the Southwest
Regional Office in Santa Fe. He also
worked for several years in Boston in
the Northeast Regional Office, and as
the Director of the Denver Services
Center, the planning, design, and con-
struction arm of the Park Service.

In 1988 Mr. Galvin held two posi-
tions that brought him into frequent
contact with the Congress and our
Committee, as the Associate Director
for Planning and Development from
1989 to 1997, and twice as the Deputy
Director of the National Park Service,
from 1985 to 1989, and again from 1997
until now.

In his capacity as Associate Director
and Deputy Director, Mr. Galvin has
been involved in every major policy
issue facing the National Park Service.
He has been one of the National Park
Service’s greatest resources, and his
knowledge and judgment on national
park issues is very much re-
pected, both within the agency
and here in Congress. Whenever the Com-
mittee held a hearing on an especially
important legislative issue affecting the
National Park Service, we would
often request that Mr. Galvin testify,
so that the members of the Committee
could benefit from his expertise and ad-
vice. Because of his broad and varied
background, he could speak with as
much knowledge on the merits of par-
ticular construction project within a
park as he could on general policy
issues affecting the entire park system.

I would like to recognize his efforts,
especially in his role in the National
Park Service leadership, to maintain
and protect the integrity of the Na-
tional Park System. The Park Service
has been fortunate to have had many
strong and far-sighted leaders in its
history. We have been extremely for-
nate that Denis Galvin has continued
in that great tradition. As he embarks
on a new chapter in his life I would like
to take this opportunity to thank
Denny for all of his assistance to me
and to other members of the Senate,
and I extend my best wishes upon his
retirement.

**TRIBUTE TO CARAN KOLBE MCKEE**

Mr. GRASSLEY. Mr. President, I rise
to pay tribute to a loyal friend and
trusted advisor who left my staff in
late August. Caran Kolbe McKee came
to work for me 14 years ago. She served
the people of Iowa in a number of ca-
pacities in my office. In every case,
Caran demonstrated remarkable leader-
skip qualities, steadfastness of pur-
pose, and the kind of problem-solving
ability that can make our Government work for the people in the best way possible.

Caran came to the Senate in 1987, when she joined my staff as assistant press secretary. Two years later, she became my press secretary. During this time, she dealt with a range of important issues, including the Gulf War, Supreme Court nominations, whistle-blower protections, a farm bill, civil rights legislation, a campaign to apply labor and employment laws to Congress, and the budget battle of 1990. She made certain that Iowans had access to accurate and timely information through the news media and fostered a better understanding of the way in which the issues addressed by Congress affect the lives of individuals and families.

In 1994, Caran took on new challenges as a special assistant. She developed initiatives and reached out to the grassroots. Caran brought to her work a great appreciation for the people who make Iowa the extraordinary place that it is. She grew up on a farm in Western Iowa, graduated from Iowa State University, and maintains many close family ties in Iowa.

Caran is the kind of person who is always looking ahead and making a plan to improve things for others no matter what their stage and place in life. Just last week, President Bush signed into law the Violence Against Women Act, and Caran worked on a bill I sponsored in the Senate. Caran’s work with the national Cooperative Enforcement program and the FIT—its first-ever community-based, statewide anti-drug coalition.

The goal is to help Iowans work together to keep their neighborhoods, schools, workplaces, and communities drug-free. I hope to see this productive effort continue. Ongoing for 28 years, Gene has dedicated himself to the protection of our nation’s oceans and living marine resources. His commitment and leadership with the National Marine Fisheries Service’s Office for Law Enforcement (OLE) has been appropriately honored for this service at an event to be held on December 21st in the Southeast region.

His initiative led to a Joint Enforcement Agreement that is improving the management and protection of South Carolina’s precious marine resources. This program has proven so successful that it is now the “gold standard” model of marine resource enforcement, and it is being established in coastal states around the nation. These cooperative programs and relationships will be the legacy of Gene’s leadership.

In closing, although we hate to see him go, I once again wish to congratulate Agent Proulx on his exemplary career. Through his tireless efforts, he has made a difference in protecting the marine resources of South Carolina and the nation.

In Memory of the Honorable Deran Koligian

Deran Koligian was a Fresno County icon, having served as a Supervisor for two decades. He faithfully served his constituents up until the day of his death.

Deran Koligian set a high standard of integrity and decency. He was a man of great determination and dedication and has dedicated tirelessly for Fresno County and California and was loved and respected by so many. He was a farmer, a World War II veteran, a family man and an honorable Fresno County Supervisor. He will be greatly missed by all.

I ask that the Fresno Bee editorial from December 13, 2001, be printed in the RECORD. And, on behalf of the Senate, I extend our thoughts and prayers to the Koligian Family on the loss of an extraordinary public servant.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Fresno Bee, Dec. 13, 2001]

DEaran KOLIGIAN—A POWERFUL VOICE IN FRESNO COUNTY, STATE POLITICS FALLS SILENT

The odds suggest we shall not soon see the likes of Deran Koligian in public life. The lifetime Fresno County supervisor, who died Tuesday at the age of 74, embodied a rare set of skills and virtues. He was a bluntly honest farmer, a man of the soil who so deeply loved his roots he lived his entire life on his family’s original 40-acre homestead. He was also a talented and shrewd politician, in the very best sense: clear about his philosophy and
objectives, civil in his behavior and capable of inspired compromise when conditions demanded it.

Koligian spent most of his adult life in public service. It began in the Army at age 18, fought in the Philippines in World War II, and came home to attend Fresno State. The family farm sustained him, but could not contain him. He served multiple terms on local school boards and was first elected to the county Board of Supervisors in 1982. In doing so, he became the first Armenian-American elected to public office in the county.

Defending Valley agricultural lands against urban encroachment was among Koligian’s most important principles. His most single-handedly pushed Fresno’s growth away from his district, mostly lying to the west of Freeway 99, and out to the northeast. He was immensely popular among farmers for his defense of agriculture. He wasn’t able to stop westward sprawl completely—no one individual could—but it is only recently that significant residential development has taken place on his turf.

Koligian was deeply opposed to the county using bonds to raise money for capital expenditures, arguing that it was fiscally irresponsible. He usually managed to persuade the rest of the board to support that position. It was one of the bones of contention between Koligian and The Bee, and he won the argument more often than he lost.

But—as with most of his adversaries—we always had a deep respect for Koligian. His combative wit, his honesty and political savvy is one we do not often see, and we are all the poorer for that.

HONORING DR. DONALD J. COHEN

Mr. LIEBERMAN. Mr. President, today I honor Dr. Donald J. Cohen, a doctor, an author, an outstanding psychiatrist, a true professional, and caregiver and friend to the thousands of people who had the good fortune of knowing him. Today I grieve for my friend, as he recently passed away after only 61 short years on this Earth. I could think of no better tribute to this great man than to name the very program he envisioned so many years ago to help the victims of violence-related stress in his honor. Thus, I submitted an amendment to the Labor, Health and Human Services appropriations bill to amend Section 582 of the Public Health Service Act to rename this critically important grant program, the “Donald J. Cohen National Child Traumatic Stress Initiative.” I am proud to say that this amendment has been accepted by both the House and Senate and for that I thank my colleagues.

Dr. Cohen did more in his 61 years than most anyone else could ever hope to accomplish in a lifetime. He started at Brandeis University in 1961 on the course of a medical career and then went on to graduate from Yale University School of Medicine in 1966. Over the following 35 years, Dr. Cohen dedicated his life to helping children and adolescents. Donald spent virtually all of his adult life working tirelessly to develop and promote programs to assist children. I recently learned from my colleague, Senator Donna, that Dr. Cohen was the first person to suggest a special health insurance program for children that ultimately became the Children’s Health Insurance Program. Today, this program throughout the Nation provides health care for millions of children who would otherwise go without it. Their parents need them to grow up healthy and flourish.

Dr. Cohen was a well-respected and world-renowned physician and teacher. Over the course of his illustrious career, he held many faculty positions at the Yale University School of Medicine, culminating with his appointment as the child Psychiatrist-in-Chief of the Yale Children’s Hospital and Director of the Child Study Center at Yale School of Medicine. He held these positions for the past 18 years, which, as anyone in medicine will tell you, is an incredible testimony to his stature and leadership.

He has been honored by the Institute of Medicine, the National Academy of Sciences, the National Commission on Children, and the American Psychiatric association for his outstanding work. He received numerous lifetime research awards, including the Strecker Award from the Institute of the Pennsylvania Hospital and the Agnes Purcell McGavin Award for Prevention from the APA. He was recognized as a Sterling Professor of Child Psychiatry, Pediatrics and Psychology. He served as President of the International Association of Child and Adolescent Psychiatry and Allied Professions since 1993 and published over 300 papers and books. Dr. Cohen was also awarded a Doctor of Philosophy, Honoris Causa, from the Bar Ilan University in Israel.

As you can see, Dr. Donald Cohen was quite a remarkable man. So many people have been touched in some way by this great man’s dedication. It can be said that Dr. Cohen indeed achieved what most of us strive for, to make a difference. For those of us who knew him, for those of us in whose life Donald made a difference, his passing comes painfully. We mourn and pray that Donald’s soul will be embraced in the warmth of eternal life and that God will comfort and strengthen Phyllis, his wife, their children and grandchildren, and all of the family, friends, colleagues and patients who will miss him. I know the spirit and warmth of Dr. Donald J. Cohen will burn on in the hearts of those who grieve him. It is with spirit that I ask my colleagues to honor this man with the dedication of the Donald J. Cohen National Child Traumatic Stress Initiative.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 9:33 a.m., a message from the House of Representatives, delivered by Ms. Noland, one of its reading clerks, announced that the House has agreed to the amendment of the bill (H.R. 2199) to amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to permit any Federal law enforcement agency to enter into a cooperative agreement with the Metropolitan Police Department of the District of Columbia to assist the Department in carrying out crime prevention and law enforcement activities in the District of Columbia if deemed appropriate by the Chief of the Department and the United States Attorney for the District of Columbia, and for other purposes.

The message also announced that the House has agreed to the amendment of the Senate to the bill (H.R. 2657) to amend title 11, District of Columbia Code, to redesignate the Family Division of the Superior Court of the District of Columbia as the Family Court of the Superior Court, to recruit and retain trained and experienced judges to serve in the Family Court, to promote consistency and efficiency in the assignment of judges to the Family Court and in the consideration of actions and proceedings in the Family Court, and for other purposes.

The message further announced that the House has agreed to the amendment of the Senate to the concurrent resolution (H. Con. Res. 289) directing the Clerk of the House of Representatives to make technical corrections in the enrollment of the bill H.R. 1.

The message also announced that pursuant to section 3b) of the Public Safety Officer Medal of Valor Act of 2001 (42 U.S.C. 15202), the Speaker has appointed the following members on the part of the House of Representatives to the Medal of Valor Review Board for a term of 4 years: Tim Bivens of Dixon, Illinois and Mr. William J. Nolan of Chicago, Illinois.

The message further announced that the House has passed the following bill, without amendment:

S. 1741. An act to amend title XIX of the Social Security Act to clarify that Indian women with breast or cervical cancer who are eligible for health services provided under a medical care program of the Indian Health Service or of a tribal organization are included in the optional Medicaid eligibility category of breast or cervical cancer patients added by the Breast and Cervical Prevention and Treatment Act of 2000.

MEASURES REFERRED

The following bills and joint resolutions were read the first and the second times by unanimous consent, and referred as indicated:

H. Res. 3527. An act to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes; to the Committee on Energy and Natural Resources.

H. R. 2561. An act to increase the rate of special payment recipients of the medal of honor, to authorize those recipients to be buried in Arlington National Cemetery.

H. J. Res. 73. An act to authorize appropriations for the Department of Energy, for fiscal year ending September 30, 2002, and for other purposes.

H. J. Res. 302. An act to authorize additional appropriations for the Department of Energy, for fiscal year ending September 30, 2002, and for other purposes.

H. J. Res. 75. Joint resolution regarding the monitoring of weapons development in Iraq, as required by United Nations Security Council Resolution 687 (April 3, 1991); to the Committee on Foreign Relations.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 279. Concurrent resolution recognizing the service of the crew members of the USS Enterprise Battle Group during its extended deployment for the war effort in Afghanistan; to the Committee on Armed Services.
MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3507. An act to authorize appropriations for the Coast Guard for fiscal year 2002, and for other purposes.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

H.R. 490. An act to authorize the Secretary of the Interior to establish the Ronald Reagan Boyhood Home National Historic Site, and for other purposes.

H.R. 1432. An act to designate the facility of the United States Postal Service located in 3698 Inner Perimeter road in Valdosta, Georgia, as the "Major Lynn McIntosh Post Office Building".

H.R. 2362. An act to establish the Benjamin Franklin Tercentenary Commission.

H.R. 2742. An act to authorize the construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma.

H.R. 3441. An act to amend title 49, United States Code, to realign the policy responsibility in the Department of Transportation, and for other purposes.

H.R. 3487. An act to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing.

H.R. 3594. An act to amend the Public Health Service Act with respect to qualified organ procurement organizations.

H.R. 3529. An act to provide tax incentives for economic recovery and assistance to displaced workers.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, December 20, 2001, she had presented to the President of the United States the following enrolled bill:

S. 1438. An act to authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–4965. A communication from the Chief Financial Officer of the Export-Import Bank of the United States, transmitting, pursuant to law, the annual report which includes the Management Report on Financial Statement and Internal Control over Financial Reporting for Fiscal Year 2001; to the Committee on Governmental Affairs.

EC–4966. A communication from the General Counsel of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report of a nomination confirmed for the position of Controller, Office of Federal Financial Management, received on December 20, 2001; to the Committee on Governmental Affairs.

EC–4967. A communication from the Deputy Associate Administrator of the Office of Acquisition Policy, General Service Administration, transmitting, pursuant to law, the report of a rule entitled "Federal Acquisi-
tion Regulations; Federal Acquisition Circular 2001–02" (FAC2001–02) received on December 18, 2001; to the Committee on Governmental Affairs.

EC–4968. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more to Australia, Canada, Germany, Spain, and Switzerland; to the Committee on Foreign Relations.

EC–4969. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed manufacturing license agreement with France; to the Committee on Foreign Relations.

EC–4970. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed manufacturing license agreement with Japan; to the Committee on Foreign Relations.

EC–4971. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense artifacts or services sold commercially under a contract in the amount of $50,000,000 or more to Denmark and Belgium; to the Committee on Foreign Relations.

EC–4972. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense artifacts or services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–4973. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense artifacts or services sold commercially under a contract in the amount of $50,000,000 or more to Germany; to the Committee on Foreign Relations.

EC–4974. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense artifacts or services sold commercially under a contract in the amount of $50,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–4975. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense artifacts or services sold commercially under a contract in the amount of $50,000,000 or more to Germany; to the Committee on Foreign Relations.

EC–4976. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification of a proposed license for the export of defense artifacts or services sold commercially under a contract in the amount of $50,000,000 or more to Canada; to the Committee on Foreign Relations.

EC–4977. A communication from the Assistant Secretary of Legislative Affairs, Department of the Interior, transmitting, pursuant to law, a report relative to Judgement Fund Use and Distribution Plan; to the Committee on Indian Affairs.

EC–4978. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Pennsylvania Regulatory Program" (WV–093–FOR) received on December 19, 2001; to the Committee on Energy and Natural Resources.

EC–4979. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Pennsylvania Regulatory Program" (PA–122–FOR) received on December 19, 2001; to the Committee on Energy and Natural Resources.

EC–4980. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Pennsylvania Regulatory Program" (PA–112–FOR) received on December 19, 2001; to the Committee on Energy and Natural Resources.

EC–4981. A communication from the Acting Director of the Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Kentucky Regulatory Program" (KY–221–FOR) received on December 18, 2001; to the Committee on Energy and Natural Resources.

EC–4982. A communication from the Chairman of the Commission on the Future of the United States Aerospace Industry, transmitting, pursuant to law, a report relative to aerospace research and development, and procurement budgets; to the Committee on Commerce, Science, and Transportation.

EC–4983. A communication from the Assistant Secretary of Legislative Affairs, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Notice of Solicitation of Grant Applications" (RIN0660–ZADE) received on December 19, 2001; to the Committee on Commerce, Science, and Transportation.

EC–4984. A communication from the Director of the Bureau of Transportation Statistics, Department of Transportation, transmitting, pursuant to law, the Transportation Statistics Annual Report for 2000; to the Committee on Commerce, Science, and Transportation.

EC–4985. A communication from the Regulations Officer, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled "The Ticket to Work and Self-Sufficiency Program" (RIN0660–AF11) received on December 19, 2001; to the Committee on Finance.

EC–4986. A communication from the Director of the Policy Directives and Branch, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Adjustment of Certain Fees of the Immigration Examinations Fee Account" (RIN0660–AF01) received on December 20, 2001; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with amendments:

S. 1438 to amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, and for other purposes. (Rept. No. 107–131).
S. 1206: A bill to reauthorize the Appalachian Regional Development Act of 1965, and for other purposes. (Rept. No. 107-132).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEVIN for the Committee on Armed Services:

*Joseph E. Schmitz, of Maryland, to be Inspector General, Department of Defense.

Army nominations beginning Brigadier General Donna F. Barbisch and ending Colonel Bruce E. Zuzuakas, which nominations were received by the Senate and appeared in the Congressional Record on December 5, 2001.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

(*Nomination was reported with the recommendation that the nominee be confirmed subject to the nominee’s commitment to respond to requests to appear and testify before any duly constituted committee on the Senate."

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DORGAN (for himself and Mr. HAGEL):

S. 1860: A bill to reward the hard work and risk of individuals who choose to live in, or help provide America's small, rural towns, and for other purposes; to the Committee on Finance.

By Mr. LUGAR:

S. 1861: A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Russia, to the Committee on Finance.

By Mr. DURBIN:

S. 1862: A bill to provide for grants to assist States and communities in developing a comprehensive approach to helping children 5 and under who have been exposed to domestic violence or a violent act in the home or community; to the Committee on the Judiciary.

By Mr. GRAHAM:

S. 1863: A bill to amend the Internal Revenue Code of 1986 to clarify treatment for foreign tax credit limitation purposes of certain transfers of intangible property; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Mr. HUTCHINSON, Mr. KERRY, Mr. JEFFORDS, Mr. GREGG, Mr. DASCHLE, Mr. FISTCH, Mr. KENNEDY, Ms. COLLINS, Mr. REID, Mr. ENZI, Mrs. CANTOR, Mr. WARNER, Mr. JOHNSON, Mr. ROBERTS, Mrs. LINCOLN, Mrs. HUTCHINSON, Mrs. MURRAY, Mr. SMITH of Oregon, Mr. SBAHANS, Mr. HAGEL, Mr. TERRICELLI, Mr. COCHRAN, Mr. DAYTON, Mr. CHAFEE, Mr. GRAHAM, Mr. LUAR, Ms. CANTWELL, Mr. HATCH, Mr. LEAHY, Mrs. CARRANAR, Mr. ROCKFELLER, Mr. STABENOW, Mr. CORZINE, Mr. SCHUMER, Mr. INOUYE, Mr. MILLER, Mr. WELLSTONE, Mr. LIEBERMAN, Mr. SANTOROUM, Mr. REED, and Mr. BOND):

S. 1864: A bill to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention programs to address the nursing shortage, and for other purposes; considered and passed.

By Mr. BOXER:

S. 1865: A bill to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Lower Los Angeles River and River watershed in the State of California as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. LINCOLN:

S. 1866: A bill to amend title XVIII of the Social Security Act to phase in the fee schedule for ambulance services to provide for equitable treatment of suppliers of such services that are required to equip all ambulances to provide advanced life support services; to the Committee on Finance.

By Mr. LIEBERMAN (for himself and Mr. MCCAIN):

S. 1867: A bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BIDEN:

S. 1868: A bill to establish a national center on volunteer and provider screening to reduce sexual and other abuse of children, the elderly, and individuals with disabilities; to the Committee on the Judiciary.

By Mrs. LINCOLN (for herself, Mr. BATH, Mr. DURBIN, Mr. HOLLINGS, and Mr. HUSKINSON):

S. 1869: A bill to amend the Tariff Act of 1930 to provide for an expedited antidumping investigation when imports increase materially from a new source following an antidumping order has been issued, and to amend the provision relating to adjustments to export price and constructed export price; to the Committee on Finance.

By Mr. CORZINE (for himself, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 1870: A bill to amend the Clean Air Act to establish an inventory, registry, and information system of United States greenhouse gas emissions to inform the public and private sector concerning, and encourage voluntary reductions in, greenhouse emissions; to the Committee on Environment and Public Works.

By Mr. ROCKFELLER:

S. 1871: A bill to direct the Secretary of Transportation to conduct a rail transportation security risk assessment, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BAYH:

S. 1872: A bill to amend the Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation to notify plan participants and beneficiaries of the commencement of proceedings to terminate such plan; to the Committee on Commerce, Science, and Transportation.

By Mr. SNOWE:

S. 1873: A bill to amend the Internal Revenue Code of 1986 to allow credits for the installation of energy efficiency home improvements, and for other purposes; to the Committee on Finance.

By Mr. SESSONS (for himself and Mr. HATCH):

S. 1874: A bill to reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the seriousness of the offense and the culpability of the offender, and for other purposes; to the Committee on the Judiciary.

By Mr. LEAHY (for himself and Ms. SNOWE):

S. 1875: A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility steam generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. CLINTON (for herself, Mr. SMITH of Oregon, Mr. STEVENS, Mr. SPEICHER, Mrs. BOXER, Mr. FITZGERALD, Mr. SCHUMER, and Mr. DODD):

S. 1876: A bill to establish a National Foundation for the Study of Holocaust Assets; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HARKIN:

S. 1877: A bill to clarify and reaffirm a cause of action and Federal court jurisdiction for certain claims against the Government of Iran; to the Committee on Foreign Relations.

By Mrs. HUTCHISON (for herself and Mr. RINGAMAN):

S. 1878: A bill to establish programs to address the health care needs of residents of the United States-Mexico Border Area, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 1879: A bill to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE:

S. 1880: A bill to provide assistance for the relief and reconstruction of Afghanistan, and for other purposes; to the Committee on Foreign Relations.

By Mr. DODD (for himself and Mr. MILERI):

S. 1881: A bill to require the Federal Trade Commission to establish a list of consumers who request not to receive telephone sales calls; to the Committee on Commerce, Science, and Transportation.

By Mr. SMITH of Oregon:

S. 1882: A bill to amend the Small Reclamation Projects Act of 1956, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SMITH of Oregon (for himself and Mr. WYDEN):

S. 1883: A bill to authorize the Bureau of Reclamation to participate in the rehabilitation of the Walla Walla Lake Dam in Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE (for himself, Mr. DEWINE, Mr. DAYTON, Mr. SPEICHER, Mr. BAYH, Ms. MIKULSKI, and Mr. Voinovich):

S. 1884: A bill to amend the Emergency Steel Loan Guarantee Act of 1990 to revise eligibility and other requirements for loan guarantees under that Act, and for other purposes; to the Committee on Appropriations.

By Mr. DODD:

S. 1885: A bill to establish the elderly housing plus health support demonstration program to provide modernized public housing for elderly and disabled persons; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DODD:

S. 1886: A bill to amend the Internal Revenue Code of 1986 to allow a business credit for supported elderly housing; to the Committee on Finance.

By Ms. SNOWE:

S. 1887: A bill to provide for renewal of project-based assisted housing contracts at Brown's Island and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. STEVENS (for himself, Mr. BENNETT, Mr. CAMPBELL, Mr. HATCH, and Mr. SPEICHER):
S. 1888. A bill to amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code; considered and passed.

S. 1889. A bill to provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of temporary employment for which certain intracompany transferees have to be continuously employed before applying for admission to the United States; to the Committee on the Judiciary.

By Mr. HATCH: S. 1890. A bill to provide for work authorization for nonimmigrant spouses of treaty traders and treaty investors; to the Committee on the Judiciary.

By Mr. DASHIEL (for himself and Mr. LOTT): S. Res. 130. A joint resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. DASCHLE: S. Res. 137. A resolution tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. LOTT: S. Res. 136. A resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. DASCHLE: S. Res. 135. A resolution tendering the thanks of the Senate to the Majority Leader; considered and agreed to.

By Mr. DASCHLE: S. Res. 138. A resolution to commend the exemplary leadership of the Republican Leader; considered and agreed to.

S. 62 S. 162

At the request of Ms. Collins, the name of the Senator from Washington (Mrs. Murray) was added as a cosponsor of S. 162, a bill to amend the Internal Revenue Code of 1986 to provide a business credit against income for the purchase of fishing safety equipment.

S. 590 At the request of Ms. Snowe, her name was added as a cosponsor of S. 590, a bill to amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, and for other purposes.

S. 1092 At the request of Mr. Torricelli, the name of the Senator from New Jersey (Mrs. Boxer) was added as a cosponsor of S. 1092, a bill to amend the Internal Revenue Code of 1986 to expand the expensing of environmental remediation costs.

S. 1225 At the request of Mr. McConnell, the names of the Senator from Nebraska (Mr. Hagel) and the Senator from California (Mrs. Boxer) were added as cosponsors of S. 1125, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate transport of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1239 At the request of Mr. Jeffords, the name of the Senator from Arkansas (Mrs. Lincoln) was added as a cosponsor of S. 1239, a bill to amend the Internal Revenue Code of 1986 to provide a tax incentive for land sales for conservation purposes.

S. 1396 At the request of Mr. Sessions, the names of the Senator from Louisiana (Ms. Landrieu) and the Senator from Arkansas (Mrs. Lincoln) were added as cosponsors of S. 1346, a bill to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

S. 1478 At the request of Mr. Santorum, the names of the Senator from California (Mrs. Boxer), the Senator from New York (Mrs. Clinton), and the Senator from Ohio (Mr. Dewine) were added as cosponsors of S. 1478, a bill to amend the Animal Welfare Act to improve the treatment of certain animals, and for other purposes.

S. 1500 At the request of Ms. Kyl, the name of the Senator from Minnesota (Mr. Dayton) was added as a cosponsor of S. 1500, a bill to amend the Internal Revenue Code of 1986 to provide tax and...
other incentives to maintain a vibrant travel and tourism industry, to keep working people working, and to stimulate economic growth, and for other purposes.

S. 1556

At the request of Mr. DOMENICI, his name was added as a cosponsor of S. 1556, a bill to establish a program to name national and community service projects in honor of victims killed as a result of the terrorist attacks on September 11, 2001.

S. 1566

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 1566, a bill to amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes.

S. 1565

At the request of Ms. MUKILSKI, her name was added as a cosponsor of S. 1565, a bill to amend title I, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 1707

At the request of Mr. JEFFORDS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a co-sponsor of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the Medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1745

At the request of Mrs. LINCOLN, the name of the Senator from New Jersey (Mr. CORSINK) was added as a cosponsor of S. 1745, a bill to delay until at least January 1, 2003, any changes in medicare regulations that modify the medicare upper payment limit for non-State Government-owned or operated hospitals.

S. 1789

At the request of Mr. KYL, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1789, a bill to enhance the border security of the United States, and for other purposes.

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 1789, supra.

S. 1766

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from North Dakota (Mr. DORGAN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from South Dakota (Mr. JOHNSTON), and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 1766, a bill to provide for the energy security of the Nation, and for other purposes.

S. 1797

At the request of Mr. KENNEDY, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. 1767, a bill to amend title III, United States Code, to provide that certain service in the American Field Service ambulance corps shall be considered to be performed in the purposes of all laws administered by the Secretary of Veteran’s Affairs, and for other purposes.

S. 1796

At the request of Mr. DURBIN, the names of the Senator from New York (Mr. SCHUMER), the Senator from Hawaii (Mr. INOUYE), the Senator from Missouri (Mrs. CARNAHAN), and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 1796, a bill to expand aviation capacity in the Chicago area.

S. 1813

At the request of Mr. BIDEN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1813, a bill to provide that members of the Armed Forces performing services in the Republic of Korea shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes.

S. 1829

At the request of Mr. ALLEN, the names of the Senator from Oklahoma (Mr. NICKLES), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Virginia (Mr. WARNER), and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 1829, a bill to permit the closed circuit televising of the criminal trial of Zacarias Moussaoui for the victims of September 11th.

S. 1839

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1839, a bill to extend the deadline for granting posthumous citizenship to individuals who die while on active-duty service in the Armed Forces.

S. CON. RES. 3

At the request of Mr. FEINGOLD, the name of the Senator from Nebraska (Mr. HAGEL) was added as cosponsor of S. Con. Res. 3, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of the USS Wisconsin and all those who served aboard her.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR:

S. 1861. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Russia; to the Committee on Finance.

Mr. LUGAR, Mr. President, at the request of the Administration, I rise today to offer legislation to repeal the Jackson-Vanik amendment to Title IV of the 1974 Trade Act and to authorize the extension of normal trade relations to the products of the Russian Federation.

Congress passed the Jackson-Vanik amendment as a means to deny Permanent Normal Trade Relations to communist countries that restricted emigration rights and were not market economies. Jackson-Vanik continues today despite the findings of successive Administrations that Russia had come into full compliance with requirements of freedom of emigration, including the absence of any tax on emigration. Furthermore, although Russia’s transformation has been imperfect, substantial progress has been made toward the creation of a free-market economy.

Since the fall of the Soviet Union, there have been dramatic changes in all aspects of life in Russia. It is clear that the Jackson-Vanik amendment played a role in bringing about these changes and in promoting freedom of emigration in many countries in the former Soviet Union.

But, the time has come to move beyond the Cold War era.

Since 1991, Congress has authorized the removal of Jackson-Vanik restrictions from Estonia, Latvia, Lithuania, the Czech Republic, the Slovak Republic, Hungary, Bulgaria, Romania, Kyrgyzstan, Albania, and Georgia. Because Russia continues to be subject to Jackson-Vanik conditions, the Administration must submit a semi-annual report to the Congress on that government’s continued compliance with freedom of emigration requirements. The Administration reports that this requirement continues to be a major irritant in U.S. relations with Russia. The changed circumstances that have permitted the removal of other communist countries from Title IV reporting now apply equally to Russia.

I understand there remain those with concerns about extending nondiscriminatory treatment to the products of the Russian Federation. But I would simply point out that the U.S. and Russia concluded a bilateral trade agreement on June 17, 1992 and that Russia is currently in the process of acceding to the World Trade Organization. In other words, the time has come to take the next step in the U.S.-Russian bilateral relationship, namely, Permanent Normal Trade Relations. It is for that purpose that I introduce this legislation today.

By Mr. GRAHAM:

S. 1863. A bill to amend the Internal Revenue Code of 1986 to clarify treatment for foreign tax credit limitation purposes of certain transfers of intangible property; to the Committee on Finance.

Mr. GRAHAM, Mr. President, today I am introducing legislation that will clarify the proper tax treatment of intangible assets transferred to foreign corporations. This bill is necessary to avoid trapping unwary taxpayers who relied on Congressional intent when it made changes to this area of the tax code in 1997.

Transfers of intangible property from a U.S. person to a foreign corporation...
in a transaction that would be tax-free under Code section 351 or 361 are subject to special rules. Pursuant to section 367(d), the U.S. person making such a transfer is treated as 1. having sold the intangible property in exchange for payments that are contingent upon the receipt of royalties, use, or other amounts that reasonably reflect the amounts that would have been received annually over the useful life of such property. The deemed royalty amounts included in the gross income of the U.S. person by reason of this rule are treated as ordinary income and the earnings and profits of the foreign corporation to which the intangible property was distributed are reduced by such amounts.

Prior to the Taxpayer Relief Act of 1997 (the “1997 Act”), the deemed royalties under section 367(d) were treated as U.S.-source income and therefore were eligible for foreign tax credits. The 1997 Act eliminated this special “deemed U.S. source rule” and provided that deemed royalties under section 367(d) are treated as foreign-source income to the same extent that an actual royalty payment would be. The Act reflected a recognition that the previous rule was intended to discourage transfers of intangible property to foreign corporations, relative to licenses of such intangible property, but that the enhanced informaton included in the 1997 Act made it unnecessary to continue to so discourage transfers relative to licenses.

The 1997 Act intended to eliminate the penalty provided by the prior-law deemed U.S. source rule under section 367(d) and that had operated to discourage taxpayers from transferring intangible property in a transaction that would be covered by section 367(d). Prior to the 1997 Act, in order to avoid this penalty taxpayers licensed intangible property to foreign corporations instead of transferring such property in a transaction that would be subject to section 367(d). With the 1997 Act’s elimination of the penalty source rule of section 367(d), it was intended that taxpayers could transfer intangible property to a foreign corporation in a transaction that gives rise to deemed royalty payments under section 367(d) instead of having to structure the transaction in a manner that places the foreign corporation as a license in exchange for actual royalty payments.

The 1997 Act’s goal of eliminating the penalty treatment of transfers of intangible property under section 367(d) is achieved only if the deemed royalty payments under section 367(d) not only are sourced for foreign tax credit purposes in the same manner as actual royalty payments, but also are characterized for foreign tax credit limitation purposes in the same manner as actual royalty payments. Without a characterization that the deemed royalty payments under section 367(d) are characterized for foreign tax credit limitation purposes in the same manner as an actual royalty, there is a risk in many cases that such deemed royalties would be characterized in a manner that leads to a foreign tax credit result that is equally as disadvantageous as the result that arose under the penalty source rule. Thus, the 1997 Act was intended to be eliminated by the 1997 Act. The bill I am introducing today provides the necessary clarification of the foreign tax credit limitation treatment of a deemed royalty under section 367(d), ensuring that it was intended to be eliminated with the 1997 Act in fact eliminated.

The bill clarifies that the deemed income inclusions under section 367(d) upon a transfer of intangible property to a foreign corporation are characterized for purposes of the foreign tax credit limitation rules in the same manner as an actual royalty is characterized. The tax treatment of such a transfer of intangible property to a foreign corporation would be the same as the tax treatment that applies if the intangible property is made available to the foreign corporation through a license arrangement.

The bill’s provision would be effective for income inclusions under section 367(d) on or after August 5, 1997, which is the effective date of the 1997 Act provision eliminating the special deemed U.S. source rule under section 367(d). Like the 1997 Act provision, the bill’s provision would be effective for transfers made, for royalties deemed received, on or after August 5, 1997.

I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1863

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) In General.—Subparagraph (C) of section 367(d)(2) of the Internal Revenue Code of 1986 (relating to transfer of intangibles treated as transfer pursuant to sale of contingent payments) is amended by adding at the end of the following new sentence: “For purposes of applying the various categories of income described in section 904(d)(1), any such amount shall be treated in the same manner as if such amount were a royalty.”.

(b) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 1131(b) of the Taxpayer Relief Act of 1997.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of the amendment made by this section is prevented at any time before the close of the taxable year beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit shall be made as if the law or rule of law had not operated to prevent such refund or credit.
December 20, 2001

CONGRESSIONAL RECORD — SENATE

S13947

Mr. HUTCHINSON. Mr. President, I am proud to be a lead cosponsor of the legislation we are introducing today to address the shortage of nurses in our country. After holding two hearings earlier this year to examine the nurse shortage and its impact on our health care delivery system, I introduced S. 721, the Nurse Employment and Education Development Act, or NEED Act. This bipartisan legislation seeks to encourage individuals to enter the nursing profession, provide continued education and opportunities for advancement within the profession, and to bolster our nursing faculty to teach at our nursing schools. Most importantly, its legislation would establish a Nurse Service Corps, which would provide financial assistance to individuals for nurse education in exchange for 2 years of service in a nurse shortage area.

The NEED Act won unanimous approval by the Senate Health, Education, Labor and Pensions Committee on November 1, and I am pleased that it has served as the basis for the legislation we are introducing today.

The nursing profession is suffering from a serious decline in practicing nurses due to a shrinking pipeline. The nursing profession as a whole is aging, the average age of Registered Nurses is 43.3 years, while nurses under age 30 comprise less than 10 percent of today’s nurse workforce. Large numbers of nurses are retiring or leaving the profession, and only a small number of nurses and nurse educators are taking their place. By the year 2020, when millions of Baby Boomers will retire, it is projected that nursing needs will be unmet by at least 20 percent. For this reason we need to employ innovative recruitment techniques, including a Nurse Service Corps, public service announcements, and outreach efforts at elementary and secondary schools to promote nursing as a viable, fulfilling career option.

The NEED Act would also address the needs of the elderly. Our Nation’s population is aging, more than 70 million Americans will be over age 65 by 2030. This means more people will need care provided by nurses and other individuals specifically trained to care for the unique health needs of older Americans.

I look forward to the Senate’s speedy passage of this important legislation and to working with our colleagues in the House of Representatives to enact a strong bill that gets behind our Nation’s nurses. I also want to thank Senators KENNEDY, GREGG, and FRIST for their hard work in moving this legislation forward, as well as Senators LEIBMAN and CLINTON for their important contributions to this bill.

Mr. HUTCHINSON. Mr. President, I am pleased to join my colleagues Senators JEFFORDS, HUTCHINSON and MIKULSKI in re-introducing the Nurse Reinvestment Act. This legislation will increase the number of nurses in our country, and also ensure that every nurse in the field has the skills he or she needs to provide the quality care patients deserve.

We are in the midst of a serious nursing workforce shortage. Every type of community, urban, suburban and rural, is touched by it. No sector of our health care system is immune to it. Across the country, hospitals, nursing homes, home health care agencies and hospices are struggling to find nurses to care for their patients. Patients in search of care have been denied admission to facilities and told that there are ‘no beds’ for them. There are beds, just not the nurses to care for the patients who would occupy them.

Our Nation has suffered from nursing shortages in the past. However, this shortage is particularly severe because we are losing nurses at both ends of the pipeline. Over the past five years, enrollment in entry-level nursing programs has declined by 20 percent. Lured to the lucrative jobs of the new economy, high school graduates are not pursuing careers in nursing. In the near future, they will be joined by the elderly, the need will provide grants for gerontological education and training.

Hospitals, nursing homes, community health centers and other health care facilities are desperately seeking nurses to fill vacant positions so they can continue to provide safe, quality health care. In Arkansas, hospitals have reported over 750 nursing vacancies, which are facing in nursing and advance within the profession, the nursing bill provides for a career ladder program and encourages hospitals and other employers to develop innovative retention strategies. The bill also enables specialty training mentors through an internship and residency program, in order to fill the void created by experienced nurses leaving the profession.

Finally, the bill addresses the critical need for nurse educators. The number of nursing school graduates in Arkansas is at its lowest in a decade, and nursing students have been turned away because of the lack of faculty to teach them. There are approximately 12,000 nursing vacancies in nursing schools nationwide. Therefore we include two provisions, a nurse faculty fast-track loan repayment program and a stipend and scholarship program, both of which provide financial assistance to mentors who teach at our nursing schools nationwide. Therefore we include two provisions, a nurse faculty fast-track loan repayment program and a stipend and scholarship program, both of which provide financial assistance to mentors who teach at our nursing schools.

This bill will empower the single mom who has been working in a minimum wage job to forge a better life for herself and her family. It will help her get a scholarship to help pay for tuition, books, and lab fees, and by funding child care programs to help her balance work and family.

This bill will empower the nurse who has a baccalaureate degree, but wants to get a Master’s degree so she can teach nursing at a community college.
workforce will be over the age of 50, and nearing retirement. If these trends are not reversed, we stand to lose vast numbers of nurses at the same time that they will be needed to care for the millions of baby boomers enrolling in Medicare.

The Nurse Reinvestment Act will support the recruitment of new students into our Nation’s nursing programs. The bill will fund national and local public service announcements to enhance the profile of the nursing profession and encourage students to commit to a career in nursing. Our legislation will also expand school-to-career partnerships between health care facilities, nursing colleges, middle schools and high schools to show our youth the value of a nursing degree.

Our legislation will ensure that barriers to higher education do not dissuade Americans who are interested in nursing from pursuing a degree in the field. The Nurse Reinvestment Act will support current nursing students who need help getting-up to speed on math, science and medical English. Our legislation will also ensure that there is support for single moms and dads with children who need a hand in daycare or a lift in getting to their classroom because they are without transportation.

Still, is it not enough to simply encourage more individuals to enter the nursing profession, we must also ensure that our schools of nursing have enough professors to teach the nursing profession. The Nurse Reinvestment Act provides for a fast-track facility development program, which encourages master’s and doctoral students to rapidly complete their studies through loans and scholarship programs. Individuals receiving financial assistance through the fast-track facility program must agree to teach at an accredited school of nursing in exchange for this assistance.

In addition to recruiting new nurses, our bill will re-invest in nurses who are already practicing by providing them with education and training at every step of the career ladder and at every health care facility in which they work. It will ensure that nurses can obtain advanced degrees, from a B.S. in Nursing to a PhD in Nursing. It will enable nurses to access the specialty training they require to learn how to treat a specific disease or utilize a new piece of technology. Our bill will also make sure universities develop curriculum in gerontology and long-term care so that nursing students can pursue concentrations, minors and majors in this growing field of health care and be ready to apply their knowledge to the current and future senior population.

To assist institutions in providing advanced education and training for nurses across the career ladder, our bill will strengthen the partnerships between colleges of nursing and health care facilities. Grants will be available to support such initiatives as the teaching of a course in gerontology in the conference rooms of a hospital or nursing home. Grants will also support the use of distance learning technology to extend education and training to rural areas, and specialty education and training to all areas.

The Nurse Reinvestment Act will authorize the National Nurse Service Corps. Separate from, though modeled after, the National Health Service Corps, the NNSC will administer scholarships to students who commit to working in a health care facility that is experiencing a shortage of nurses. In urban, suburban and rural communities across the country, where facilities turn away patients due to staff shortages, the NNSC will send qualified nurses to serve and provide the care that patients deserve.

Our country boasts the best health care system in the world. But, that health care system is being jeopardized by the shortage plaguing our nursing workforce. By 2010, 40 percent of the state-of-the-art medical facilities are of no use if their beds go unfulfilled and their floors remain empty because the nurses needed to staff them are not available. The Nurse Reinvestment Act not only seeks to increase the numbers of new nurses in the workforce, but also ensure that all nurses have the skills they need to provide the high quality care that makes our health care system the best in the world.

Mr. JEFFORDS. Mr. President, I am especially pleased that the Senate is scheduled to consider and vote on the Nurse Reinvestment Act. When we pass this measure, it will represent a good day for the future of nursing in America and a good day for the future for patient-care. I want to take this opportunity to tell our colleagues a little about this legislation and to congratulate and complement my fellow Senators who worked so hard to see this effort through. My good friend from Massachusetts, Senator KERRY, was the original sponsor of the Nurse Reinvestment Act and with me crafted an innovative set of solutions to the nursing shortage problem. Since then, this bill has been strengthened significantly by the inclusion of a complimentary measure authored by my colleagues on the HELP Committee, Senator HUTCHINSON and Senator MIKULSKI. The measure we are considering today has been benefited by this collaboration.

As I have stated before, we are facing a looming crisis in this country. The size of our nursing workforce remains stagnant, while the average age of the American nurse is on the rise. Over the past five years, enrollment in entry-level nursing programs has declined by 20 percent. Nurses under the age of 30 represent only 10 percent of the current workforce. By 2010, 40 percent of the nursing workforce will be over the age of 50, and nearing retirement. In short, we are facing a greater crisis because these numbers are worse. Only 28 percent of nurses are under the age of 40 and Vermont schools and colleges are producing 31 percent fewer nurses today than they did just five years ago.

We have a compelling need to encourage more Americans to enter the nursing profession and to strengthen it so nurses can stay in the profession. All facets of the health care system will have a role to play in ensuring a strong nursing workforce. Nurses, physicians, hospitals, nursing homes, academia, community organizations, state and federal governments all must accept responsibility and work towards a solution. Part of the responsibility to launch that effort begins with us today as we make a decision on the vote for the Nurse Reinvestment Act.

The Nurse Reinvestment Act expands and improves the federal government’s support of “pipeline” programs, which will maintain a strong talent pool and develop a nursing workforce that can address the increasingly diverse needs of an aging and state and federal government will reinvest in nursing programs, which encourages master’s and doctoral students to rapidly complete their studies through loans and scholarships, and lead current nurses to take advantage of career development opportunities.

The legislation creates a National Nursing Service Corps Program authorized at $40 million that will provide scholarships to individuals to attend nursing schools in exchange for a commitment to serve two years in a health facility determined to have a critical shortage of nurses. This scholarship program is designed to greatly help the recruitment of nursing students by providing them tuition, other reasonable and necessary educational fees and a monthly stipend paid to the student.

Our bill also authorizes the “Nurse Recruitment Grant Program” to support outreach efforts by nursing schools and other eligible healthcare facilities to inform students in primary, junior and secondary schools of nursing educational opportunities and to attract them to the nursing profession. The grant program provides appropriate student support services to individuals from disadvantaged backgrounds and creates community-based programs that recruit nurses in medically underserved rural and urban areas. Further, the “Area Health Education Centers Program” will award grants to nursing schools that work in partnership in the community to develop models of excellence.

The “Career Ladder Programs” will assist schools of nursing, health care facilities or partnerships of the two to develop programs that will encourage current nursing students in active nursing roles, to pursue further educational or retraining. This will be achieved through scholarships, stipends, career counseling, direct training and distance learning programs.
And, in light of our aging baby-boomer generation, specific grants are offered to schools and health care facilities so that they might place a further emphasis upon encouraging students to study long-term care for the elderly.

In addition to the provisions that were included in the original bill I co-sponsored with my colleague Senator KERRY, there are provisions added by our colleagues which, I am happy to have in this final piece of legislation. Those provisions will provide for the development of internship and residency programs to encourage the development of specialties and student, loan, stipend and scholarship programs for those who would like to seek a masters or doctorate degree at a school of nursing. The final bill was also strengthened by provisions added through the efforts of Senator LIEBERMAN and Senator CLINTON.

I want to applaud my colleagues Senator KERRY, Senator MIKULSKI and Senator HUTCHINSON for their tireless work on the Nurse Reinvestment Act and for the work of their staffs. I want to recognize the efforts of Kelly Bovio in Senator KERRY’s office, Kate Hull in Senator HUTCHINSON’s office and Rhonda Richards with Senator MIKULSKI. This effort was also advanced with the help of Sarah Bianchi and Jackie Gran who are members of Senator KENNEDY’s staff, Steve Irizarry with Senator GREG and Shana Christrup with Senator FRISS. Finally, in my own office, I want to note the efforts of Philo Hall, Angela Mattie, Eric Silva and Sean Donohue.

Adapting health care services cannot survive any further diminishing of the nursing workforce. All patients depend on the professional care of nurses, and we must make sure it will be there for them. I urged my colleagues to join me and the bill’s cosponsors in support of this measure.

Mr. FRISS. Mr. President, I rise today in support of the introduction of a very important bill to address the nursing workforce shortage. At the beginning of November, we reported two different bills from the Senate HELP Committee designed to address the nursing shortage in this country, the Hutchinson-Mikulski “Nursing Employment and Education Development Act” and the Kerry-Jeffords “Nursing Reinvestment Act.” I was an original cosponsor of the Hutchinson legislation and a strong supporter of that bill. At that time, I voiced my concern that we are marking up two rather similar proposals to deal with the nursing shortage, and I requested that the differences be worked out before the bill was passed out of the Senate floor. I am happy today to report that the final reconciliation is complete, and we have a consensus bill that firmly addresses the nursing workforce shortage issue. I thank Senator HUTCHINSON for his hard work in ensuring that we could reach this point.

We are in the midst of a direct care workforce shortage. Not only are fewer people entering and staying in the nursing profession, but we are losing experienced nurses at a time of growing need. Today, nurses are needed in a greater number of settings, such as nursing homes, extended care facilities, community and public health centers, professional education and ambulatory care facilities. Nationwide, health care providers, ranging from hospitals and nursing homes to home health agencies and public health departments, are struggling to qualify nurses to provide safe, efficient, quality care for their patients. That’s why it is important to have a new Nursing Corps, which will provide scholarships to qualified individuals in exchange for direct care service in a variety of settings as well as to allow others to know about the numerous possibilities within the profession by authorizing public service announcements.

Though we have faced nursing shortages in the past, this looming shortage is particularly troublesome because it reflects two trends that are occurring simultaneously: 1. A shortage of people entering the profession; and 2. The retirement of nurses who have been working in the profession for many years. Over the past five years, enrollment in entry-level nursing programs has declined by twenty percent, mirroring the declining awareness of the nursing profession among high school graduates. Consequently, nurses under the age of thirty represent only ten percent of the current workforce. By 2010, forty percent of the nursing workforce will be older than fifty years old and nearing retirement. If these trends continue, we stand to lose vast numbers of nurses at the very time that they will be needed to care for the millions of baby boomers reaching retirement age. To deal with the increased need for nurses to care for the elderly, this bill has a provision to assist with both the necessary training and educational development of gerontological nurses as well as to strengthen the ability of nurses to obtain additional training and certification through the career ladder programs.

Further, greater efforts must be made to recruit more men and minorities to this noble profession. Currently, only ten percent of the registered nurses in the United States are from racial or ethnic minority backgrounds, even though these individuals comprise twenty-eight percent of the total United States population. In 2000, less than six percent of the registered nurses were men. We must work to promote diversity in the workforce, not only to increase the number of individuals within the profession, but also to promote culturally competent and relevant care. Within the combined nursing shortage bill, one grant program directly addresses the need to increase the training of minority and disadvantaged students to make it easier for individuals to enter the nursing profession.

Even if nursing schools could recruit more students to deal with the shortage, many schools could not accommodate higher enrollments because of facility shortages. There are nearly four hundred facility vacancies at nursing schools in this country. And, even if facilities could be filled in the next ten to fifteen years as many current nursing faculty approach retirement and fewer nursing students pursue academic careers. Therefore, I strongly support the two provisions to address with faculty development and training, the fast track nursing faculty loan program and the stipend and scholarship program.

In addressing these direct care staffing shortages, we must work together to develop innovative solutions to address this growing issue. As reported in the Memphis Commercial Appeal on May 10, there are steps that Congress can take to increase funding for specific programs and reduce regulatory requirements. However, a comprehensive strategy must also include other sectors of the health care system, hospitals, health care professionals, educators, and the general public, to successfully deal with this looming shortage. That’s why it is important to also include a provision to deal with developing retention strategies and best practices in nursing staff management.

I am extremely supportive of this legislation, and I want to thank Senator HUTCHINSON for her efforts. Senator HUTCHINSON clearly has shown tremendous leadership in this area. He understands the need to address the nursing shortage issue, and he is largely responsible for getting us to this point today.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues in introducing the Nursing Act. Our goal in this bipartisan legislation is to do as much as we can to alleviate the nursing shortage experienced by health care facilities across the United States. Increasing the number of nurses is an essential part of the ongoing effort to reduce medical errors, improve patient outcomes, and encourage more Americans to become and remain nurses.

The Nation’s nurses provide care for Americans at the most vulnerable times in the lives. We must act now to halt the decline in the number of nurses. Enrollment in schools of nursing is failing, and the average age of the nursing workforce is rising. Across the country, communities are losing vast numbers of nurses, just as we need more to care for the millions of aging baby boomers and deal with the many medical challenges facing our hospitals.

The current shortage means that too many nurses now have to care for too many patients at once, undermining the high quality of care that nurses want to give, and patients deserve. A
recent survey by the American Nurses Association showed that 75 percent of nurses believe that the quality of nursing care at their facility has declined. More than half of those surveyed said that the time they can spend with patients has decreased. A nurse in Massachusetts told this committee that she would not return to the hospital where she worked, if she needed care. Nationally, the shortfall is expected to rise to 20 percent in the coming years. Yet nurses themselves are already reducing the intensity of bedside treatments now being provided on intensive care units, in emergency rooms, and at the bedside of patients where they work. Their questions are call for help. This legislation can be significant in strengthening the nursing profession, and responding to the urgent need.

The Nurse Reinvestment Act will recruit new students into schools of nursing through outreach programs, public awareness campaigns, and area health education centers. It establishes a national nurse service corps, which will offer scholarships to bring individuals into the profession and place them in medically underserved areas and facilities. The Act expands school-to-career partnerships to show youths the high value and importance of a nursing degree. It invests in today’s nurses by providing education and training at every step of the career ladder, providing them the opportunity to earn advanced degrees, such as a B.S. in Nursing or a Ph.D. in Nursing. It includes provisions developed by Senator LIEBERMAN and Senator CLINTON to help health care facilities retain nurses.

Our country has the best health care system in the world. But that system is being jeopardized today by the shortages plaguing the nursing workforce. Even our best medical facilities are in deep trouble if their beds go unfilled and their floors remain empty because there are no nurses to staff them.

I commend Senator MIKULSKI, Senator KERRY, Senator HUTCHINSON, and Senator JEFFORDS for their leadership in this initiative. Bringing more nurses into the profession will help to ensure that nurses are ready and able to provide the highest quality of care to their patients. The Nurse Reinvestment Act is a significant step that Congress can take to support the Nation’s nurses, and the committees to support it.

Mr. LIEBERMAN. Mr. President, I am proud to be an original cosponsor of the Nurse Reinvestment Act of 2001. I want to congratulate my colleagues, particularly Senators MIKULSKI, HUTCHINSON, KERRY, and JEFFORDS, for their extraordinary efforts to put together this excellent bill. I also want to thank the Committee for including the provisions of the LIEBERMAN-ENGLISH “Hospital Based Nursing Initiative Act of 2001” in the bill.

By Mrs. BOXER:

S. 1865. A bill to authorize the Secretary of the Interior to study the suit-ability and feasibility of establishing the Lower Los Angeles River and San Gabriel River watersheds in the State of California as a unit of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am pleased to be introducing today a bill that will take an important first step in restoring the San Gabriel River and the Lower LA River, which runs through Los Angeles, CA. These two rivers have suffered from years of abuse and neglect. For far too long, we have channeled, redirected, constricted, polluted, and simply ignored these two rivers. The result is that substantial portions of these rivers look nothing like their natural form. Instead of soft bottoms covered with aquatic grasses, stream bank lining with native vegetation, bushes, and waters teeming with fish, these rivers have cement bottoms, cement banks, and little remaining wildlife.
By Mr. LIEBERMAN (for himself and Mr. MCCAIN):

S. 1867. A bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes; to the Committee on Governmental Affairs.

Mr. LIEBERMAN. Mr. President, I rise to introduce with my colleague Senator MCCAIN legislation to establish the National Commission on Terrorist Attacks Upon the United States. This Commission will have a broad mandate to examine and report upon the facts and causes relating to the September 11, 2001 terrorist attacks occurring at the World Trade Center and at the Pentagon, and it will be charged with making a “full and complete account of all circumstances surrounding the attacks, and the extent of the United States’ preparedness for, and response to, the attacks.” It will “investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.”

Certain events stand out in our history for having left an indelible mark of pain and sorrow on America. The infamous attack on Pearl Harbor not only roused a slumbering giant, but also raised difficult questions about why our great Navy had been caught unawares. The tragic assassination of President John F. Kennedy evoked public mourning and outpouring of grief, but also searching questions about the identity and motives of the assassin. And on this past September 11, the United States suffered assaults on its territory unparalleled in its cruelty, destruction and loss of life. Americans were stunned both by the magnitude of the loss and the maliciously simple plan that had caused the carnage. Here too, alongside their grief and rage, the American people have been asking questions: Why was this plan so successful, and achieving its evil goals? Were opportunities missed to prevent the destruction? What additional steps should be taken now to prevent any future attacks?

In the immediate aftermath of both Pearl Harbor and the Kennedy assassination, special commissions were formed to conduct investigations and answer similar questions. These precedents provide us with important models as we seek answers to such questions, and then use the findings to move forward, to develop strategies for responding to the scourge of terrorism. Like many of my constituents, I too want to know how September 11 happened, why it happened, and what corrective measures can be taken to prevent it from ever occurring again. The American people deserve answers to these very legitimate questions about how the terrorists succeeded in achieving their brutal objectives, and in so doing, for ever changing the country in which we Americans lead our lives.

To be successful, this Commission must have a number of resources, including enough time, a top level staff, ample investigative powers, and adequate funding, all of which we have provided for in this legislation. But most critically, it must have broad bipartisan support. This Commission must not become a witch-hunt. The events of September 11 were so cataclysmic that there is enough responsibility to be shouldered by multiple parties. The overriding purpose of the inquiry must be a learning exercise, to understand what happened without preconceptions about its ultimate findings.

Just as Presidents Roosevelt and Johnson turned to national leaders of their day, Justice Roberts and Chief Justice Warren, to spearhead the Pearl Harbor and Kennedy assassination inquiries respectively, so in this Commission must also draw upon the great reservoir of bipartisan talent that our nation possesses to answer crucial and fundamental questions. We expect that the members appointed to this blue-ribbon Commission will possess some of these characteristics. From prominent U.S. citizens, though not currently serving in public office, with “national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.”

To help ensure that members of the Commission will possess some of these substantive and professional attributes, which are so critical to understanding and analyzing the events of September 11, 10 of its 14 members will be appointed by the Senate and House chairmen, in consultation with their ranking minority members, of the Congressional committees that oversee Intelligence, Foreign Affairs, Armed Services, Judiciary, and Commerce. President Bush will appoint the four remaining members of the Commission, including the Chairman, who in turn will appoint the staff. In an effort to mandate bipartisanship, or perhaps more accurately, non-partisanship, no more than 7 of the Commission’s 14 members may be from one political party.

Though some of the Commission’s recommendations may include “proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations,” we cannot wait for the findings of this report to begin the process of strengthening our homeland defense. That process, of course, is already underway, and must continue to occur at a rapid pace to ensure the continued protection of American lives and property. This Commission will not issue its first report until six months after its first meeting, and its final report will be issued another year after that. Rather than wait for these reports to be researched and submitted, we must ever continue the process that has already started to proactively address vulnerabilities that undermine our daily safety. We have already received the valuable input of numerous other experts and Commissions, some of which even issued their prescient warnings before the events of September, such as the Hart-Rudman Commission. When this proposed Commission completes its investigation and makes its final recommendations, those suggestions and conclusions will augment the record we have already developed on ways we can continue to safeguard our nation.

The Commission is not only the right thing to do, but this is the right time to try. Understandably, the initial months after September 11 were preoccupied first with mourning, and then with prosecution of the war. There were legitimate concerns that a robust investigation into the causes of September 11 would siphon resources from the ongoing war effort. But with the first stage of the war against terrorism now drawing to a close, and with many perplexing questions still before us, we must now begin in earnest the process of finding answers to how it happened. This Commission should also draw with the war effort of any federal agency; rather, its efforts will complement the internal review processes some agencies are undergoing.

Determining the causes and circumstances of the terrorist attacks will ensure that those who lost their lives on this second American “day of infamy” did not die in vain. In so doing, this Commission will not only pay tribute to those who perished, but it will preserve the country, and the memory of our brave and all the citizens of this great nation, continue to live life secure in the knowledge that the U.S. government is doing all within its powers to preserve their lives, liberties, and pursuits of happiness.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1867

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Section 1. Establishment of Commission.

There is established the National Commission on Terrorist Attacks Upon the United States (in this Act referred to as the "Commission")

Section 2. Purposes.

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York and at the Pentagon in Virginia;
(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;
(3) conduct a complete accounting of the circumstances surrounding the attacks, and the extent of the United States’ preparedness for, and response to, the attacks; and
(4) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SEC. 3. COMPOSITION OF THE COMMISSION.

(a) MEMBERS.—The Commission shall be composed of 14 members, of whom—
(1) 2 members shall be appointed by the President;
(2) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Armed Services of the Senate;
(3) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Commerce, Science, and Transportation of the Senate;
(4) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Intelligence of the Senate;
(5) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Select Committee on Intelligence of the Senate;
(6) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Foreign Relations of the Senate;
(7) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Armed Services of the House of Representatives;
(8) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Energy and Commerce of the House of Representatives;
(9) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Committee on Foreign Relations of the House of Representatives; and
(11) 1 member shall be appointed by the chairperson, in consultation with the ranking member, of the Permanent Select Committee on Intelligence of the House of Representatives.
(b) CHAIRPERSON.—The President shall select the chairperson of the Commission.
(c) QUALIFICATIONS; INITIAL MEETING.—
(1) POLITICAL PARTY AFFILIATION.—Not more than 7 members of the Commission shall be from the same political party.
(2) PERSONAL SERVICE.—Any individual appointed to the Commission shall be an employee of the United States service.
(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, intelligence, military service, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs.
(4) If 60 days after the date of enactment of this Act, 8 or more members of the Commission have been appointed, those members who have been appointed may meet and, if necessary, select a temporary chairperson, who may begin the operations of the Commission, including the hiring of staff, until
(d) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairperson or a majority of the members of the Commission.

SEC. 4. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are to—
(1) conduct an investigation into relevant facts and circumstances surrounding the terrorist attacks of September 11, 2001, including any relevant legislation, Executive order, regulation, plan, practice, or procedure;
(2) review and evaluate the lessons learned from the terrorist attacks of September 11, 2001 regarding the structure, coordination, and management arrangements of the Federal Government relative to detecting, preventing, and responding to such terrorist attacks; and
(3) submit to the President and Congress such reports as are required by this Act containing such findings, conclusions, and recommendations as the Commission shall determine are necessary for the reorganization, coordination, planning, management arrangements, procedures, rules, and regulations.

SEC. 5. POWERS OF THE COMMISSION.

(a) IN GENERAL.—
(1) HEARINGS AND EVIDENCE.—The Commission, or the authority of the Commission, may request any person, member thereof, or the head of any department or agency to appear and testify at any hearing of the Commission, and the Commission may compel the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine.
(2) SUBPOENAS.—Subpoenas issued under paragraph (1) shall be served in the manner provided in section 2103 of title 28, United States Code, and may be issued by the Commission or such designated subcommittee or designated member upon request made by the chairperson of the Commission.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, such details to be regulated with respect to the rights, status, and privileges of the person details and the regular employment without interruption.

(c) CONSULTANT SERVICES.—The Commission is authorized to procure the services of consultants and experts in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 6. STAFF OF THE COMMISSION.

(a) IN GENERAL.—
(1) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of such administrative and other support services as they may deem advisable and as may be authorized by law.

(b) ENTRUST.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

SEC. 7. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Commission, upon request made by the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, may be compensated at not to exceed the daily equivalent of the annual Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level IV of the Executive Schedule under section 5316 of title 5, United States Code.

(b) PERSONNEL AS FEDERAL EMPLOYEES.—
(A) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 86, 87, 89, and 90 of that title.

(B) MEMBERS OF COMMISSION.—Subparagraph (A) shall not be construed to apply to members of the Commission.

(c) TRAVEL EXPENSES.—(1) After enactment of this Act, members of the Commission shall be entitled to the same travel expenses, including per diem in lieu of subsistence, in the same manner as employees employed in the Federal service who are allowed expenses under section 5703(b) of title 5, United States Code.
As we did after Pearl Harbor and the Kennedy assassination, we need a blue-ribbon team of distinguished Americans from all walks of life to thoroughly investigate all evidence surrounding the attacks, including how prepared we were and how well we responded to the al Qaeda assault.

It will require digging deep into the resources of the full range of government agencies. It will demand objective judgment into what went wrong, what we did right, and what else we need to do to prevent such attacks against innocent lives in the future.

This is no witch hunt. Our enemies would be strengthened if their attacks caused us to turn on ourselves, contrary not with the malice of our foes but with our own failings.

We are a proud nation, a strong nation. However horrible, September 11th reminded us of our love of country, of our fierce patriotic pride. It highlighted the distinctive contributions of our diverse civilization, and the sacrifices we will endure to defend it against evil. It made us stronger.

That said, if there were serious failures on the part of individuals or institutions to prevent these assaults, we have a right to know, indeed a need to know. But to work, this must be a learning exercise, without preconceptions about the inquiry’s ultimate findings.

The commission’s members should include leading citizens not now holding public office, but with broad experience in national affairs. The commission should have an adequate budget, a top-level staff, and ample investigatory resources—including subpoena power, if it is needed to uncover the truth.

To be effective and legitimate, the commission should be given a broad mandate to discover facts and recommend corrective actions. It should be given limited time, with care and deliberation. It should have the stature and significance afforded by its grave mission of telling the whole truth about September 11th, and telling us what we need to know to protect against future tragedy.

To be credible, this inquiry must be independent from ongoing government operations, but it must of necessity draw on the resources of government. The commission’s conclusions and recommendations have enduring meaning only if they are valued by those of us who can set them in motion—the President, the Congress, and all concerned Americans.

Our best defense now lies in pursuing our enemy overseas, and working here at home to adapt to the challenges of this new day. We can rid the world of terrorism’s scourge. But it will take time, and our campaign will likely inspire further, desperate tests of our resolve.

More Americans may die before we are through. In this moment when we enjoy peace at home, even as brave Americans risk their lives for us overseas, let us marshal our resolve to defend our homeland, not merely through force of arms, but through reasoned introspection into how September 11th happened, what we’ve learned, and how we can apply those lessons to the defense of the American people.

At this time, I would like to thank the bipartisan Hart-Rudman Commission on National Security envisioned a time when terrorists and rogue nations would acquire weapons of mass destruction and “mass disruption.”

It will be likely die on American soil,” the commission warned, “possibly in large numbers.”

That time has come. The worst has happened. But it must not happen again. We hope history will judge America well for her response to September 11th—the incredible bravery of so many Americans, and the measures we have already put in place to prevent future acts of catastrophic terrorism.

The commission is an integral part of our response to the attacks of September 11. Its mission is urgent. The American people clearly share our sense of urgency about protecting our country. I hope our proposed commission can channel that sense of urgency into meaningful reform of the way we defend America.

By Mr. BIDEN:

S. 1868. A bill to establish a national commission on volunteer and provider screening to reduce sexual and other abuse of children, the elderly, and individuals with disabilities; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise today to introduce the National Child Protection Improvement Act of 2001.

Today, 87 million of our children are involved in provided by child and youth organizations which depend heavily on volunteers to deliver their services. Millions more adults are served by public and private voluntary organizations. Organizations across the country, like the Boys and Girls Clubs, often rely solely on volunteers to make these safe havens for kids a place where they can learn. The Boys and Girls Clubs and others don’t just provide services to kids, their work reverberates throughout our communities, as the after-school programs they provide help keep kids out of trouble. This is juvenile crime prevention at its best, and I salute the volunteers who help make these programs work.

Unfortunately, some of these volunteers come to their jobs with less than the best of intentions. According to the National Mentoring Partnership, incident of child sexual abuse in child care settings, foster homes and schools ranges from 1 to 7 percent. Volunteer organizations have tried to weed out bad apples, and today most conduct background checks on applicants who seek to work with children. Unfortunately, these programs often take months to complete, can be expensive, and many organizations do not have access to the FBI’s national fingerprint
database. These time delays and scope limitations are dangerous: a prospective volunteer could pass a name-based background check in one state, only to have a past felony committed in another jurisdiction go undetected.

Today I am introducing a bill designed to address these problems. The National Child Protection Improvement Act of 2001 creates a new, FBI national center to conduct criminal history fingerprint checks at the request of volunteer organizations. Funds are authorized so that volunteer organizations could have the national checks performed at no cost to them, the Federal government ought to be supporting those groups who seek to safeguard our kids, and this is a modest investment that deserves to be made. Other child-serving organizations who sought the services of the new national center would have checks conducted at a minimal cost. My bill envisions as many as 10 million background checks conducted per year at this center, enough to prevent felons and other dangerous members of society from getting anywhere near our kids. States perform many of these checks today, so to help them do their jobs better my bill authorizes $5 million per year to hire personnel and improve fingerprint technology so that they can update information in national databases.

All of us understand the positive impact that volunteer organizations are making in our communities. We need to give these groups the tools and resources they need to ensure absolute safety for the children they serve. I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "National Child Protection Improvement Act".

SEC. 2. ESTABLISHMENT OF A NATIONAL CENTER ON VOLUNTEER AND PROVIDER SCREENING.
The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended by adding at the end the following:

"TITLE VI—NATIONAL CENTER ON VOLUNTEER AND PROVIDER SCREENING"

SEC. 601. SHORT TITLE.
This title may be cited as the "National Child Protection Improvement Act".

SEC. 602. FINDINGS.
"Congress finds the following:

'(1) More than 87,000,000 children are involved each year in activities provided by child and youth organizations which depend heavily on volunteers to deliver their services.

'(2) Millions more adults, both the elderly and individuals with disabilities, are served by public and private voluntary organizations.

'(3) The vast majority of activities provided to children, the elderly, and individuals with disabilities by public and private nonprofit agencies and organizations result in the delivery of much needed services in safe environments that could not be provided without the assistance of virtually millions of volunteers, but abuses do occur.

'(4) Estimates of the incidence of child sexual abuse in child care settings, foster care homes, and schools, range from 1 to 7 percent.

'(5) Abuse traumatizes the victims and shakes public trust in care providers and organizations serving vulnerable populations.

'(6) Congress has acted to address concerns about this type of abuse through the National Child Protection Act of 1993 and the Violence Against Women Act of 1994 to set forth a framework for screening through criminal record checks of care providers, including volunteers who work with children, the elderly, and individuals with disabilities. Unfortunately, problems regarding the safety of these vulnerable groups still remain.

'(7) While State screening is sometimes adequate to conduct volunteer background checks, more extensive national criminal history checks using fingerprints or other means of positive identification are often available, a prospective volunteer or non-volunteer provider may have lived in more than one State.

'(8) The high cost of fingerprint background checks is unaffordable for organizations that use a large number of volunteers and, if passed on to volunteers, often discourages their participation.

'(9) The current system of retrieving national criminal background information on volunteers through an authorized agency of the State is cumbersome and often requires months before vital results are returned.

'(10) In order to protect children, volunteer agencies must currently depend on a convoluted, sometimes duplicative series of checks that leave children at risk.

'(11) A national volunteer and provider screening center is needed to protect vulnerable groups by providing efficient, effective national criminal history background checks of volunteers at no-cost, and at minimal cost for employed care providers.

SEC. 603. DEFINITIONS.
"In this Act:

'(1) the term 'qualified entity' means a business or organization, including a business or organization that licenses or certifies others to provide care or care placement services designated by the National Task Force;

'(2) the term 'provider screening' means a person who volunteers or seeks to volunteer with a qualified entity;

'(3) the term 'provider' means a person who is employed by or works for a qualified entity, who seeks to be employed by or volunteer with a qualified entity, who owns or operates a qualified entity, or who has or may have supervised access to a child to whom the qualified entity provides care;

'(4) the term 'criminal background check system' means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

'(5) the term 'child' means a person who is under the age of 18;

'(6) the term 'individuals with disabilities' has the same meaning as that provided in section 7(5) of the National Child Protection Act of 1993;

'(7) the term 'State' has the same meaning as that provided in section 5(11) of the National Child Protection Act of 1993 and

'(8) the term 'care' means the provision of care, treatment, education, training, in-

Section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119 et seq.) is amended to read as follows:

"SEC. 3. NATIONAL BACKGROUND CHECKS.

"(a) REQUIREMENTS.—Requests for national background checks under this section shall be submitted to the National Center for Volunteer Screening, which shall conduct a search using the Integrated Automated Fingerprint Identification System, or other criminal record checks using reliable means of positive identification subject to the following conditions:

"(1) A qualified entity requesting a national criminal history background check shall provide the National Center the provider’s fingerprints or other identifying information, and shall obtain a statement completed and signed by the provider that:

"(A) sets out the provider or volunteer’s name, address, date of birth appearing on a valid identification document as defined in section 1028 of title 18, United States Code, and a photocopy of the valid identifying document;

"(B) states whether the provider or volunteer has a criminal history background check that and that the provider’s signature to the statement constitutes an acknowledgement that such a check may be conducted;

"(C) notifies the provider or volunteer that the National Center for Volunteer Screening may conduct a national criminal history background check and that the provider’s signature to the statement constitutes an acknowledgement that such a check may be conducted;

"(D) notifies the provider or volunteer that prior to and after the completion of the background check, the qualified entity may choose to deny the provider access to children or elderly or persons with disabilities; and

"(E) notifies the provider or volunteer of his right to correct an erroneous record held by the FBI, the National Center, or a State.

"(2) Statements obtained pursuant to paragraph (1) and forwarded to the National Center shall be retained by the qualified entity or the National Center for at least 2 years.

"(3) Each provider or volunteer who is the subject of a criminal history background check under this section is entitled to contact the National Center to initiate procedures to—

"(A) obtain a copy of their criminal history record report; and

"(B) challenge the accuracy and completeness of the criminal history record information in the report.

"(4) The National Center receiving a criminal history record information that lacks disposition information shall, to the extent possible, contact State and local recordkeeping systems to obtain complete information.

"(5) The National Center shall make a determination that the criminal history record information received pursuant to the national background check indicates that the provider has a criminal history record that renders the provider unfit to provide care to children, the elderly, or individuals with disabilities based upon criteria established by the National Task Force on Volunteer Screening, and will convey that determination to the qualified entity.

"(b) GUIDANCE BY THE NATIONAL TASK FORCE.—The National Task Force, chaired by the Attorney General shall—

"(1) provide for, to the maximum extent possible, of the best technology available in conducting criminal background checks; and

"(2) provide guidelines concerning standards to guide the National Center in making fitness determinations concerning care providers based upon criminal history record information.

"(c) LIMITATIONS OF LIABILITY.—

"(1) IN GENERAL.—A qualified entity shall not be liable in an action for damages solely for failure to request a criminal history background check on a provider, nor shall a State or political subdivision thereof or any agency, authority, or instrumentality thereof, be liable in an action for damages for the failure of a qualified entity (other than itself) to take action adverse to a provider who was the subject of a criminal check.

"(2) RELIANCE.—The National Center or a qualified entity that reasonably relies on information in the report that the national background check indicates that the provider has a criminal history record information received in response to a request on the national background check pursuant to this section shall not be liable in an action for damages based upon the inaccuracy or incompleteness of the information.

"(d) FEES.—In the case of a background check pursuant to a State requirement adopted after December 20, 1993, conducted by the National Center or by a qualified entity that—

"(1) purchase Live-Scan fingerprint technology and a State-vehicle to make such mobile units available to qualified entities and the District of Columbia, and

"(2) purchase electric fingerprint imaging machines for use throughout the State to send fingerprint images to the National Center to conduct background checks.

"(b) ADDITIONAL FUNDS.—In addition to funds provided under this section, $50,000 shall be provided to each State and the District of Columbia to hire personnel to—

"(1) provide information and training to each county law enforcement agency within the State regarding all National Child Protection Act requirements for input of criminal and disposition data into the national criminal history background check system; and

"(2) provide an annual summary to the National Task Force of the State’s progress in complying with the criminal and disposition data entry provisions of the National Child Protection Act of 1993 which shall include information about the input of criminal data, child abuse crime information, domestic violence arrests and stay-away orders of protection.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—Out of any funds appropriated for national background checks of providers who are employed as or apply for positions as paid employees...

SEC. 4. ESTABLISHMENT OF A MODEL PROGRAM IN STATES TO STRENGTHEN CRIMINAL DATA REPOSITORIES AND FINGERPRINT TECHNOLOGY.

"(a) ESTABLISHMENT.—A model program shall be established in each State and the District of Columbia for the purpose of improving fingerprinting technology which shall grant to each State $50,000 to either—

"(1) purchase Live-Scan fingerprint technology and a State-vehicle to make such mobile units available to qualified entities and the District of Columbia, and

"(2) purchase electric fingerprint imaging machines for use throughout the State to send fingerprint images to the National Center to conduct background checks.

"(b) ADDITIONAL FUNDS.—In addition to funds provided under this section, $50,000 shall be provided to each State and the District of Columbia to hire personnel to—

"(1) provide information and training to each county law enforcement agency within the State regarding all National Child Protection Act requirements for input of criminal and disposition data into the national criminal history background check system; and

"(2) provide an annual summary to the National Task Force of the State’s progress in complying with the criminal and disposition data entry provisions of the National Child Protection Act of 1993 which shall include information about the input of criminal data, child abuse crime information, domestic violence arrests and stay-away orders of protection.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—Out of any funds appropriated for national background checks of providers who are employed as or apply for positions as paid employees...

"(2) PEER REVIEW.—Sums appropriated under this section shall remain available until expended.

By Mr. CORZINE (for himself, Mr. JEFFORDS, and Mr. LIEBERMAN):
as a place where companies can register greenhouse gas emissions reductions. In addition, the bill would require an annual report on U.S. greenhouse gas emissions. I'd like to go through each of these components in more detail.

First, the bill requires EPA to work with the Secretaries of Energy, Commerce and Agriculture, as well as the private sector and non-governmental organizations to establish a greenhouse gas emissions information system. For the purposes of the bill, greenhouse gases are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. EPA is directed to establish threshold quantities for each of these gases. The threshold quantities will trigger the requirement for a company to report to the system, and are included to enable exclusion of most small businesses from the reporting requirements. Companies that emit more than a threshold quantity of each gas will be required to report their emissions on an annual basis to EPA. The requirements will be phased in, beginning with stationary source emissions in 2003. The following year, in 2004, companies to the reporting requirements will need to submit to EPA estimates of other types of greenhouse gas emissions, such as process emissions, fugitive emissions, mobile source emissions, forest product-sector emissions, and indirect emissions from heat and steam.

Just as important as the reporting system is the greenhouse gas registry established by the bill. The bill requires EPA to work with the same set of actors to establish this greenhouse gas registry, which will enable companies to register greenhouse gas reductions. Many companies are voluntarily implementing projects to reduce emissions or sequester carbon. The registry would serve as a place for companies to be able to put these projects on public record in a consistent and reliable way.

Taken together, these provisions of the bill will accomplish several important goals. First, they will create a reliable record of the sources of greenhouse gas emissions within our economy. This will provide the public and private sector with important information that, if necessary, can be used to identify the most cost-effective ways to reduce greenhouse gas emissions.

Perhaps more importantly, these provisions will provide a powerful incentive for companies to continue to make voluntary greenhouse gas reductions. By requiring emissions reporting, and making that information available to the public, companies may face increased scrutiny with respect to their greenhouse gas emissions. But they will also have a place where they can register their greenhouse gas reductions project in a consistent and uniform way. This will enable companies to demonstrate the actions that they are taking to reduce their emissions, and will assist them in making the case for credits if a mandatory greenhouse gas emission reduction program is ever enacted.

Finally, the bill requires EPA to annually publish a greenhouse gas emissions information system that will enable a national account of greenhouse gas emissions for our Nation, and will incorporate the information submitted to the greenhouse gas information system and registry. EPA has issued such a report for several years now, and this provision is intended to explicitly authorize and expand the scope of this report.

I know that there are technical challenges associated with measuring greenhouse gas emissions and reductions. But many advances have been made in recent years, often in a cooperative way, with industry, environmental groups and governments at the table. It’s my intent that the systems and protocols developed under this bill conform to the best practices that have been and continue to be developed in this fashion.

I urge my colleagues to join with me in this legislation. Let’s start taking reasonable steps to address the threat of climate change, and make a conscious effort that the text of the bill be printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1870
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “National Greenhouse Gas Emissions Inventory and Registry Act of 2001.”

SEC. 2. FINDINGS AND PURPOSE.
(a) FINDINGS.—Congress finds that—
(1) human activities have caused rapid increases in atmospheric concentrations of carbon dioxide and other greenhouse gases in the last century;
(2) according to the Intergovernmental Panel on Climate Change and the National Research Council—
(A) the Earth has warmed in the last century; and
(B) the majority of the observed warming is attributable to human activities;
(3) despite the fact that many uncertainties in climate science remain, the potential impacts from human-induced climate change pose a substantial risk that should be managed in a responsible manner; and
(4) to begin to manage climate change risks, public and private entities will need a comprehensive inventory, registry, and information system of the sources and quantities of United States greenhouse gas emissions.

(b) PURPOSE.—The purpose of this Act is to establish a mandatory greenhouse gas inventory, registry, and information system that—
(1) is complete, consistent, transparent, and accurate;
(2) will create accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies; and
(3) will encourage greenhouse gas emission reductions.

C. 5 GREENHOUSE GAS EMISSIONS.
The Clean Air Act (42 U.S.C. 701 et seq.) is amended by adding at the end the following:
emissions, the Administrator shall establish
organizations concerned with establishing
the Secretary of Commerce, the Secretary of
Agriculture, the Secretary of Energy, States,
the Secretary of Commerce, the Secretary of
ment.—To the maximum extent practicable,
vasive activities that increase carbon stocks;
(G) carbon capture and storage;
(H) methane recovery; and
(I) carbon offset investments.
(c) Adjustment factors.—
(1) In general.—Each reporting entity
shall adjust the greenhouse gas emissions
record of the reporting entity in accordance
with this subsection.
(2) Significant structural changes.—
(A) In general.—A reporting entity that
experiences a significant structural change
to the extent practicable, the Administrator
shall integrate information in the national greenhouse gas
emissions information system with other environ-
mental information managed by the Administrator.
"(d) Integration with other environmental
information.—To the maximum extent prac-
table threshold quantities of emissions for each
combination of a source and a greenhouse
gas that is subject to the mandatory reporting requirements under this sub-
section.
"(b) Voluntary reporting to national greenhouse gas registry.—
"(1) In general.—Not later than April 30,
2001, and each April 30 thereafter, in accord-
ance with this subsection and the regula-
tions promulgated under section 706(e)(1),
an entity may voluntarily report to the Ad-
mnistrator, for inclusion in the national greenhouse
gas registry, with respect to the pre-
ceding calendar year, any greenhouse gas
emissions that are included in the greenhouse
gas report submitted by the reporting entity.
"(A) project reductions;
"(B) transfers of project reductions to and from any other entity;
"(C) project reductions and transfers of project reductions outside the United States;
"(D) indirect emissions that are not re-
ported in accordance with this subsection;
"(E) use of combined heat and power systems;
"(F) forestry activities that increase carbon stocks;
"(G) carbon capture and storage;
"(H) methane recovery; and
"(I) carbon offset investments.
(c) Adjustment factors.—
(1) In general.—Each reporting entity
shall adjust the greenhouse gas emissions
record of the reporting entity in accordance
with this subsection.
(2) Significant structural changes.—
(A) In general.—A reporting entity that
experiences a significant structural change
to the extent practicable, the Administrator
shall integrate information in the national greenhouse gas
emissions information system with other environ-
mental information managed by the Administrator.
"(d) Integration with other environmental
information.—To the maximum extent prac-
table threshold quantities of emissions for each
combination of a source and a greenhouse
gas that is subject to the mandatory reporting requirements under this sub-
section.
"(b) Voluntary reporting to national greenhouse gas registry.—
"(1) In general.—Not later than April 30,
2001, and each April 30 thereafter, in accord-
ance with this subsection and the regula-
tions promulgated under section 706(e)(1),
an entity may voluntarily report to the Ad-
mnistrator, for inclusion in the national greenhouse
gas registry, with respect to the pre-
ceding calendar year, any greenhouse gas
emissions that are included in the greenhouse gas report submitted by the reporting entity.
"(A) project reductions;
"(B) transfers of project reductions to and from any other entity;
"(C) project reductions and transfers of project reductions outside the United States;
"(D) indirect emissions that are not re-
ported in accordance with this subsection;
"(E) use of combined heat and power systems;
"(F) forestry activities that increase carbon stocks;
"(G) carbon capture and storage;
"(H) methane recovery; and
"(I) carbon offset investments.
(c) Adjustment factors.—
(1) In general.—Each reporting entity
shall adjust the greenhouse gas emissions
record of the reporting entity in accordance
with this subsection.
(2) Significant structural changes.—
(A) In general.—A reporting entity that
experiences a significant structural change
to the extent practicable, the Administrator
shall integrate information in the national greenhouse gas
emissions information system with other environ-
mental information managed by the Administrator.
"(d) Integration with other environmental
information.—To the maximum extent prac-
"(B) REQUIRED ELEMENTS.—Each green-
house gas report submitted under subpara-
graph (A) shall include estimates of direct sta-
tionary combustion source emissions;
(ii) express greenhouse gas emis-
sions in metric tons of the carbon dioxide
equivalent of each greenhouse gas emitted;
(iii) specify the sources of green-
house gas emissions that are included in the greenhouse gas report
submitted under subparagraph (B)(iii), in accord-
ance with this paragraph and the regulations promul-
gated under section 706(e)(2), each covered entity shall submit to the Adminis-
trator the national greenhouse gas emissions infor-
mation system, the greenhouse gas report of the covered entity
shall include estimates of
tional purposes of the covered entity.
(2) Final reporting requirements.—
(A) In general.—Not later than April 30,
2001, and each April 30 thereafter (except as
provided in subparagraph (B)(iv)), in accord-
ance with this paragraph and the regulations promul-
gated under section 706(e)(2), each covered entity shall submit to the Adminis-
trator the national greenhouse gas emissions infor-
mation system, the greenhouse gas report of the covered entity
shall include estimates of
tional purposes of the covered entity.
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(A) In general.—Not later than April 30,
2001, and each April 30 thereafter (except as
provided in subparagraph (B)(iv)), in accord-
ance with this paragraph and the regulations promul-
gated under section 706(e)(2), each covered entity shall submit to the Adminis-
trator the national greenhouse gas emissions infor-
mation system, the greenhouse gas report of the covered entity
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trator the national greenhouse gas emissions infor-
mation system, the greenhouse gas report of the covered entity
shall include estimates of
tional purposes of the covered entity.
“(A) any significant adjustment in the greenhouse gas emissions record of the reporting entity; and

“(B) any significant change between the greenhouse gas emissions record for the preceding year and the greenhouse gas emissions reported for the current year;

“(d) QUANTIFICATION AND VERIFICATION PROVISIONS.—

“(1) IN GENERAL.—The Administrator and the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall jointly work with the States, the private sector, and nongovernmental organizations to develop—

“(A) protocols for quantification and verification of greenhouse gas emissions;

“(B) electronic methods for quantification and reporting of greenhouse gas emissions; and

“(C) greenhouse gas accounting and reporting standards.

“(2) BEST PRACTICES.—The protocols and methods developed under paragraph (1) shall conform, to the maximum extent practicable, to the best practice protocols that have the greatest support of experts in the field.

“(3) INCORPORATION INTO REGULATIONS.—

“The Administrator shall incorporate the protocols developed under paragraph (1)(A) into the regulations promulgated under section 704.

“(4) OUTREACH PROGRAM.—The Administrator, the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall jointly conduct an outreach program to provide information to all reporting entities and the public on the protocols and methods developed under this subsection.

“(e) VERIFICATION.—

“(1) PROVISION OF INFORMATION BY REPORTING ENTITIES.—Each reporting entity shall provide information sufficient for the Administrator to verify, in accordance with greenhouse gas accounting and reporting standards developed under subsection (d)(1)(C), that the greenhouse gas report of the reporting entity—

“(A) has been accurately reported; and

“(B) in the case of each project reduction, represents the actual reductions in greenhouse gas emissions or actual increases in net sequestration, as applicable.

“(2) INDEPENDENT THIRD-PARTY VERIFICATION.—

“A reporting entity may—

“(A) obtain independent third-party verification; and

“(B) present the results of the third-party verification to the Administrator for consideration by the Administrator in carrying out paragraph (1).

“(f) ENFORCEMENT.—

“The Administrator may bring a civil action in United States district court against a covered entity that fails to comply with subsection (a), or a regulation promulgated under section 706(e), to impose a civil penalty of not more than $25,000 for each day that the failure to comply continues.

“SEC. 705. NATIONAL GREENHOUSE GAS EMISSIONS INVENTORY.

“Not later than April 30, 2002, and each April 30 thereafter, the Administrator shall publish a national greenhouse gas emissions inventory that includes national emissions from greenhouse gas emissions from major sources and to create a national trading system in carbon emission credits. The U.S. is a global leader in the creation and operation of such systems and must not lag behind doors in the international community.

“Mr. JEFFORDS. Mr. President, we are now near the end of the first session of the 107th Congress. It has been an exceedingly long and difficult year. There have been many changes, surprises and tragedies.

“One politically significant event that particularly dismayed me was the President’s modification of his campaign pledge to reduce emissions of four major pollutants, sulfur dioxide, nitrogen oxides, mercury and carbon dioxide, emitted by power plants. In March, he wrote to several Senators telling them he would no longer support mandatory emissions reductions for carbon dioxide reported as greenhouse gas. This struck me as a return to a 1950s-style energy and environmental policy.

“On a more optimistic role, however, that reversal and the administration’s unilateral withdrawal and disengagement from the international negotiations to implement the United Nations Framework Convention on Climate Change and the Kyoto Protocol has created more interest and activity on this matter. We have even on Capitol Hill and in the media. Now, many Members are asking themselves whether Congress should just proceed without the Administration. In fact, the Daschle-Bingaman energy legislation contains a significant climate change title that does just that. This subject will contain to receive a great deal of attention in the Environment and Public Works Committee and elsewhere. We are poised to implement through statute our existing national commitment to reduce greenhouse gas emissions to 1990 levels.

“Today, I am joining with Senators CORZINE and LIBBY to introduce a bill to amend the Clean Air Act to require reporting of greenhouse gas emissions from major sources and to create a voluntary registry for those sources to document their emissions reduction efforts. This new system will be maintained and operated by the Environmental Protection Agency, which has the greatest Federal agency experience and capability in monitoring enforcing and tracking air emissions. The information generated by this system will lend great assistance in the establishment of a national trading system in carbon emission credits.

“On a more optimistic role, however, that reversal and the administration’s unilateral withdrawal and disengagement from the international negotiations to implement the United Nations Framework Convention on Climate Change and the Kyoto Protocol has created more interest and activity on this matter. We have even on Capitol Hill and in the media. Now, many Members are asking themselves whether Congress should
response to terrorism, particularly of our friends in the European Union. We must not forget that they too have an agenda for the international community, and that agenda includes concerted action on climate change. Ignoring their too long list of trade and tariff problems for U.S. goods and services. Already, the pending adoption of the Kyoto Protocol in European Union countries and elsewhere poses, complex accounting and trade issues for U.S. multinationals operating in Annex 2 countries.

The Administration’s silence on this clearly growing problem is also puzzling. The National Oceanic and Atmospheric and the World Meteorological Organization say that 2001 will be the second warmest year on record since records have been kept in the mid-1800s. Recently, the Washington Post reported on the New England Regional Assessment of the Potential Consequences of Climate Variability and Change.

The Assessment, which is one of the many regional assessments being conducted pursuant to the Global Change Research Act of 1990, found that the Northeast’s climate is likely to become hotter and more flood-prone. The region may see a 6-10 degrees Fahrenheit overall temperature increase over the next 100 years due to the global warming caused by greenhouse gas emissions of some countries. Carbon dioxide, a gas that the maples to disappear from Vermont forests, threaten coastal areas with rising sea levels, exacerbate existing air pollution problems and harm cold-weather-dependent industries like skiing.

There are varying claims about the economic effects related to global warming and climate change. Effects that will occur beyond the normal economic forecasting period are difficult to determine. But, some studies have suggested a doubling of atmospheric CO2 may potentially extirpate the sugar maple industry in New England. Within 20 years, it says, “the changes in climate could potentially extirpate the sugar maple industry in New England.”

Next year promises to be very busy for the Department of Energy and various think-tanks. However, we must do something soon to stimulate that revolution. Providing information on waste generation and release into the environment, the Department has updated the Toxic Release Inventory. Educating the public and the market about wasteeful behavior has stimulated major emissions reductions. The bill we are introducing today should be similarly successful in reducing and increasing efficiency in all major carbon emitting sectors, in addition to preparing the appropriate infrastructure for a national carbon credit trading system.

Each year, the Senate Environment and Public Works Committee will mark up S. 556, the Clean Power Act, which requires reductions in greenhouse gas emissions from the power generating sector. That sector’s emissions have risen approximately 26 percent above 1990 levels and are expected to grow 1.8 percent annually without some Federal action. This is well beyond our international treaty commitments on a sector basis. The majority of us are already required to report their carbon dioxide emissions to EPA.

I am hopeful that we can proceed with a tri-partisan, consensus markup of the Clean Power Act. But, two elements may make it difficult to achieve some agreement. First, the Administration may go forward with proposals to modify the New Source Review, NSR, program. This possibility gravely concerns me and other Members of the Committee, given the lack of transparency in the Administration’s proceedings on the pending NSR enforcement actions and the “consistency” review by the Department of Justice. And, second, perhaps more importantly, the lack of constructive engagement with the Committee on a multi-pollutant bill or any clear progress on an Administration proposal.

Next you promises to be very busy in the energy and environmental policy arena. We cannot afford to simply recreate the debates that occurred during the Energy Policy Act of 1992. We know the world to be a much different place now and fraught with greater and more complex dangers like global warming. It would be irresponsible in the extreme for Congress or the White House to take actions that increase, rather than decrease, the likelihood of those dangers.

I look forward to working with the Administration and my colleagues on a variety of actions to make progress in adapting to the climate change we have already caused and on reducing our energy use to prevent greater future damage that our great-grandchildren will have to face.

I ask unanimous consent to print the article to which I referred in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Washington Post, Dec. 17, 2001]

NORTHEAST SEEN GETTING BALMIER

(By Michael Powell)

NEW YORK—New England’s maple trees stop producing sap. The Long Island and Cape Cod beaches shrink and shift, and disappear for good. Cases of heatstroke triple. And every 10 years or so, a winter storm floods portions of Lower Manhattan, Jersey city and Coney Island with seawater.

The Northeast of recent memory could disappear this century, replaced by a hotter and more flood-prone region where New York could have the climate of Miami and Miami could have the climate of Atlanta, according to the first comprehensive federal studies of the possible effects of global warming on the Northeast. In the most optimistic projection, we will end up with a six- to nine-degree increase in temperature,” said George Hurtt, a University of New Hampshire scientist and co-author of the study on the New England region. “That’s the greatest increase in temperature at any time since the last Ice Age.”

Commissioned by Congress, the separate reports on New England and the New York region explore how global warming could affect the coastline, economy and public health of the Northeast. While often technical, the projections rely on middle-of-the-road and sometimes contradictory predictive models.

But predictions are not arresting.

New England, where the regional character was forged by cold and long, dark winters, could face a balmy future that within 30 to 40 years could result in increased production but also destroy prominent native tree species.

“The brilliant reds, oranges and yellows of the maples, birches and oaks may be replaced by the browns and dull greens of maples,” the New England report concludes. “Within 20 years, it says, “the changes in climate could potentially extirpate the sugar maple industry in New England.”

The report’s origins date to 1990, when Congress passed the Global Change Research Act. Seven years later, the Environmental Protection Agency appointed 16 regional panels to examine global warming, and how the nation might adapt. These Northeast reports completed last year are the last to be released. (The mid-Atlantic report, which includes Washington, was completed a year ago.)

The scientists on the panels employed conventional assumptions, such as an annual 1 percent increase in greenhouse gases in the atmosphere. They conclude that global warming is already occurring, not that, on average, the Northeast became two degrees warmer in the past century. And they say that the temperature rise in the 21st century “will be significantly larger than in the 20th century.” One widely used climate model cited in the report predicted a six-degree increase, the other a seven-degree increase.

The Environmental Protection Agency summarizes the findings on its Web site. “Changing regional climate could alter food crops yields, and water the EPA states. “It could also threaten human health, and harm birds, fish, and many types of ecosystems.”

Yale economist Robert O. Mendelsohn is more skeptical. He agrees that mild global warming seems likely to continue—but argues that a slightly hotter climate will make the U.S. economy in general, perhaps in the Northeast in particular, more rather than less productive. A greater risk comes from spending billions of dollars to slow emissions of greenhouse gases.

“Even in the extreme scenarios, the northern United States benefits from global
warming," said Mendelsohn, editor of the forthcoming "Global Warming and the American Economy." "To have New England lead the battle against global warming would be deeply ironic, because it will be beneficial to our climate and economy."

The scientists on the Northeastern panels estimated that Americans have a grace period during which the United States can adapt before global warming accelerates. "We will face an increasingly hazardous local environment in this century," said William Solecki, a professor of geography at Montclair State University in New Jersey and a co-author of the climate change report covering the New York metropolitan region. "We’re in transition right now to something entirely new and uncertain."

New York City, the nation’s densest urban center, is armored with heat-retaining concrete and stone, and so its median temperature hovers five to six degrees above the regional norm. The city, the New York report predicts, will grow warmer still. Within 70 years, New York will have as many 90-degree days each year as London does now.

If temperatures and ozone levels rise, the report says, the poor, the elderly and the young—especially those in crowded, poorly ventilated buildings—could suffer more heatstroke and asthma.

But such problems might have relatively inexpensive solutions, from subsidizing the purchase of air conditioners to planting trees and painting roofs light colors to reflect back heat.

"The experience of southern cities is that you can cut deaths and adapt rather easily," said Patrick Kinney of the Mailman School of Public Health at Columbia University, who wrote the report.

Rising ocean waters present a more complicated threat. The seas around New York have risen 15 to 18 inches in the past century, and scientists forecast that by 2050, waters could rise an additional 10 to 20 inches.

By 2080, storms with 25-foot surges could hit New York every three or four years, inundating the Hudson River tunnels and flooding the edges of the financial district, causing billions of dollars in damage.

"It’s not sustainable," said Klaus Jacob, a senior research scientist with Columbia University’s Lamont-Doherty Earth Observatory, who worked on the New York report. "It’s a disaster for the infrastructure. A world-class city cannot afford to be exposed to such a threat so often."

Jacob recommends constructing dikes and reinforced seawalls in Lower Manhattan, and new construction standards for the lower floors of offices.

Sea level rise could reshape the entire Northeast coastline, turning the summer retreat of the Hamptons and Cape Cod into landscapes defined by dikes and houses on stilts. "To pass, government would have to decide whether to allow nature to have its way, or to spend vast sums of money to reinforce the beaches and dunes. Complicating the issue is the fact that some wealthy coastal communities exclude non-resident taxpayers from their beaches."

"More already are abandoning their property with sandbags, but they can’t do it on their own," said Vivian Gornitz of Columbia’s Center for Climate Systems Research. "The report’s section on dunes rises. ‘You would be asking taxpayers to pay for restoring beaches they can never walk on, and they might demand access."

HARD TIMES IN ENGLAND

Farther north, global warming could change flora and fauna, and perhaps the culture itself.

Compared with a century ago, the report notes, ice melts a week earlier on northern lakes. Ticks carrying Lyme disease range north, and what scientists once assumed was their natural winter range have extended as far north as Anchorage. "People complain that we’ll lose the sugar maples, but 100 years ago, New England was 80 percent farmland," said Yale economist William Nordhaus.

"This clearly is untenable," said Klaus Jacob, a senior research scientist with Columbia University’s Lamont-Doherty Earth Observatory, who worked on the New York report. "It’s a disaster for the infrastructure. A world-class city cannot afford to be exposed to such a threat so often."

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HARD TIMES IN ENGLAND

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small town and large city in the country, carries more than 1.7 million car-loads, many millions of tons, of chemicals and other hazardous materials each year. More than 50,000 carloads of “poison by inhalation” chemicals, including chlorine, are transported with-in a huge percent of our population. It is not my purpose to alarm my colleagues or the public at large. The simple fact is, however, the Safe Rails Act will protect millions of American workers working in proximity to the facilities manufacturing these hazardous materials, or the trains carrying them.

Very briefly, the Safe Rails Act would require the Secretary of Transportation to conduct a comprehensive analysis of the security risks on our entire rail system, with special emphasis given to a security needs assessment for the transportation of hazardous materials.

The bill creates a Rail Security Fund, to be administered by the Secretary, to reimburse or defray the costs of increased or new security measures taken by railroads, hazardous materials shippers, or tank car owners, in the wake of any terrorist attack on September 11. In conducting the required assessments, the Secretary will consult with and may use materials prepared by the railroad, chemical, and tank car leasing industries, as well as any relevant risk or analysis or assessments prepared by Federal or State law enforcement, public safety, or regulatory agencies.

The Secretary will develop criteria to determine the appropriateness of full or partial reimbursement for various security-related activities. The Secretary may consider, but will not be limited to, the Fund to help pay for costs incurred due to the following security-related activities: unanticipated fuel switching or rollbacks or cargoes, and the express movement of hazardous materials to address security risks; hiring additional manpower required to increase security of the entire rail network, including rail cars on leased track; the purchase of equipment or improved training to enhance emergency response in hazardous materials transportation incidents; improvements in critical communications essential for rail operations and security, including: Development and deployment of real-time positioning tracking systems on all tank cars transporting high hazard materials; and development of secure network to provide hazardous materials shippers and tank car owners information regarding credible threats to shipment of these products or rolling stock; investment in the physical hardening of critical railroad infrastructure to enable it to withstand terrorist attacks; tank car modifications, or storage of additional tank cars in excess of the number normally stored in facilities’ facilities; as mandated by federal regulators; research and development supporting enhanced safety and security of hazardous materials transportation along the freight rail network, including: technology for sealing rail cars; techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; systems to enhance rail car security on shipper property.

Mr. President, the Safe Rails Act is crucially important legislation for the safety and security of our country, and for the protection of human health along our rail network. I thank the chairman of the Commerce Committee for his commitment to mark this bill up early next year. I strongly urge the leadership of the Senate to schedule consideration of this legislation early in the next session of the 107th Congress, and I encourage my colleagues to support its passage.

By Mr. SESSIONS (for himself and Mr. HATCH):

S. 1874. A bill to reduce the disparity in punishment between crack and powder cocaine offenses, to more broadly focus the punishment for drug offenders on the nature of the crime, and the culpability of the offender, and for other purposes; to the Committee on the Judiciary.

Mr. SESSIONS. Mr. President, I send to the desk a bill entitled the Drug Sentencing Reform Act of 2001. This bill provides measured and balanced approach to improving the statutory and guidelines system that governs the sentencing of drug offenders.

This bill makes two important changes to our Federal sentencing system for drug offenders: First, it reduces the disparity in sentences for crack and powder cocaine from a ratio of 100-to-1 to 20-to-1. It does so by reducing the penalty for crack and increasing the penalty for powder cocaine.

Second, the bill shifts some of the sentencing emphasis from drug quantity to the nature of the criminal conduct, the degree of the defendant’s criminality. The bill increases penalties for the worst drug offenders that use violence and employ women and children as couriers to traffic drugs. The bill decreases mandatory penalties on those who play only a minimal role in a drug trafficking offense, such as a girlfriend or child of a drug dealer who receives little or no compensation.

In short, this bill will make measured and balanced improvements in the current sentencing system to ensure a more just outcome, tougher sentences on the worst and most violent drug offenders and lighter sentences on lower-level, nonviolent offenders.

To understand the changes that I propose, it is necessary to review how we got to the present system.

Prior to the promulgation of the Sentencing Guidelines in 1984, judges in Federal courts had very broad discretion to sentence drug offenders. Because judges had different views on sentencing, one defendant who committed a crime could receive parole while another defendant guilty of the exact same criminal conduct could receive literally 20 years in prison. See, e.g., United States Sentencing Commission, Guidelines Manual 2 (Nov. 2000).

Further, because of the existence of the parole system, convicts generally served only one-third of the sentence announced by the judge. Id. There was no truth in sentencing. Thus, the old Commission provided uniformity, honesty, and certainty.


The Sentencing Commission went to work in studying empirical data on average sentences imposed for various crimes prior to the Sentencing Reform Act. See United States Sentencing Commission, Guidelines Manual 9-10 (Nov. 2000). It then made adjustments for acceptance of responsibility and provision of substantial assistance to the government. Id. at 10.

On April 13, 1987, the Sentencing Commission submitted its first set of Sentencing Guidelines to Congress. See United States Sentencing Commission, Guidelines Manual 1 (Nov. 2000). After the prescribed period, the Guidelines took effect on November 1, 1987, and applied to all offenses committed on or after that date. Id. at 1.

In applying the Guidelines to a particular case, a judge must generally:

1. Determine the base offense level for the offense of conviction.
2. Apply applicable adjustments for the type of victim, the defendant’s role in the offense, and whether the defendant obstructed justice;
3. Determine the defendant’s criminal history category; and

After all the factors are considered, the judge is required to sentence within a narrow range.

Thus, the promulgation of the Sentencing Guidelines and the repeal of the parole system promoted uniformity, honesty, and certainty in sentencing.

In 1989, in Mistretta v. United States, 488 U.S. 361 (1989), the Supreme Court upheld the constitutionality of the Sentencing Guidelines. Thus, Federal prosecutors, criminal defense attorneys, and Federal judges have been applying the Sentencing Guidelines for over a decade.
Serious Health Threat, Houston Chronicle, July 16, 1986.

Senator Lawton Chiles of Florida was one of the leaders in the Senate on the fight against crack. He stated:

"The whole Nation now knows about crack cocaine....[It] is sold on the price of a cassette tape, and make people into slaves. It can turn promising young people into robbers and thieves, stealing anything they can get the money to feed their habit.—132 Cong. Rec. S 26446, 26447 (1986) (statement of Sen. Chiles)."

Senator Chiles also stated with regard to the bill imposing the heavy penalties on crack:

"...a blunt instrument that data now shows is in need of refinement. Guidelines on quantity has resulted in a blunter instrument that data now shows is in need of refinement."

"The 1986 mandatory minimums based on the quantity of crack cocaine sold for possession, while appropriately reflecting that drug's more serious effects, failed to keep crack off the streets. The use of crack had grown rapidly in the early and mid-1980s and by 1987 and 1988, crack was available across America, including my home town of Mobile, AL, and small towns all over Alabama. See, e.g., Lloyd D. Johnson, et al. Monitoring the Future: National Results on Adolescent Drug Use 16 (Univ. of Mich. 2000) (noting that crack use that started in 1983-1986); James Coates & Robert Blau, Big-City Gangs Fuel Growing Crack Crisis, Chicago Tribune, Sept. 13, 1989, at C1, noting that crack use began in Fort Wayne, IN, in 1986 and spread rapidly through that city. Though the tough penalties did not stop the geographical spread of crack, they did, in my opinion, play a role in slowing the rate of increase in use that would have occurred without the tough penalties."
of racial bias because the distributors and users of crack are largely African-American.

Parenthetically, let me note that criminal statutes, as they are written, are not biased, they simply required punishment who breaks the law regardless of race, sex, nationality, or religion. Thus, just because more males commit Federal crimes than females, it is not unfair or sexist to punish males with all the severity society concludes, to stop the crimes that both sexes commit. See United States Sentencing Commission, 2000 Sourcebook of Federal Sentencing Statistics 15 (Table 5) (reporting that 85.7 percent of Federal offenders are male and 14.3 percent are female).

Because everyone knows that crack carries heavy penalties, I cannot conclude that it is discriminatory to punish all who possess or distribute it with equal severity. My experience does lead me to conclude, however, that where an overwhelming majority of the offender convicted of crack offenses are African-American, and the penalties for crack offenses are the most severe, we should listen to fair-minded people who argue that these sentences fall too heavily on African-Americans.

One of the facts used in the argument for changing crack sentences is the percentage of crack defendants that are African-American. In 1995, the Sentencing Commission issued report showing that of the defendants convicted of crack cocaine offenses, 88.2 percent were African-American. United States Sentencing Commission, Cocaine and Federal Sentencing Policy 152 (1995). Of the persons sentenced for powder cocaine offenses, 32 percent where white, 27.4 percent African-American, and 37 percent Hispanic, Id.

This generated stories in newspapers, like one from the Birmingham Post-Herald that reported:

At some point, nation’s black leaders supported the hard line against drugs. Inner-city church ministers decried the crack epidemic that seemed to blaze through their neighboring communities. As the disparities in jail sentences became increasingly obvious, support for the policy dried up among many blacks. . . .” —Thomas Hargrove, Drug’s Form Influences Length of Sentence, Birmingham Post-Herald, Nov. 17, 1997, at A1, A9 (describing differences in punishments for crack and powder cocaine).

As data from the Sentencing Commission became available during the mid-1980s, many federal and state officials, including myself, began to doubt whether the 100-to-1 ratio between powder and crack cocaine continued to be justifiable.

We in the public service asked ourselves, “If in light of our experience, we can conclude that crack sentences are disproportionately severe, why should we not act to improve them?”


Moreover, in 1995, the Sentencing Commission, most of the members of which had opposed two amendments to the Guidelines to reduce the disparity in sentences between crack and powder cocaine. Specifically, the amendments would have adopted a starting point for the guidelines of 1 to 1 amounts of crack and powder cocaine—a 1-to-1 ratio at the 500-gr. level, and would have provided a sentencing enhancement for violence and other harms associated with crack cocaine. See United States Sentencing Commission, Cocaine and Federal Sentencing Policy 1 (1997). Congress, however, passed and President Clinton signed a law that rejected the amendments and directed the Sentencing Commission to study the issue more thoroughly. Pub. L. No. 104-38, 109 Stat. 334 (1995).

In 1997, the Sentencing Commission responded with a study entitled, “Cocaine and Federal Sentencing Policy.” The study recommended a reduction in the crack-powder differential from 100-to-1 to approximately 5-to-1. United States Sentencing Commission, Cocaine and Federal Sentencing Policy 9 (1997). Specifically, the Commission recommended to Congress that the trigger points for the 5-year mandatory minimums be reduced from 500 grams to a range of 125 to 375 grams and for crack be raised from 5 grams to a range of 25 to 75 grams. Id.

Moreover, some judges who did not sit on the Sentencing Commission began speaking out against the crack-powder differential. See, e.g., Pete Bowles, Judge Known for Unusual Sensitivity, Newsday, May 22, 1998, at A39 (quoting Judge Jack Weinstein as characterizing the Sentencing Guidelines as “a misapplication” and saying, “I simply cannot sentence another impoverished person whose destruction has no discernible effect on the drug trade”). And some have said that judges may have used downward departures more often than they should have to reduce drug sentences to a level that they view as more just. Indeed, Professors Frank Bowman and Michael Heise, citing a downward trend in drug sentences have stated, “a pervasive and pervasive and other drug crimes which will maintain public confidence in the federal government’s anti-drug efforts and make those efforts more rational and justifiable.

For thoughtful review, and consideration in light of my own experience in prosecuting drug offense, I have concluded that we must reform the justness of our means to match the legitimacy of our goals. We must restore justness to sentencing for crack trafficking and other drug crimes which will maintain public confidence in the federal government’s anti-drug efforts and make those efforts more rational and justifiable.

Today, I propose a bill to make two modest changes to the current sentencing system. First, the bill will reduce the crack-powder sentencing disparity from the current 100-to-1 ratio to a 20-to-1 ratio—the same ratio proposed by the Reagan Administration in 1988. This bill would trigger the 5-year mandatory minimum sentence for trafficking at 20 grams of crack—not 5 grams—and at 400 grams of powder cocaine—not 500
grams. The 10-year mandatory minimum would be triggered by trafficking 200 grams of crack and by trafficking 4 kilograms of powder cocaine. The reduction in the amount of powder cocaine required to trigger the mandatory minimum from 400 grams to 400 grams reflects that 400 grams is almost a pound of cocaine—a large amount—worth well over $10,000. Also, this increase in the penalty for powder cocaine reflects that powder cocaine is cheaper and used as the raw material used to make crack. United States Sentencing Commission, Special Report: Cocaine and Federal Sentencing Policy (1995). Finally, the increased penalty responds to the powder cocaine use rates among high school students.

According to the University of Michigan Study entitled Monitoring the Future, powder cocaine use among 12th grade students had risen by 61.3 percent from 1992 to 2000, although there was a slight decline from 1999 to 2000. Further, more than twice as many 12th grade students used powder cocaine than crack in 1992 and in 2000.

### 12TH GRADERS DRUG USE

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<tr>
<td>Crack</td>
<td>1.5</td>
<td>2.0</td>
<td>33.3</td>
</tr>
</tbody>
</table>

See Lloyd D. Johnston, Monitoring the Future: National Results on Adolescent Drug Use 14 (Univ. of Mich. 2000) (Table 2).

We need to discourage those who are dealing powder cocaine to our high school students and those who are providing a supply market of powder cocaine that enable the manufacture of crack. This bill does this by providing a small increase in the penalty for powder cocaine.

The bill's approach of narrowing, but not eliminating, the sentencing disparity between crack and powder cocaine by changing the penalties for both drugs parallels the 1997 Sentencing Commission recommendation of increasing penalties and decreasing penalties on crack. United States Sentencing Commission, Special Report to Congress: Federal Sentencing Policy 9 (1997). Further, it is consistent with the bipartisan Act of Congress that President Clinton signed in 1996 rejecting the Sentencing Commission's attempt to equalize the penalties for crack and powder cocaine. That act stated, "the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in an equal quantity of powder cocaine." Pub. L. No. 104–38, 104th Cong. 1st Sess. §2(a)(1)(A) (1995). The bill changes the penalties for crack and powder to reduce the 100-to-1 disparity, but retains a reasonable distinction, a 20-to-1 ratio, between crack and powder cocaine.

The bill also reduces the 5-year mandatory minimum penalty for the simple possession of 5 grams of crack to just 1 year. This reflects the fact that crack is a more serious drug than most other drugs, but that the sentence need not be unjustifiably harsh.

Second, the bill increases emphasis on defendant's criminality, as opposed to a heavy emphasis on the quantity of drug involved. This bill requires a sentencing enhancement for violence or possession of a firearm, or other dangerous weapon, associated with a drug trafficking offense. This reflects that use of a dangerous weapon or violent action results in higher recidivism rates than drug use alone. See Federal Bureau of Prisons, Recidivism Among Federal Prison Releases in 1987: A Preliminary Report 12 (1994).

Further, the bill incorporates an additional enhancement if the defendant is an organizer, leader, manager, or supervisor in the drug trafficking offense and a "superaggravating" factor applies. Superaggravating factors include using a girlfriend or child to distribute drugs, making a crack house, distributing a drug to a minor, an elderly person, or a pregnant woman, bribing a law enforcement official, importing drugs in the United States from a foreign country, or committing the drug offense as a part of a pattern of criminal conduct engaging in as a livelihood. These sentencing enhancements will apply to offenses involving cocaine, methamphetamine, marijuana, and all illegal drugs.

Aside from the girlfriend factor, many of the superaggravating factors are already available in certain cases. The bill would employ these punishments in drug cases as sentencing enhancements, instead of statutory penalties. States could authorize a prosecutor to obtain the tougher penalty by proving the superaggravating criminal conduct by a preponderance of the evidence rather than beyond a reasonable doubt. Further, the bill will make some enhancements easier to establish. For example instead of proving that a victim had a particular vulnerability to a crime, a prosecutor could simply show that the victim was 16 years old.

The offenders to which these sentencing enhancements apply are the most culpable members of the drug trade that prey on young women, school children, and the elderly, and bring violence into our neighborhoods. Their sentences should reflect the criminality of their conduct, not simply the quantity of drugs with which they are caught.

While providing sentencing increases for the worst offenders, the bill limits the impact of mandatory minimums on the least dangerous offenders. The bill caps the drug quantity portion of a sentence for a defendant who plays a minimal role at 10 years, base offense level 32 under the Sentencing Guidelines. This is very significant because couriers, who are often low-level participants in a drug organization, can have disproportionate sentences of 20 or 30 years simply because they are caught with a large amount of drugs in their possession. By capping the impact of drug quantity on the ultimate sentence for the super-aggravating role offenders, the bill allows a greater role for the criminality, or lack of criminality, of their conduct in determining their ultimate sentence.

For example, the bill provides a decrease for the super-aggravating factor of the girlfriend or child who plays a minimal role in the offense. These are often the most abused victims of the drug trade, and we should not punish them as harshly as the drug dealer who used them.

Existing adjustments could then be made for factors such as the role in the offense, acceptance of responsibility, and provision of substantial assistance to the government.

The bill also establishes a 3-year pilot program for placing elderly, non-violent prisoners in home detention in lieu of prison. It allows the Attorney General to designate 1 or more Federal prisons at which prisoners who meet the following criteria could be placed in home detention.

The prisoner: 1. is at least 65 years old; 2. has served the greater of 10 years or one-half of his sentence; 3. has never committed a Federal or State offense of violence; 4. is determined by the Bureau of Prisons to have a history of violence or to have committed a violent infraction while in prison; and 5. has not escaped or attempted to escape.

My experience tells me, that elderly prisoners who are nonviolent and who have served a substantial amount of their sentence generally pose no threat to the community. Removing them from prison and placing them in home detention could save the federal government money and free up space to house the most dangerous criminals.

The bill, however, would require an independent study on recidivism and cost savings. At the end of 3 years, Congress could decide whether to continue or expand the pilot program.

There are those on the Left of the political spectrum who want to substantially restrict or even repeal mandatory minimums for some drug offenders who do not even all drug offenses. I firmly disagree with such an approach. The Sentencing Guidelines and mandatory minimum statutes have been a critical component of a criminal justice system that treats equal conduct equally. It increases deterrence because criminals know they will not be able to talk themselves out of jail. It is a great system. By following the balanced approach that I have proposed, we improve the guidelines and improve sentencing. My goal is to have our sentencing for the super-mitigating case be the right sentence to incapacitate, deter, punish, and rehabilitate the criminal. Because Congress has set the rules, we
must act to improve them. The courts cannot do it for us.

There are those on the Right side of the political spectrum, however, who do not want to decrease any drug penalty whatsoever. While I respect their view, I reject it. The mandatory minimums have been in effect since 1986 and the Sentencing Guidelines have been in effect since 1987. We are not in a position to reflect on what the effects have been.

As I have stated from experience, the 100-to-1 disparity in sentencing between crack cocaine and power cocaine, which falls the hardest on African-Americans, is not justifiable. See, e.g., 145 Cong. Rec. S. 14452–14453 (1999), (statement of Sen. Sessions), to-1 ratio is a movement in the right direction," but questioning whether solely increasing penalties on crack was justifiable). It is simply unjust.

The legacy of the drug sentencing system on quantity of drugs, which has sent the girlsfriends of drug dealers, who act as mere couriers, to prison for long terms, should be adjusted to increase the emphasis on the criminality of conduct. This will free up prison space for violent drug offenders.

Trust me on this. The federal drug sentences are tough. In practice—as they play out in actual time served, they are tougher than any State drug sentences that I know of. This legislation will in no way change the seriousness with which drugs are taken. Please know that I will resist with all the force of my opposition any attempt to destroy or undermine the integrity or effectiveness of the Sentencing Guidelines. This bill simply targets the toughest sentences to those who deserve it most.

The Drug Sentencing Reform Act of 2001 takes a measured and balanced approach to modifying the sentencing system that we have used for over a decade. By increasing penalties on the worst offenders and decreasing penalties on the least dangerous offenders, we will increase the focus of our law enforcement resources on the drug traffickers that endanger our families and decrease the focus on those defendants who pose less danger.

I commend this bill to my colleagues to study and debate. I challenge them to cast aside the politics of the Left and the Right and to support this bill on the merits as a matter of plain, simple justice.

Mr. HATCH. Mr. President, I rise today to speak briefly on the legislation that my good friend from the State of Alabama, Senator Sessions, has introduced today. That legislation, the "Drug Sentencing Reform Act of 2001," addresses the disparity between sentences handed down to those who traffic in power cocaine and those who traffic in crack cocaine. I am proud to cosponsor this bill, and I hope that we can promptly act on it when we return next year.

This legislation provides a balanced and measured solution to the disparity problem without undermining our efforts to pursue relentlessly those who make their living peddling these poisons. At the same time that we reduce the crack-powder sentence ratio from 100 to 1 to 20 to 1 and reduce sentences for girlfriends and children who play truly minimal roles in drug crimes, we increase sentences for those who play leadership roles in trafficking organizations. The bill also increases sentences for those who use firearms or violence in carrying out their drug crimes.

As a former federal prosecutor, United States Attorney, and Attorney General of Alabama, Senator Sessions is uniquely qualified to lead the Senate on this issue. Since at least 1996, he has done just that. Both in the Judiciary Committee and on the floor of the Senate, Senator Sessions has worked tirelessly to bring about a more just sentencing structure for cocaine offenses. This legislation represents the right approach, and it deserves the support of all of my colleagues.

By Mrs. CLINTON (for herself, Mr. SMITH of Oregon, Mr. STEVENS, Mr. SPECKER, Mrs. BOXER, Mr. FITZGERALD, Mr. SCHUMER, and Mr. DAVIES):
S. 1876. A bill to establish a National Foundation for the Study of Holocaust Assets; to the Committee on Banking, Housing, and Urban Affairs:
Mr. SMITH of Oregon. Mr. President, I am proud to introduce, with Senator CLINTON, the Holocaust Victims' Assets Restitution Policy and Remembrance Act. This legislation will create a public/private Foundation dedicated to educating and to completing the necessary research in the area of Holocaust-era assets and restitution policy and to promote innovative solutions to restitution issues. The Foundation is authorized for ten years at a cost of $100 million, after which it will sunset and it is to accept, receive, hold, and distribute funds and all records and materials to private entities. It is able to accept private funds as well as public dollars.

The need for the Foundation comes from the work of the Presidential Advisory Commission on Holocaust Assets in the United States. I was proud to have served as a Commissioner along with several of my colleagues in the Senate. The Commission identified a number of policy initiatives that require the support of the Foundation. It was clear that additional research and review of Holocaust-era assets in the United States and worldwide; providing for the dissemination of information about restitution programs; creating a simple mechanism to assist claimants in obtaining resolution of claims; and, supporting a modern database of Holocaust victims' claims for the restitution of personal property.

The Commission determined that "our government performed in an uncredible and the least manner in attempting to ensure the restitution of assets to victims of the Holocaust. However, even the best intentioned and most comprehensive policies were unable, given the unique circumstances of the time, to ensure that all victims' assets were restituted." I believe this Foundation will provide a focal point for work between Federal and State government and on cross-country research with losses of Holocaust victims. It will work with the museum community to further stimulate provenance research into European paintings and Judaica. It will promote and monitor the implementation of federal and state bank regulations of the agreement developed in conjunction with the New York Bankers Association. Finally, it will work with the private sector to develop and promote common standards and best practices for research on Holocaust-era assets.

I look forward to working with my colleagues in creating this Foundation to finish the work of the Holocaust Assets Commission. I urge all my colleagues to co-sponsor this important legislation that will solve restitution issues and engender needed research on Holocaust assets in the United States.

By Mr. HARKIN:
S. 1877. A bill to clarify and reaffirm a cause of action and Federal court jurisdiction for certain claims against the Government of Iran; to the Committee on Foreign Relations:
Mr. HARKIN. Mr. President, we all remember the dark days of the Iran hostage crisis between 1979 and 1981. Fifty-two Americans were taken hostage in the U.S. Embassy in Tehran and held in captivity by the Ayatollah Khomeini and his followers for the ensuing 444 days in the newly-established Islamic Republic of Iran. They were brutalized by their captors and the pain and suffering of these brave Americans and their families throughout that ordeal cannot be over-estimated.

Incredibly, the U.S. Justice and}
united as a Nation in a war against ter-
rorism and the U.S. State Department
itself continues to document and de-
clare the Government of Iran as the num-
er one state sponsor of terrorism in the
world today?
The Government of Iran has never
had to pay one cent to any of the
Americans taken hostage or their
families. If U.S. Justice and State
Department attorneys get their way, the
Gov-
ernment of Iran will never have to pay
anything and the hostages and their
families will never be given their day
in Federal court to pursue justice and
be awarded compensation.
That is why I am today introducing
legislation, The Justice for Former
U.S. Hostages in Iran Act, to prevent
this grave injustice from being com-
ounded. My bill would reaffirm the
clear intent of this Congress expressed
in four prior enactments and make
crystal clear that this group of hos-
tages and their families have the right
to pursue their Federal lawsuit. It is
rightful conclusion and to be eligible
to receive compensatory damage
awards from the Government of Iran,
should the Federal courts so determine
on the merits.
The position of the U.S. Justice and
State Departments, contrary to the
claims and interests of the American
hostages and their families, is that the
U.S. Government must honor a little-
nown executive agreement called the
Algiers Accords that Presidents Carter
and Reagan entered into in January,
1981 in order to get our hostages re-
leased from captivity inside Iran. The
Algiers Accords, among other provi-
sions, required the U.S. to immediately
transfer to Iran through
Algeria $7.9 billion in frozen assets in
exchange for the freedom of our people.
But also buried in the fine print of the
Algiers Accords is one very specific
provision which singularly strips the
hostages and their families of their
rights and flatly prohibits any of them
from ever being able to sue the Govern-
ment of Iran and make that regime pay
for their pain and suffering. Ironically,
under the terms of the Algiers Accords,
U.S. companies can take the Iranians
before an international tribunal at The
Hague and recover damages for their
lost property, but the Americans actu-
ally taken hostage and their families
alone, are prohibited from doing the
same. How can this be? It is unfair to those
American heroes and their families
who suffered the most from this hellish
experience.
The Algiers Accords is not a treaty.
It was never submitted to the Senate
for ratification for obvious reasons. It
is a shabby executive agreement that
was negotiated under extreme duress
and entered into between the executive
branch of our government and the Gov-
ernment of Iran because the Govern-
ment of Iran, at that time, was daily
threatened to put the American hostages
on trial in Iran as “spies” and
to execute them. In fact, the Algiers
Accords, from their inception, have
functioned as little more than a ran-
som pact with kidnappers acting in the
name and under the sponsorship of the
Government of Iran.
Last week, the Federal judge hearing
this case expressed a reluctance to
make a final judgment and to order the
Government of Iran to pay damages
unless the Congress takes further legis-
lative action to clearly and irrefutably
abrogate the Algiers Accords insofar as
necessary to allow the Americans held
hostage and their families to sue in
federal court and recover damages
from the Government of Iran. The next
court proceeding is this unresolved
matter has been scheduled for January
14.
I appeal to my colleagues on both
sides of the aisle to co-sponsor this leg-
islation with a sense of urgency and
fairness. Unless the Congress acts
promptly to reaffirm and clarify our
prior enactments, the U.S. Justice and
State Departments will block the only
path available to the hostages and
their families to pursue justice, to get
a federal court judgment against the
Government of Iran for its brutal and
criminal misconduct, and to require
this on-going state sponsor of inter-
national terrorism to pay for the pain,
suffering and injuries they inflicted on
Kathryn Koob and these other coura-
geous Americans.
I ask unanimous consent that the
text of the bill be printed in the
Record.
There being no objection, the bill was
ordered to be printed in the Record,
as follows:
S. 1877
Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in
Congress assembled,
SECTION 1. FEDERAL COURT JURISDICTION OF
CERTAIN CLAIMS AGAINST THE GOV-
ERNMENT OF IRAN.
(a) CAUSE OF ACTION.—Notwithstanding the
Algiers Accords, any other international
agreement, or any other provision of law, a
former Iranian hostage or any person
immediately relative thereof shall have a cause of action
for money damages against the Government of Iran for
the hostage taking and any death, suffering or injury
(including pain and suffering and financial loss) to the
former Iranian hostage resulting from the
former Iranian hostage’s period of captivity
in Iran.
(b) JURISDICTION OF THE FEDERAL COURTS.—
Notwithstanding the Algiers Accords, any other
international agreement, or any other provision of
law, the Federal court shall decline to hear or deter-
mine on the merits a claim under subsection (a) against
the Government of Iran.
(c) DEFINITIONS.—In this section:
(1) ALGIERS ACCORDS.—The term “Algiers
Accords” means the Declarations of the Gov-
ernment of Iran and make that regime pay
damages for the freedom of our people.

The Algiers Accords is not a treaty.

in the border region, while requesting authorization for the recruitment, training and retaining of bilingual health professionals, “promotor(a)’s.”

As a member of the United States Senate, I have worked very hard to improve the health of Border residents in the short term, but more important, to putting in place the infrastructure and institutions necessary to ensure a good, healthful life for our Nation’s people well into the twenty-first century.

I commend the Senator from New Mexico for his support on this issue, and I urge other Senators to join us in this effort.

I ask unanimous consent the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1878

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States-Mexico Border Health Improvement Act of 2001.”

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States-Mexico Border Area is the area located in the United States within 100 kilometers of the border between the United States and Mexico.

(2) In the United States, the United States-Mexico Border Area encompasses 46 counties in California, Arizona, New Mexico, and Texas.

(3) Presently, the United States-Mexico Border Area is experiencing explosive population growth. In the United States, this region currently has 11,500,000 residents. However, this number is expected to exceed 22,000,000 by the year 2025. The population of the region in Mexico is growing at an even faster rate. In total, the population of the communities in both countries is expected to double between the years 2020 and 2025.

(4) With 11,500,000 residents and a 2,000-mile expanse, the United States-Mexico Border Area has the population and size of a State of the United States. If the region was such a State, it would rank—

(A) last in access to health care;

(B) second in death rates (due to hepatitis);

(C) third in deaths related to diabetes;

(D) first in the number of tuberculosis cases;

(E) first in schoolchildren living in pov-

erty; and

(F) last in per capita income.

(5) In addition to the specific health problems listed in paragraph (5), hundreds of thousands of residents also face increased health risks due to being exposed to the polluted water, soil, and air of the region.

(6) Every county in the United States-Mexico Border Area in the United States has at least a partial health professional shortage area designation. Twenty-five percent of such counties have severe shortages and lack adequate primary care physicians. The shortage of dentists is also severe in many Area localities.

(7) According to GAO, the United States-Mexico Border Area contains hundreds of colonias. Colonias are substandard developments that typically lack running water, sewer systems, and electricity. Many of the residents of colonias are migrant farm-worker families.

(8) Due to the poor living conditions in the colonias, the United States-Mexico Border Area has a much higher rate of waterborne infectious diseases. The occurrence of hepatitis A, for example, is 3 times the national rate, and the occurrence of salmonella and shigella dysentery occur is 2 to 4 times the national rate.

SEC. 3. DEFINITIONS.

In this Act:

(1) UNITED STATES-MEXICO BORDER AREA.—The term “United States-Mexico Border Area” means the area located in the United States within 100 kilometers of the border between the United States and Mexico.

(2) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(3) ENVIRONMENTAL HEALTH.—The term “environmental health” means the health of Border residents in the United States-Mexico Border Area.

SEC. 4. OFFICE OF BORDER HEALTH.

(a) IN GENERAL.—There is established within the Department of Health and Human Services an Office of Border Health (referred to in this section as the “Office”).

(b) DIRECTOR.—The Secretary shall appoint a Director of the Office to administer and oversee the functions of such Office.

(c) AUTHORITY.—In overseeing the Office, the Secretary, acting through the Director—

(1) shall be responsible for the overall direction of the establishment and implementation of general policies respecting the management and operation of programs and activities of the Office;

(2) shall establish programs and activities to study and monitor border health service delivery in general, the coordination of Federal and State and Federal and local border health activities, the availability of health education available for resident residents, existing outreach for residents and the success of such outreach, border health service activities, particularly prevention, and early intervention activities, and any other activity that the Secretary determines is appropriate to improve the health of United States-Mexico Border Area residents, including the health of Native American tribes located within the primary area;

(3) shall review Federal public health programs and identify opportunities for collaboration with other Federal, State, and local efforts to address border health issues;

(4) shall coordinate activities with the United States-Mexico Border Health Commission and State offices;

(5) shall award grants to States, local governments, or other eligible entities as determined by the Secretary, in the United States-Mexico border area to address priorities and recommendations established by the Secretary; and

(6) shall carry out this section, such sums as may be necessary.

SEC. 5. UNITED STATES-MEXICO BORDER AREA ENVIRONMENTAL HEALTH PROGRAM.

(a) IN GENERAL.—The Secretary shall—

(1) establish an environmental health program that addresses health hazards along the United States-Mexico Border Area;

(2) identify and eliminate environmental health hazards;

(3) coordinate its program with any environmental health programs, if applicable, administered by the Environmental Protection Agency, the National Institute of Environmental Health Sciences, and the National Consortium for the Environment (ICE), other relevant Federal, State, and local agencies, and nongovernmental organizations;

(4) recruit and train health professionals and environmental health specialists to identify and address environmental health hazards in the United States-Mexico Border Area;

(5) support State and local public health, food safety, and building inspection agencies to address environmental hazards, including hazards existing in or around private residences in the United States-Mexico Border Area.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 6. COMMUNITY HEALTH CENTERS.

Part D of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following:

“SEC. 3301. UNITED STATES-MEXICO BORDER AREA GRANTS.

“(a) IN GENERAL.—The Secretary shall award grants to eligible entities as determined by the Secretary to establish community health centers in medically underserved areas of the United States-Mexico Border Area.

“(b) DEFINITIONS.—The term “United States-Mexico Border Area” means the area located in the United States within 100 kilometers of the border between the United States and Mexico.

“(c) APPLICATION.—An eligible entity that receives a grant under this section shall establish and fund community health centers in medically underserved areas of the United States-Mexico Border Area.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 7. NATIONAL HEALTH SERVICE CORPS.

Subsection II of the Public Health Service Act (42 U.S.C. 254d et seq.) is amended by adding at the end the following:
SEC. 339. UNITED STATES-MEXICO BORDER HEALTH SERVICE CORPS.

(a) IN GENERAL.—The Secretary shall establish a loan repayment program and recruit and develop Corps members to provide health services for United States-Mexico Border Area residents in exchange for participation in such program.

(b) PREFERENCE.—In selecting Corps members to participate, the Secretary shall give preference to pediatricians and pediatric specialists who are fluent in English and Spanish, and to applicants who agree to serve along the United States-Mexico Border Health Area for at least 2 years.

SEC. 8. PROMOTOR(A) GRANT PROGRAMS.

(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to eligible entities to establish promotora programs to recruit, train, and retain bilingual lay health advisors to deliver culturally appropriate health education and other services for medically underserved populations in the United States-Mexico Border Area.

(b) DEFINITION.—The term ‘‘eligible entity’’ means an entity located in the United States within 100 kilometers of the border between the United States and Mexico.

(c) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 10. PREVENTION AND TREATMENT OF HIV/AIDS.

(a) PROGRAM AUTHORIZED.—The Secretary shall carry out a study to review agency activities regarding reducing the spread of HIV/AIDS in the United States-Mexico Border Area.

(b) COORDINATION.—In carrying out such study, the Secretary shall coordinate activities with appropriate agencies in Mexico to develop early intervention and treatment efforts to curb the spread of HIV/AIDS.

(c) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 11. PREVENTION AND TREATMENT OF TUBERCULOSIS.

(a) PROGRAM AUTHORIZED.—The Secretary shall carry out a study to review agency activities regarding reducing the spread of tuberculosis, particularly multi-drug resistant tuberculosis, affecting the residents in the United States-Mexico Border Area.

(b) COORDINATION.—In carrying out such study, the Secretary shall coordinate activities with the Immigration and Naturalization Service and other appropriate Federal and State agencies and with appropriate agencies in Mexico to develop diagnosis, detection, and early intervention and treatment efforts to curb the spread of tuberculosis, particularly multi-drug resistant tuberculosis.

(c) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 12. CHILDREN’S HEALTH INSURANCE PROGRAM.

The Secretary shall establish a targeted campaign of public education and awareness in the United States-Mexico Border Area that is culturally relevant to the residents of that area.

SEC. 13. INTERVENTION AND TREATMENT GRANTS.

(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to eligible entities as determined by the Secretary to carry out intervention and treatment programs for diabetes.

(b) USE OF FUNDS.—An entity that receives a grant under this section shall use funds received through such grant to:

(1) develop intervention programs oriented towards increasing access to diabetes health care;

(2) increase venues and opportunities for physical activity and exercise in the border area;

(3) address obesity as a risk factor for diabetes, especially in juvenile populations;

(4) improve health choices in school nutrition; and

(5) develop diabetes networks and coalitions to encourage communities to address diabetes risk factors.

(c) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 14. CENTERS FOR DISEASE CONTROL PREVENTION.

(a) PROGRAM AUTHORIZED.—There is established within the Centers for Disease Control and Prevention a National Border Health Databank (referred to in this section as the ‘‘Network’’).

(b) DUTIES.—The Secretary shall:

(1) develop and electronically link the health surveillance, assessment, and response capabilities of the Centers for Disease Control and Prevention and all border State and local health agencies;

(2) award grants to State and local public health agencies, medical schools, schools of public health, Border Health Education Training Centers, or other entities as determined by the Secretary located in or serving the United States-Mexico Border Area for the development of border health epidemiology training programs and to build upon the existing Health Alert Network, the Information Network for Public Health Officials, and the Border Infectious Disease Surveillance System;

(3) AUTHORIZE APPROPRIATIONS.—

There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 15. BORDER AREA BREAST AND CERVICAL CANCER SCREENING.

Section 1501 of the Public Health Service Act (42 U.S.C. 300k) is amended by adding at the end the following:

‘‘1501. CONSIDERATION FOR BORDER AREA RESIDENTS.—In making grants under subsection (a), the Secretary shall set-aside certain funds described in give special consideration to any State that proposes to increase the number of United States-Mexico Border Area residents who are screened for breast and cervical cancer.’’

SEC. 16. GRANTS FOR BORDER AREA HEALTH TESTING.

(a) IN GENERAL.—The Director of the Centers for Disease Control and Prevention shall award grants to United States-Mexico Border Area State and local health agencies to upgrade public health laboratories and conduct rapid tests for disease organisms and toxic chemicals.

(b) COORDINATION.—A State or local health agency that receives a grant under this section shall, to the extent possible, coordinate its activities carried out under this section with activities carried out under programs administered by the National Laboratory Training Network.

SEC. 17. GRANTS FOR BORDER AREA HEALTH INFORMATION DISSEMINATION.

(a) PROGRAM AUTHORIZED.—The Centers for Disease Control and Prevention shall establish a National Border Health Databank (referred to in this section as the ‘‘Databank’’) to gather and retain data and other information on the health of United States-Mexico Border Area residents and on past, present, and emerging health issues in such Area.

(b) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to carry out this section, such sums as may be necessary.
at such time, in such manner, and containing such information as the Director may reasonably require.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 19. HEALTH PROMOTION ACTIVITIES.

(a) IN GENERAL.—The Secretary shall establish new, comprehensive guidelines for community- and family-oriented prevention and health promotion activities based on Guidelines under The Healthy Border 2010 Guidelines. The Secretary shall disseminate these guidelines in both English and Spanish to all United States-Mexico Border Area health professionals, utilizing all available tools, including the CDC Prevention Guidelines Database.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 20. GENERAL ACCOUNTING OFFICE.

(a) PROGRAM AUTHORIZED.—The General Accounting Office shall conduct a comprehensive study of Federal and State border health programs.

(b) CONTENT.—The study described in subsection (a) shall review border health care programs and evaluate the manner in which such programs may be improved. Such study shall also review any problematic limitations in the coordination of services in serving United States-Mexico Border Area residents.

(c) REPORT.—Not later than 1 year after the date of enactment of this section, the General Accounting Office shall prepare and submit to Congress a report describing the findings of the study described in subsection (a) and recommending certain courses of action to improve such border health care programs, with particular emphasis on recommendations for improving Federal and State border health care programs and administering agencies.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 21. GRANTS TO INCREASE RESOURCES FOR COMMUNITY WATER FLUORIDATION.

(a) IN GENERAL.—The Secretary, acting through the Director of the U.S. Mexico Border Health Commission and the Director of the Centers for Disease Control and Prevention, shall establish a demonstration project that is designed to assist rural water systems in Texas, New Mexico, Arizona and California in successfully implementing the Centers for Disease Control and Prevention water fluoridation guidelines entitled "Engineering and Administrative Recommendations for Water Fluoridation" (referred to in this section as the "EARWF").

(b) REQUIREMENTS.—

(1) COLLABORATION.—The Director of the U.S. Mexico Border Health Commission shall collaborate with the Director of the Centers for Disease Control and Prevention in developing the project under subsection (a).

(2) GENERAL USE OF FUNDS.—Amounts made available under this section shall be used to assist small water systems in improving the effectiveness of water fluoridation and to meet the recommendations of the EARWF.

(3) FLUORIDATION SPECIALISTS.—

(A) IN GENERAL.—In carrying out this section, the Secretary shall provide for the establishment of measurement and evaluation positions in each of the Dental Clinical and Preventive Support Centers through which technical assistance and training will be provided to grantees.

(B) CDC.—The Director of the Centers for Disease Control and Prevention shall appoint individuals to serve as the fluoridation specialists.

(4) IMPLEMENTATION.—The project established under this section shall be planned, implemented and evaluated over the 5-year period beginning on the date on which funds are appropriated under this section and shall be designed to serve as a model for improving the effectiveness of water fluoridation systems of small water systems.

(c) EVALUATION.—In conducting the ongoing evaluation as provided for in subsection (b)(4), the Secretary shall ensure that such evaluation includes:

(1) the measurement of changes in water fluoridation compliance levels resulting from assistance provided under this section;

(2) the identification of administrative, technical, and operational challenges that are unique to the fluoridation of small water systems;

(3) the development of a practical model that may be easily utilized by other tribal, State, county or local governments in improving the quality of water fluoridation activities; and

(4) the measurement of any increased percentage of residents who receive the benefits of optimally fluoridated water.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 22. COMMUNITY WATER FLUORIDATION.

(a) IN GENERAL.—The Secretary, acting through the Director of the U.S. Mexico Border Health Commission and the Director of the Centers for Disease Control and Prevention, shall establish a demonstration project that is designed to assist rural water systems in Texas, New Mexico, Arizona and California in successfully implementing the Centers for Disease Control and Prevention water fluoridation guidelines entitled "Engineering and Administrative Recommendations for Water Fluoridation" (referred to in this section as the "EARWF").

(b) REQUIREMENTS.—

(1) COLLABORATION.—The Director of the U.S. Mexico Border Health Commission shall collaborate with the Director of the Centers for Disease Control and Prevention in developing the project under subsection (a).

(2) GENERAL USE OF FUNDS.—Amounts made available under this section shall be used to assist small water systems in improving the effectiveness of water fluoridation and to meet the recommendations of the EARWF.

(3) FLUORIDATION SPECIALISTS.—

(A) IN GENERAL.—In carrying out this section, the Secretary shall provide for the establishment of specialist engineering positions in each of the Dental Clinical and Preventive Support Centers through which technical assistance and training will be provided to grantees.

(B) CDC.—The Director of the Centers for Disease Control and Prevention shall appoint individuals to serve as the fluoridation specialists.

(4) IMPLEMENTATION.—The project established under this section shall be planned, implemented and evaluated over the 5-year period beginning on the date on which funds are appropriated under this section and shall be designed to serve as a model for improving the effectiveness of water fluoridation systems of small water systems.

(c) EVALUATION.—In conducting the ongoing evaluation as provided for in subsection (b)(4), the Secretary shall ensure that such evaluation includes:

(1) the measurement of changes in water fluoridation compliance levels resulting from assistance provided under this section;

(2) the identification of administrative, technical, and operational challenges that are unique to the fluoridation of small water systems;

(3) the development of a practical model that may be easily utilized by other tribal, State, county or local governments in improving the quality of water fluoridation activities; and

(4) the measurement of any increased percentage of residents who receive the benefits of optimally fluoridated water.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 23. COMMUNITY-BASED DENTAL SEALANT PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Director of the Maternal and Child Health Bureau of the Health Resources and Services Administration, may award grants to eligible entities determined by the Secretary to provide for the development of innovative programs utilizing mobile van units to carry out dental sealant activities to support the care of migrant and seasonal farm workers as well as for prevention and primary care.

(b) USE OF FUNDS.—An entity shall use amounts received under a grant under subsection (a) to provide funds to eligible community-based entities to make available a mobile van unit to provide children in second or sixth grade with access to dental care and dental sealants. Such services may be provided by dental hygienists so long as a formalized plan for the referral of a child for treatment of dental problems is established.

(c) ELIGIBILITY.—To be eligible to receive funds under this section an entity shall—

(1) prepare and submit to the Secretary an application at such time and containing such information as the Secretary may require; and

(2) be a community-based entity that is determined by the Secretary to provide an appropriate entry point for children into the dental care system and be located within 100 kilometers of the United States Mexico Border.

(d) COORDINATION WITH OTHER PROGRAMS.—An entity that receives funds from a State under this section shall serve as an enrollment center for purposes of enrolling individuals to enroll in the State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) or in the State Children’s Health Insurance Program under title XXI of such Act (42 U.S.C. 1397aa et seq.).

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 24. UNITED STATES HISPANIC NUTRITION EDUCATION AND RESEARCH CENTER.

(a) ESTABLISHMENT.—The Secretary shall establish a United States Hispanic Nutrition Education and Research Center (referred to in this section as the “Center”) at a national academic health center.

(b) PURPOSE.—The general purpose of the Center shall be to undertake nutrition research and nutrition education activities that sustain and promote the health of United States Hispanics, particularly those United States Hispanics in the United States-Mexico Border Area. The Center shall serve as a national clearinghouse for research, and for data collection and information dissemination to the United States Hispanic population. In addition, the Center shall serve as an educational resource for United States Hispanic nutrition for students, universities, and academic and research institutions throughout the United States.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 1879. A bill to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of California; to the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Mr. President, I am pleased today to introduce the
“Russian River Land Act”. The purpose of this legislation is to ratify an agreement that settles a land ownership issue at the Russian River on the Kenai Peninsula in Alaska between the U.S. Forest Service, the U.S. Fish and Wildlife Service, and Cook Inlet Region, Inc., CIRI, an Alaska Native Corporation.

The legislation ratifies an agreement reached between CIRI and the agencies after three years of negotiations and it covers a part of the confluence of the Kenai and Russian Rivers in Alaska.

The area surrounding the confluence of the Russian and Kenai Rivers is rich in archaeological cultural features. It is also the site of perhaps the most heavily used public sports fishery in Alaska. Because of the archaeological resources at Russian River, Cook Inlet Region, Inc., made selections at Russian River in 1997 under the provisions of the Alaska Native Claims Settlement Act that allowed for selections of historical places and cemetery sites. The lands at the confluence are managed in part by the U.S. Forest Service and in part by the U.S. Fish and Wildlife Service.

Seeking to protect the public’s access to the sport fishery at Russian River, the two federal agencies and Cook Inlet Region, Inc., reached an agreement that requires the Federal legislation in order to become effective. Because this agreement provides for continuing ownership and management by the two Federal agencies of the vast majority of lands at Russian River, the public’s right to continue fishing remains unchanged from its current status.

I congratulate the U.S. Forest Service, the Fish and Wildlife Service and CIRI for finding a way to fulfill the intent of the Alaska Native Claims Settlement Act in a way that fully protects the interests of the public. I also congratulate all three parties on reaching final accord on the longstanding unresolved issue of land ownership at Russian River.

By Mr. WELSTON:

S. 1880. A bill to provide assistance for the relief and reconstruction of Afghanistan, and for other purposes; to the Committee on Foreign Relations.

Mr. WELSTON. Mr. President, I am introducing the Afghanistan Freedom and Reconstruction Act of 2001. This legislation is a comprehensive framework of bilateral and multilateral assistance for the humanitarian relief and long-term reconstruction and rehabilitation of Afghanistan. It is a companion to H.R. 3427, introduced by Representatives LANTOS and ACKERMAN in the House.

The last pockets of Taliban resistance are being routed, and the new interim administration of Afghanistan is set to assume power in Kabul in 2 days. Freedom is returning to Afghanistan. Its men and women are listening to music again and women are leaving their homes unescorted, cautiously optimistic about their future after enduring years of repressive rule.

Now is the time for decisive action by Congress and by the administration to demonstrate to the people of Afghanistan and throughout the Muslim world that the war against the al-Qaida and the Taliban was neither a war against Muslims, nor against ordinary Afghans. This has led the effort to eliminate the terrorist network in Afghanistan, and now it must lead the peace effort by helping the Afghans reclaim their country and rebuild their lives.

The United States did not live up to its commitment to the Afghan people after the Soviets were defeated in the 1980s. I regret to say we walked away. If we break or commitment again, Afghanistan is likely to remain an isolated incubator of terrorist activities, and regional instability will continue. We would not now be focused on Afghanistan had the events of September 11 not occurred. Those horrific events have driven home the truth that the indivisibility of human security is not just an empty slogan, but a fact, which we ignore at our peril.

The causes of the Afghan tragedy include nearly all the horrors that stalk failed states: meddling and invasion by neighboring countries; warfare leading to a takeover by brutal fanatics; oppression of a majority of the population, especially women and, finally, the Taliban’s fateful decision to host international terrorists.

The cure for Afghanistan’s agony are less obvious, but one is clear. The rival political and ethnic groups must take advantage of the historic opportunity that emerged in Bonn and make a genuine commitment to the peaceful sharing of power. They must establish a government broad and effective enough to meet the basic needs of the people. The same narrow-minded factionalism that originally left the country vulnerable to backward mullahs, greedy warlords and predatory neighbors continues to pose a threat to the country now.

One other thing is clear: the United States must lead the international community in moving quickly and decisively in a long-term commitment to the reconstruction of Afghanistan. The people of Afghanistan have endured 23 years of war and misery. The conflict has threatened international stability and placed enormous burdens on the United States economy. The Bush administration has said that it will not let Afghanistan descend into chaos. But, talk is not enough. We must act by committing significant resources. We must show Afghans that our commitments are not hollow. We must show genuine solidarity and real generosity now.

It is time to reverse more than a decade of neglect. The United States, in partnership with the international community, must be willing to make a multi-year, multinational effort to rebuild Afghanistan. Current estimates of the cost of assisting Afghanistan range from $5 billion over 5 years to $40 billion over a decade. The United States should be the lead financial contributor to the rehabilitation and reconstruction effort in Afghanistan, and we believe should contribute as much as $5 billion to this effort over the next 5 years.

The reconstruction effort must focus on education, particularly for girls, which has proven to give the greatest return for each assistance dollar. Creation of a secular society will help break the stranglehold of extremism and allow both boys and girls to make positive contributions to the development of their society. The effort must also focus on rebuilding basic infrastructure, repairing shattered bridges and roads, removing land mines, reconstructing irrigation systems and drilling wells. We must also rebuild the health infrastructure by establishing basic hospitals and village clinics.

Over the past few months, I have held a series of hearings in the Senate Foreign Relations Committee’s Subcommittee on Near Eastern and South Asian Affairs regarding the humanitarian and reconstruction needs of Afghanistan. Based on these hearings, I am convinced we must help the Afghan people live in a society where they can feed their children, live in safety and participate fully in their country’s development regardless of gender, religious belief or ethnicity.

The Afghan Freedom and Reconstruction Act of 2001 does just that. That bill:

Expresses a sense of Congress on the U.S. policy towards Afghanistan, including promoting its independence, supporting a broad-based, multi-ethnic, gender-inclusive, fully representative government, and maintaining a significant U.S. commitment to the relief, rehabilitation and reconstruction of Afghanistan.

Authorizes $400 million for humanitarian assistance to Afghanistan in fiscal year 03, including $75m for refugee assistance and $175m for food aid.

Authorizes $1.175 billion for rehabilitation and reconstruction assistance for fiscal years 2002–2006, to be distributed by USAID, with conditions for each year to ensure that benchmarks laid out in the December 5, 2001, Bonn Agreement between the various Afghan factions are being met, with assurance for agriculture, health care, education, vocational training, disarmament and demobilization, and anticorruption and good governance programs; a special emphasis on assistance to women and girls. Based on these benchmarks provided; and authority to provide some of this assistance through a multilateral fund and/or international foundation.

Authorizes the President to furnish supplemental assistance as may be necessary to finance a multilateral fund or international foundation, to assist in security, rehabilitation, and reconstruction...
efforts in Afghanistan, as described above.

States are taking this action because a 1994 Federal law to curb unsolicited telemarketing, while well intended, has not fully succeeded in protecting the families’ privacy. In fact, individual consumers must keep track of every telemarketer they have contacted to determine if a solicitation call was made in violation. There are numerous exemptions to the Federal law, as well, as because there are no penalties for calls made in “error,” it has proved difficult to enforce.

Direct Marketing Association members do not oppose the Connecticut law. It is their belief that consumers placing their name on a list would never buy a product from a telemarketer anyway, and thus the list saves telemarketers time and resources.

A legislation would take much of the burden off of consumers. At the same time, a comprehensive and universal law actually could help telemarketers by streamlining the process. The legislation we are introducing today would require the Federal Trade Commission to establish a “no sales solicitation calls” listing of consumers who do not wish to receive unsolicited calls. Although certain types of calls would be exempt, including calls from any company with whom a consumer currently does business, non-profits looking for donations, pollsters, and those publishing telephone directories, a violation of the “no call” list would be deemed an unfair or deceptive trade practice and the telemarketer could be fined.

I urge my colleagues to cosponsor this important consumer legislation and I ask that the bill be printed in the Record.

I think the chair and ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1831
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE. This Act may be cited as the “Telemarketing Practices Act of 2001”.

SEC. 2. DEFINITIONS. In this Act:

(1) CALLER IDENTIFICATION SERVICE OR DEVICE.—The term “caller identification service or device” means a telephone service or device that permits a consumer to see the telephone number of an incoming call.

(2) CHAIRMAN.—The term “Chairman” means the Chairman of the Federal Trade Commission.

(3) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(4) CONSUMER.—The term “consumer” means an individual who is an actual or prospective purchaser, lessee, or recipient of consumer goods or services.

(5) CONSUMER GOODS OR SERVICES.—The term “consumer goods or service” means an article or service that is purchased, leased, exchanged, or received primarily for personal, family, or household purposes, including stocks, bonds, mutual funds, annuities, and other financial products.

(6) MARKETING OR SALES SOLICITATION.—(A) IN GENERAL.—The term “marketing or sales solicitation” means the initiation of a telephone call made to encourage the purchase of, rental of, or investment in, property, goods, or services, that is transmitted to a person. (B) EXCEPTION.—The term does not include a call or message—(i) to a person with the prior express invitation or permission of that person; (ii) by a tax-exempt nonprofit organization; (iii) on behalf of a political candidate or political party; or (iv) to promote the success or defeat of a referendum question.

(7) STATE.—The term “State” means each of the several States of the United States and the District of Columbia.

(8) TELEPHONE SALES CALL.—(A) IN GENERAL.—The term “telephone sales call” means a call made by a telephone solicitor to a consumer for the purpose of—(i) engaging in a marketing or sales solicitation; (ii) soliciting an extension of credit for consumer goods or services; or (iii) obtaining information that will or may be used for the direct marketing or sales solicitation or exchange of or extension of credit for consumer goods or services. (B) EXCEPTION.—The term does not include a call made—(i) in response to an express request of the person called; or (ii) primarily in connection with an existing debt or contract, payment, or performance that has not been completed at the time of the call.

(9) TELEPHONE SOLICITOR.—The term “telephone solicitor” means an individual, association, corporation, partnership, limited partnership, limited liability company or other business entity, or a subsidiary or affiliate thereof, that does business in the United States and makes or causes to be made a telephone sales call.

SEC. 3. FEDERAL TRADE COMMISSION NO CALL LIST.

(a) IN GENERAL.—(A) The Commission shall—(1) establish and maintain a list of consumers who request not to receive telephone sales calls; and (2) provide notice to consumers of the establishment of the lists.

(b) STATE CONTRACT.—The Commission may contract with a State to establish and maintain the lists.

(c) PRIVATE CONTRACT.—The Commission may contract with a private vendor to establish and maintain the lists if the private vendor has maintained a national listing of consumers who request not to receive telephone sales calls, for not less than 2 years, or is otherwise determined by the Commission to be qualified.

(d) CONSUMER RESPONSIBILITY.—(1) INCLUSION ON LIST.—Except as provided in subsection (d)(2), a consumer who wishes to be included on a list established under subsection (a) shall notify the Commission in such manner as the Commission may determine to maximize the consumer’s opportunity to be included on that list.

(2) DELETION FROM LIST.—Information about a consumer shall be deleted from a list upon the written request of the consumer.

(e) UPDATE.—The Commission shall—(1) update the lists maintained by the Commission not less than quarterly with information the Commission receives from consumers; and

ida, Georgia, Idaho, Kentucky, Missouri, New York, North Carolina, Oregon, and Tennessee, have enacted similar laws.
(2) annually request a no call list from each State that maintains a no call list and update the lists maintained by the Commission at that time to ensure that the lists maintained by the Commission contain the same information contained in the no call lists maintained by individual States.

(f) FEES.—The Commission may charge a reasonable fee for providing a list.

(g) AVAILABILITY.—

(1) IN GENERAL.—The Commission shall make a list available only to a telephone solicitor.

(2) FORMAT.—The list shall be made available in printed or electronic format, or both, at the discretion of the Chairman.

SEC. 4. TELEPHONE SOLICITOR NO CALL LIST.

(a) IN GENERAL.—A telephone solicitor shall maintain a list of consumers who request not to receive telephone sales calls from that particular telephone solicitor.

(b) PROCEDURE.—If a consumer receives a telephone sales call and requests to be placed on the do not call list of that telephone solicitor, the solicitor shall—

(1) place the consumer on the no call list of the solicitor; and

(2) provide the consumer with a confirmation that the solicitor will provide notification of the request of the consumer to be placed on the no call list of that telephone solicitor.

SEC. 5. TELEPHONE SOLICITATIONS.

(a) TELEPHONE SALES CALL.—A telephone solicitor may not make or cause to be made a telephone sales call to a consumer—

(1) if the name and telephone number of the consumer appear in the then current quarterly lists made available by the Commission under section 3;

(2) if the consumer previously requested to be placed on the do not call list of the telephone solicitor pursuant to section 4; or

(3) to be received between the hours of nine o’clock a.m. and seven o’clock p.m., local time, at the location of the consumer:

(4) in the form of an electronically transmitted facsimile; or

(by use of an automated dialing or recorded message device.

(b) TELEPHONE OR TEXT MESSAGE.—A telephone solicitor shall not knowingly use any method to block or otherwise circumvent the telephone solicitor’s ability to make a list available only to a telephone solicitor.

(c) SALE OF CONSUMER INFORMATION TO TELEPHONE SOLICITORS.—

(1) IN GENERAL.—A person who obtains the name, residential address, or telephone number of a consumer from a published telephone directory or from any other source and publishes or compiles that information, electronically or otherwise, and sells or offers to sell that publication or compilation to a telephone solicitor for marketing or sales solicitation purposes, shall exclude from that publication or compilation, and from the database used to prepare that publication or compilation, the name, address, and telephone number of a consumer if the name and telephone number of the consumer appear in the then current quarterly list made available by the Commission under section 3.

(2) EXCEPTION.—A person who subscribes to a publisher of a telephone directory intended for use by the general public.

SEC. 6. REGULATIONS.

The Chairman may adopt regulations to carry out this Act that shall include—

(1) defining the availability and distribution of the lists established under section 3;

(2) notice requirements for a consumer who requests to be included on the lists established under section 3; and

(3) a schedule for the payment of fees to be paid by a person who requests a list made available under section 3.

SEC. 7. CIVIL CAUSE OF ACTION.

(a) ACTION BY COMMISSION.—

(1) UNLAWFUL TRADE PRACTICE.—A violation of section 4 or 5 is in an unfair or deceptive trade practice under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(2) CUMULATIVE DAMAGES.—In a civil action brought by the Commission under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), damages based on more than one alleged violation shall be cumulative.

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—A person or entity may, if otherwise permitted by the laws or the rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of section 4, 5, or 6 to enjoin the violation;

(B) an action for recovery for actual moneymony loss from a violation of section 4, 5, or 6; or

(C) an action under paragraphs (1) and (2).

(2) WILLFUL VIOLATION.—If the court finds that a person willfully or knowingly violated section 4, 5, or 6, the court may, in the discretion of the court, increase the amount of the award to an amount equal to the amount of the Act available under paragraph (1)(B) of this subsection and include reasonable attorney’s fees.

SEC. 8. EFFECT ON STATE LAW.

Nothing in this Act shall prohibit a State from enacting or enforcing more stringent legislation in the regulation of telephone solicitors.

SEC. 9. APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out the provisions of this Act.

By Mr. WELLSTONE (for himself, Mr. DEWINE, Mr. DAYTON, Mr. SPECETER, Mr. BAYH, Ms. MUKULSKI, and Mr. VOINOVICH):

S. 1884. A bill to amend the Emergency Steel Loan Guarantee Act of 1999, to revise eligibility and other requirements for loan guarantees under that Act, and for other purposes; to the Committee on Appropriations.

Mr. WELLSTONE. Mr. President, today I introduce, on behalf of myself and Senators DEWINE, DAYTON, SPECETER, MUKULSKI and BAYH the “Emergency Steel Loan Guarantee Amendments of 2001.” These amendments to the Steel Loan Guarantee Act of 1999 are designed to make the loan guaranty program more accessible to companies in urgent need of assistance as they attempt to recover from the devastating impacts of enormous, unfair import surges, as well as the effects of the current recession.

A strong domestic steel industry is essential to our national security. To ensure the continuing viability of this critical industry and to deal with the current crisis, we must act quickly, and we must act comprehensively.

First, the administration must provide immediate and decisive strong relief in the pending Section 201 steel import surge investigation. That relief needs to include substantial tariffs as well as quotas.

Second, we need a formula for industry-wide sharing of the huge retiree health-care cost burden resulting from the massive layoffs during the 1970's and 1980's. We must address health-care needs without undermining the ability of companies attempting to compete in an increasingly challenging marketplace. Several colleagues and I have previously introduced legislation to accomplish this, and we have urged the Administration to support us in this effort as part of a comprehensive solution to the steel crisis we face today.

Finally, companies urgently need access to capital to sustain their operations. This is precisely what the Emergency Steel Loan Guarantee Act of 1999 was designed to insure. The tireless efforts and foresight of Senator BYRD led to the creation of the Emergency Steel Loan Guarantee Board in 1999, but since then massive import surges, the current economic downturn and apparently overly-restrictive interpretations of the Board's authority have made it all but impossible for struggling steel firms to meet the Board's eligibility criteria.

The bill we introduce today is designed to address these concerns. It provides the Board with the necessary flexibility to provide these essential loan guarantees. In particular, the bill would do the following: 1. Clarify that a company that has placed its facilities on “hot idle status” is eligible to receive a loan guarantee. 2. Increase the amount of loans guaranteed with respect to a single qualified steel company to $350,000,000. 3. Permit the Steel Loan Guarantee Board to guarantee a loan where there is a fair likelihood of repayment, assuming vigorous and timely enforcement of our trade laws and general economic prosperity. 4. Provide flexibility to the Board in structuring security arrangements to allow for loan guarantees. 5. Expand the scope of lenders permitted to participate in a loan subject to the guarantee to include public and private institutions, including the company’s existing lenders. 6. Require the Board to adopt form of guarantee regulations no less favorable than those used in other government programs, including the Export-Import bank. 7. Include as a requirement for loan guarantees that the company’s business plan maximize both retention of jobs and capacity consistent with the long-term economic viability of the company. 8. Increase the loan guarantee level for all loans to 95 percent.

The recent economic conditions facing the U.S. iron and steel industry are of particular concern in Minnesota. We are extremely proud of our State’s history as the Nation’s largest producer of iron ore. The taconite mines on the Iron Range in Minnesota and in the sister State of Michigan have provided key raw materials to the Nation’s steel producers for over a century.
You will not find a harder-working, more committed group of workers anywhere in this country than you find in the iron ore and taconite industry. This is a group of people who work under the toughest of conditions, are absolutely committed to their families, and who will work through their marriages, through no fault of their own. Unfairly traded iron ore, semi-finished steel and finished steel products are taking their jobs.

Earlier this year, LTV Steel Mining Company halted production at its Hoyt Lakes, MN mine, leaving 1,400 workers out of good paying jobs and affecting nearly 5,000 additional workers. We need to act and we need to act now. Workers in the steel, iron ore and taconite industries want nothing more than the chance to do their jobs. The bill we introduce today is one part of the answer. I urge my colleagues to join with me in moving this legislation as quickly as possible.

Mr. President, I rise today with my colleague and friend from Minnesota, Senator Wellstone, to introduce the Emergency Steel Loan Guarantee Amendments Act. This legislation would improve the Emergency Steel Loan Guarantee program.

Our steel industry is on the brink of financial collapse because of unfair and illegal trade practices. To date, some 25 U.S. steel companies, including LTV Steel in Cleveland, Ohio, have filed bankruptcy. These companies employ thousands of workers and are responsible for providing benefits to their retirees. If our steel industry goes under, the consequences to our nation, and particularly Ohio, would be grave. Steel is vitally important to our military and economic security. During times of crisis, the industry has been a source of strength for America. With our economy sputtering and our nation fighting a new war on terrorism, we need a healthy steel industry now more than ever.

In 1998, more than 41 million tons of steel found their way to U.S. markets. This was an 83 percent increase over the 23 million net ton average for the previous eight years. While in 1999 some claimed that the steel import crisis was over, they were soon reminded how volatile the situation really is. In 2000, 37.8 million tons of steel flooded U.S. markets. This was almost as high as the 1999 record level.

For almost 50 years, foreign steel producers have received direct and often illegal assistance from their governments in the form of subsidies or market intervention. This has contributed to a worldwide overproduction of steel. In 1999, the Organization for Economic Cooperation and Development, OECD, found that world steel making capacity remained “well-above” production between 1985 and 1999. Much of this excess steel has been shipped to the United States and priced well below U.S. steel. In some cases, these imports were dumped, subsidized, and shipped in such increased quantities as to inflict serious financial harm to U.S. producers.

As a key supporter of the Emergency Steel Loan Guarantee program, I believe that we must modify the program to make it work better. It is true that we have changed it this year; extending its life, raising the portion of the loan covered by the guarantee from 85 percent to in some cases 95 percent. However, we need to do more. The Wellstone/DeWine legislation would clarify that a company, such as LTV, which places facilities on “hot idle status” is eligible to receive a loan guarantee. It would also increase the amount of loans guaranteed with respect to a single qualified steel company to $350,000,000; permit the Steel Loan Guarantee Board to guarantee a loan where there is a fair likelihood of repayment, assuming vigorous and timely enforcement of our trade laws and general economic prosperity; provide flexibility to the Board in structuring the loan to maximize participation of lenders; expand the scope of lenders permitted to participate in a loan subject to the guarantee to include public and private institutions, including the company’s existing lenders; require the Board to adopt a form of guarantee regulations no less favorable than those used in other government programs, including the Export-Import bank, and; increase the loan guarantee level for all loans to 95 percent.

We in the steel community are grateful for the President’s leadership in initiating the Section 201 trade investigation, and we were generally pleased with the International Trade Commission’s recommendations. I was pleased to see the Customs Service proceeding in a timely manner with the release of dumping and subsidy offset payments to the victims of illegal trade practices, including LTV, under the Continued Dumping and Subsidy Offset Act. However, without these changes to the Emergency Steel Loan program, many of our steel companies will not survive. We have an opportunity to send a powerful message to the world that America is standing by our steel industry in its time of need just as the industry has stood by America in her time of need.

By Mr. DODD:

S. 1886. A bill to establish the elderly housing plus support demonstration program to modernize public housing for elderly and disabled persons; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DODD:

S. 1886. A bill to amend the Internal Revenue Code of 1986 to allow a business credit for supported elderly housing; to the Committee on Finance.

Mr. DODD. Mr. President, I rise today to introduce two bills that will help address a growing problem in America, our ability to provide safe and affordable housing that meets the needs of older Americans. Currently there are 33 million Americans over 65 years old. That number will double within the next thirty years. By 2030, 20 percent of the U.S. population will be over 65 years old.

The bill that I am introducing will promote the development of assisted living programs to provide a wide range of services, including medical assistance, housekeeping services, hygiene and grooming, and meals preparation. Providing these services will improve the quality of life of older Americans greater opportunities to decide for themselves where they live and how they exercise their independence.

The first bill I am introducing is the “Elderly Plus Supportive Health Support Demonstration Act,” which will provide Federal grants to allow public housing authorities around the country to develop new strategies for providing better housing for senior citizens. Nearly one third of all public housing occupants are 62 years old or older. This figure has been steadily growing in recent years and will undoubtedly continue to grow in the future. It is critically important that we remain committed to providing low-income seniors with safe and affordable housing.

Unfortunately, as we examine the public housing stock across the country, we find a bleak situation. Over 66 percent of existing public housing units lack even the most basic accessibility features. Nearly half of our nation’s public housing stock was built more than 30 years ago. Few units are designed to meet the needs of older Americans. For example, too few of our housing units are equipped with equipment and features that facilitate mobility for those in wheelchairs. Even such simple things as having a kitchen counter top that can be reached from a wheelchair may make the difference between a senior being able to stay in her home or having to leave, often to be sent to an institution where seniors lose independence and control over their lives. The “Elder Housing Plus Health Support Demonstration Act” will give public housing authorities the tools they need to improve our public housing stock so our seniors will not be prematurely forced out of their homes.

The second bill that I am introducing is the “Assisted Living Tax Credit Act,” which will provide a tax incentive to help construct assisted living facilities for low- and moderate-income Americans. The current stock of assisted living facilities is inadequate to meet demand in certain places around the country and the stock of moderately-priced units is even tighter. The demand for assisted living units will only increase as our population ages and this highly desired housing choice should be available to all Americans. The “Assisted Living Tax Credit Act” will help make assisted living arrangements available to those who have previously been priced out of the market.

The scariness of affordable assisted living units has social costs that we
must consider as we set national housing policies for the future. Often, the cost of taking care of an aging family member can be devastating to American families. Too often, working men and women are torn between the need to maintain their jobs and the desire to provide the best possible care to their aging family members.

Advances in medicine are allowing us to live longer, healthier lives. Longevity is a great blessing, but it also poses significant challenges for individuals and society at large. One of the largest challenges we will face in the decades ahead is the challenge of defining new kinds of housing that respond to the needs of our growing elderly population.

It is my hope that the bills I am introducing today will generate earnest discussion on these important matters and will ultimately lead to action to ensure that every American senior can live in security and dignity. I ask unanimous consent that the text of the 'Elderly Housing Plus Health Support Demonstration Act' be printed in the RECORD. I also ask unanimous consent that the 'Assisted Living Tax Credit Act' be printed in the RECORD.

S. 1885

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. This Act may be called the "Elderly Housing Plus Health Support Demonstration Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) there are not fewer than 34,100,000 Americans who are 65 years of age and older, and persons who are 85 years of age or older comprise almost one-quarter of that population;

(2) the Bureau of the Census of the Department of Commerce estimates that, by 2030, the elderly population will double to 70,000,000 persons;

(3) according to the Department of Housing and Urban Development report "Housing Our Elders—A Report Card on the Housing Conditions and Needs of Older Americans", the largest and fastest growing segments of the elderly population include many people who have historically been vulnerable economically and in the housing market—women, minorities, and people over the age of 85;

(4) many elderly persons are at significant risk with respect to the availability, stability, and accessibility of affordable housing;

(5) one third of public housing residents are approximately 62 years of age or older, making public housing the largest Federal housing program for senior citizens;

(6) the elderly population residing in public housing is older, poorer, frailer, and more racially diverse than the elderly population residing in other assisted housing;

(7) most public housing developments for the elderly, including those that also serve the disabled, were constructed before 1970 and are in dire need of major rehabilitative improvements to provide new roofs, energy-efficient heating, cooling systems, accessible units, and up-to-date safety features;

(8) many of the dwelling units in public housing developments for elderly and disabled persons are inaccessible to residents with physical limitations, do not comply with the requirements under the Americans with Disabilities Act of 1990, or lack railings, grab bars, emergency call buttons, and wheelchair accessible ramps;

(9) a study conducted for the Department of Housing and Urban Development found that the cost and needs for public housing for elderly and disabled persons exceeds $5,700,000,000;

(10) a growing number of elderly and disabled persons face unnecessary institutionalization because of the absence of appropriate supportive services and assisted living facilities in their residence;

(11) for many elderly and disabled persons, independent living in a non-institutionalization setting is a preferable housing alternative, requires ongoing medical and personal care, and would allow public monies to be more efficiently used to provide necessary services for such persons;

(12) the elderly population residing in public housing developments for the elderly and disabled and to increase their access to supportive services;

(13) to provide for elderly and disabled public housing residents a readily available choice in living arrangements by utilizing the services of service coordinators and providing a continuum of care that allows such residents to age in place;

(14) to incorporate congregate housing service programs more fully into public housing operations and activities;

(b) PURPOSES.—The purposes of this Act are—

(1) to establish a demonstration program to make competitive grants to provide state-of-the-art health-supportive housing with assisted living opportunities for elderly and disabled persons;

(2) to provide funding to enhance, make safe and accessible, and extend the useful life of public housing developments for the elderly and disabled and to increase their access to supportive services;

(3) to provide for elderly and disabled public housing residents a readily available choice in living arrangements by utilizing the services of service coordinators and providing a continuum of care that allows such residents to age in place;

(4) to incorporate congregate housing service programs more fully into public housing operations and activities;

(5) to accomplish such purposes and provide such funding under existing provisions of law that currently authorize all activities to be conducted under the program.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELDERLY AND DISABLED FAMILIES.—The term "elderly and disabled families" means families in which 1 or more persons is an elderly person or a person with disabilities.

(2) ELDERLY PERSON.—The term "elderly person" means a person who is 62 years of age or older.

(3) PERSON WITH DISABILITIES.—The term "person with disabilities" has the same meaning as in section 2(6)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)(A)).

(4) PUBLIC HOUSING AGENCY.—The term "public housing agency" has the same meaning as in section 3(b)(6)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)(A)).

(5) SECRETARY.—The term "Secretary" means the Secretary of Housing and Urban Development.

SEC. 4. AUTHORITY FOR ELDERLY HOUSING PLUS HEALTH SUPPORT DEMONSTRATION PROGRAM.
The Secretary shall establish an elderly housing plus health support demonstration program (referred to in this Act as the "demonstration program") in accordance with this Act to provide coordinated funding to public housing projects for elderly and disabled residents, and to provide for (a) rehabilitation or reconfiguration of such projects; (b) the provision of services in such projects for supportive services and community and health facilities; (c) the provision of service coordinators for such projects; and (d) the provision of congregate services programs in or near such projects.

SEC. 5. PARTICIPATION.

(a) APPLICATION AND PLAN.—To be eligible for participation in the demonstration program, a public housing agency shall submit to the Secretary—

(1) an application, in such form and manner as the Secretary shall require;

(b) SELECTION AND CRITERIA.—

(1) SELECTION.—The Secretary shall select public housing agencies for participation in the demonstration program based upon a competition among public housing agencies that submit applications for participation.

(b) CRITERIA.—The competition referred to in subparagraph (1) shall be based upon—

(A) the extent of the need for rehabilitation or reconfiguration of the public housing projects of an agency that are identified in the plan of the agency pursuant to subsection (a)(2)(A);

(B) the past performance of an agency in obtaining non-public housing resources to assist such residents given the opportunities in the locality;

(C) the effectiveness of the plan of an agency in creating or expanding services described in subsection (a)(2)(B).

SEC. 6. CONFIGURATION AND CAPITAL IMPROVE-MENTS.

(a) GRANTS.—The Secretary shall make grants to public housing agencies selected for participation under section 5, to be used only—

(1) for capital improvements to rehabilitate or reconfigure public housing projects identified in the plan submitted under section 5(a)(2)(A); and

(2) to provide for community and health-related facilities primarily for the residents of projects identified in the plan submitted under section 5(a)(2)(A).

(b) SOURCE OF FUNDS.—Grants shall be made from funds made available for the demonstration program under section 5(a)(2)(A).

(c) INAPPLICABILITY OF OTHER PROVISIONS.— Section 9(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437g(c)(1)) does not apply to grants made under this section.

(d) ALLOCATION.—Grants funded in accordance with this section shall—
(1) be allocated among public housing agencies selected for participation under section 5 on the basis of the criteria established under section 9(b)(2); and
(2) such amounts and subject to such terms as the Secretary shall determine.
(c) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated for the demonstration program, to make grants in accordance with this section—
(1) $3,000,000 for fiscal year 2003; and
(2) such sums as may be necessary for fiscal years 2004 and each subsequent fiscal year.

SEC. 7. SERVICE COORDINATORS.
(a) GRANTS.—
(1) IN GENERAL.—The Secretary shall make grants to public housing agencies selected for participation under section 5, to be used only—
(A) for public housing projects for elderly and disabled families for whom capital assistance is provided under section 6; and
(B) to provide service coordinators and related activities identified in the plan of the agency pursuant to section 6(a)(2), so that the residents of such public housing projects will have improved and more economical access to services that support the health and well-being of the tenants.
(2) SOURCE OF FUNDS.—Grants shall be made under this section from funds made available for the demonstration program in accordance with subsection (c).

(3) INAPPLICABILITY OF OTHER PROVISIONS.—
Section 9(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(1)) does not apply to grants made under this section.

(b) ALLOCATION.—The Secretary shall provide a grant pursuant to this section, in an amount not to exceed $100,000, to each public housing agency that is selected for participation under section 5.

(c) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated for the demonstration program, to make grants in accordance with this section—
(1) $100,000,000 for fiscal year 2002; and
(2) such sums as may be necessary for fiscal years 2003 and each subsequent fiscal year.

SEC. 8. CONGREGATE HOUSING SERVICES PROGRAM.
(a) GRANTS.—
(1) IN GENERAL.—The Secretary shall make grants to public housing agencies selected for participation under section 5, to be used only—
(A) for public housing projects for elderly and disabled families for whom capital assistance is provided under section 6; and
(B) to provide service coordinators and related activities identified in the plan of the agency pursuant to section 6(a)(2), so that the residents of such public housing projects will have improved and more economical access to services that support the health and well-being of the tenants.
(2) SOURCE OF FUNDS.—Grants shall be made under this section from funds made available for the demonstration program in accordance with subsection (c).

(3) INAPPLICABILITY OF OTHER PROVISIONS.—
Section 9(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(1)) does not apply to grants made under this section.

(b) ALLOCATION.—The Secretary shall provide a grant pursuant to this section, in an amount not to exceed $150,000, to each public housing agency that is selected for participation under section 5, to make grants in accordance with this section—
(1) $3,000,000 for fiscal year 2003; and
(2) such sums as may be necessary for fiscal years 2004 and each subsequent fiscal year.

SEC. 9. SAFEGUARDING OTHER APPROPRIATIONS.
Amounts authorized to be appropriated under this Act are in addition to any amounts authorized to be appropriated under any other provision of law, or otherwise made available in appropriations Acts, for rehabilitation of public housing projects, for service coordinators for public housing projects, or for congregate housing services program.

8. 1886
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Assisted Living Tax Credit Act”.

SEC. 2. SUPPORTED ELDERLY HOUSING CREDIT.
(a) IN GENERAL.—In calculating Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

SEC. 42A. SUPPORTED ELDERLY HOUSING CREDIT.
(a) AMOUNT OF CREDIT.—For purposes of section 38, the amount of the supported elderly housing credit determined under this section for any taxable year in the credit period shall be an amount equal to the sum of—

(1) a 9 percent of the qualified basis of each qualified supported elderly building, plus
(2) 9 percent of the qualified basis with respect to any qualified supported elderly building providing qualified supported elderly services.
(b) QUALIFIED BASIS; QUALIFIED SUPPORTED ELDERLY BUILDING; CREDIT PERIOD.
For purposes of this section—

(1) QUALIFIED BASIS.—
(A) DETERMINATION.—The qualified basis of any qualified supported elderly building for any taxable year is an amount equal to—

(i) the applicable fraction (determined as of the close of such taxable year) of
(ii) the eligible basis of such building (determined without regard to any applicable income limitation applicable to such building or the gross rent in a taxable year, plus
(2) the period of 10 taxable years beginning with
(A) the taxable year in which the building is placed in service, or
(B) the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified supported elderly building for the 1st year of such period.

SEC. 42B. SUPPORTED ELDERLY HOUSING CREDITS
(b) APPLICABLE FRACTION.—For purposes of subparagraph (A), the term ‘applicable fraction’ means the fraction—

(i) the numerator of which is the number of supported elderly units in the building, and
(ii) the denominator of which is the number of residential units (whether or not occupied) in such building.

(c) UNIT FRACTION.—For purposes of subparagraph (B), the term ‘unit fraction’ means the fraction—

(i) the numerator of which is the total floor space of the supported elderly units in such building, and
(ii) the denominator of which is the total floor space of the residential units (whether or not occupied) in such building.

(d) FLOOR SPACE FRACTION.—For purposes of subparagraph (C), the term ‘floor space fraction’ means the fraction—

(i) the numerator of which is the floor space of the supported elderly units in such building, and
(ii) the denominator of which is the total floor space of the residential units (whether or not occupied) in such building.

(e) QUALIFIED BASIS TO INCLUDE PORTION OF BUILDING USED TO PROVIDE QUALIFIED SUPPORTED ELDERLY SERVICES.—In the case of a qualified supported elderly building described in subsection (a)(2), the qualified basis of such building for any taxable year shall be increased by the less of—

(1) so much of the qualified basis of such building as is used through the year to provide qualified supported elderly services, or
(2) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(f) QUALIFIED SUPPORTED ELDERLY BUILDING.—The term ‘qualified supported elderly building’ means any building which is part of a qualified supported elderly housing project at all times during the period beginning on the 1st day in the compliance period on which such building is part of such a project, and
(2) ending on the last day of the compliance period with respect to such building.

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the Stewar B. McKinney Homeless Assistance Act as in effect on the date of the enactment of this sentence).

(3) CREDIT PERIOD.—The term ‘credit period’ means, with respect to any building, the period of 10 taxable years beginning with—

(A) the taxable year in which the building is placed in service, or
(B) the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified supported elderly building for the 1st year of such period.

The election under subparagraph (B), once made, shall be irrevocable.

(4) APPLICABLE RULES.—
(A) FOR TREATMENT OF CERTAIN REHABILITATION EXPENDITURES AS SEPARATE NEW BUILDINGS, SUBSECTION (E) OF SECTION 42, FOR RULES REGARDING THE APPLICATION OF THE CREDIT PERIOD, PARAGRAPH (2) THROUGH (5) OF SECTION 42(f) APPLY.

(c) QUALIFIED SUPPORTED ELDERLY HOUSING PROJECT.—For purposes of this section—

(1) IN GENERAL.—The term ‘qualified supported elderly housing project’ means any project to rehabilitate residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 40-90 TEST.—The project meets the requirements of the subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-90 TEST.—The project meets the requirements of the subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 90 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) RENT-RESTRICTED UNITS.—
(A) IN GENERAL.—For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 65 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) shall not be less than such limitation for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified supported elderly housing project.

(B) GROSS RENT.—For purposes of subparagraph (A), gross rent means—

(i) includes any fee for a qualified supported elderly service which is paid to the
The owner of the unit (on the basis of the supported elderly status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof).

(2) The term ‘qualified supported elderly service’ means any services provided under a program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subparagraph (B)(iii), such term includes assistance to individuals in locating and retaining permanent housing.

(3) DATE OF MEETING REQUIREMENTS.—

(a) In general.—In determining whether a building shall be treated as a qualified supported elderly building only if the project of which such building is a part is approved under any of the provisions in section 515 of the Housing Act of 1949.

(b) Buildings which rely on later buildings for qualification.—

(i) In general.—In determining whether a building shall be treated as a qualified supported elderly building, the taxpayer may take account of any building placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elected to apply clause (ii) with respect to each additional building taken into account.

(ii) Buildings in the case of a building which the taxpayer elects to take account under clause (i), the period under subparagraph (A) for such building shall be the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service.—For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the date such building is placed in service.

(4) SPECIAL RULE.—A building—

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified supported elderly building in the case of a building which the taxpayer elects to take account under clause (i), the period under subparagraph (A) for such building shall be the 12-month period applicable to the prior building.

(5) Special rule where de minimis equity contribution.—Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the building (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such building if—

(a) amounts so held are refunded to the tenant on the occasion of his occupancy of a unit in the project, and

(b) the purchase of the unit is not permitted until after the compliance period with respect to the building in which the unit is located.

(6) Waiver of certain de minimis errors and recertifications.—Application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (1) in the case of any de minimis error in compliance with paragraph (1) of section 42(h).

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by supported elderly tenants.

(7) Limitation on aggregate credit allowable with respect to projects located in a state.—

(A) Credit may not exceed credit amount allocated to building.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the supported elderly housing credit dollar amount allocated to such building under rules similar to the rules of paragraph (2) other than subparagraph (F).

(8) Allocated credit amount to apply to all taxable years ending during or after credit allocation year.—Any supported elderly housing credit dollar amount allocated to any building for any calendar year shall—

(A) apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall be the aggregate supported elderly housing credit dollar amount which a
supported elderly housing credit agency may allocate for any calendar year is the portion of the State supported elderly housing credit ceiling allocated under this paragraph for such calendar year.

"(B) STATE CEILING INITIALLY ALLOCATED TO STATE SUPPORTED ELDERLY HOUSING CREDIT AGENCIES.—Except as provided in subparagraphs (A), (C), and (D) of this subsection, the State supported elderly housing credit ceiling for each calendar year shall be allocated to the supported elderly housing credit agency of such State. If there is more than one supported elderly housing credit agency of a State, all such agencies shall be treated as a single agency.

"(C) STATE SUPPORTED ELDERLY HOUSING CREDIT CEILING.—The State supported elderly housing credit ceiling applicable to any State and any calendar year shall be an amount equal to the sum of—

(i) the unused State supported elderly housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) $1.25 multiplied by the State population,

(iii) the amount of State supported elderly housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State supported elderly housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clause (i) through (iv) over the aggregate supported elderly housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State supported elderly housing credit ceiling returned in the calendar year equals the supported elderly housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under section 42(h)(1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified supported elderly housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is canceled by mutual agreement between the State supported elderly housing credit agency and the allocation recipient.

"(D) UNUSED SUPPORTED ELDERLY HOUSING CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

(i) IN GENERAL.—The unused supported elderly housing credit carryover of a State for any calendar year shall be assigned by the Secretary for allocation among qualified states for the succeeding calendar year.

(ii) UNUSED SUPPORTED ELDERLY HOUSING CREDIT CARRYOVER.—For purposes of this subparagraph, the unused supported elderly housing credit carryover of a State for any calendar year is the excess (if any) of—

(i) the aggregate supported elderly housing credit dollar amount allocated for such year,

(ii) the aggregate supported elderly housing credit dollar amount allocated for any calendar year, over

(iii) FORMULA FOR ALLOCATION OF UNUSED SUPPORTED ELDERLY HOUSING CREDIT CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to be the same ratio to the aggregate unused supported elderly housing credit carryovers of all States for the preceding calendar year as such State’s population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, pop-

ulation shall be determined in accordance with section 146(e).

"(IV) QUALIFIED STATE.—For purposes of this subparagraph, the term ‘qualified State’ means, with respect to a calendar year, any State—

(i) which allocated its entire State supported elderly housing credit ceiling for the preceding calendar year to the aggregate supported elderly housing credit ceiling of a State, all such agencies shall be treated as a single agency.

(ii) the unused State supported elderly housing credit ceiling (if any) of such State for the preceding calendar year,

(iii) which allocated its entire State supported elderly housing credit ceiling for such calendar year to the aggregate supported elderly housing credit ceiling applicable to such State for any calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

"(V) INTERSTATE SET-ASIDES.—For purposes of this paragraph, the term ‘interstate set-aside’ means an amount allocated under this paragraph to a qualified nonprofit organization for purposes of subparagraph (A), a qualified supported elderly housing project is described in this subparagraph if a qualified nonprofit organization is to materially participate (within the meaning of section 409(h)) in the development and operation of the project throughout the compliance period.

"(C) QUALIFIED NONPROFIT ORGANIZATION.—For purposes of this paragraph, the term ‘qualified nonprofit organization’ means any organization if—

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a).

(ii) such organization is determined by the State supported elderly housing credit agency not to be affiliated with or controlled by a for-profit organization; and

(iii) 1 of the exempt purposes of such organization includes the fostering of supported elderly housing.

"(D) TREATMENT OF CERTAIN SUBSIDIARIES.—

(i) IN GENERAL.—For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) QUALIFIED CORPORATION.—For purposes of clause (i), the term ‘qualified corporation’ means any corporation if—

(A) the total amount of such corporation’s stock held by 1 or more qualified nonprofit organizations is 100 percent of the stock of such corporation.

(B) no other corporation holds stock of such corporation.

(C) no right to receive dividends from such corporation exists.

(D) no right to the earnings of such corporation exists.

(E) the corporation is a qualified nonprofit organization.

"(E) STATE MAY NOT OVERRIDE SETASIDE.—Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

"(F) STATE MAY PROVIDE FOR DIFFERENT ALLOCATION.—Rules similar to the rules of section 146(e) (other than paragraph 2(B) thereof) shall apply for purposes of this paragraph.

"(G) POPULATION.—For purposes of this paragraph, population shall be determined in accordance with section 146(e).

"(H) CREDIT FOR BUILDINGS FINANCED BY TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP NOT TAKEN INTO ACCOUNT.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

(i) such obligation is taken into account under section 146(h)(3)(C).

(ii) the State may provide for different allocation.—Rules similar to the rules of section 146(e) shall apply for purposes of this paragraph.

"(I) BUILDINGS ELIGIBLE FOR CREDIT ONLY IF MINIMUM LONG-TERM COMMITMENT TO SUPPORTED ELDERLY HOUSING MEETS THE TEST.—

(A) GENERAL.—Under rules similar to the rules under section 42(h)(6), no credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended supported elderly housing commitment is in effect as of the end of such taxable year.

(B) EXTENDED SUPPORTED ELDERLY HOUSING COMMITMENT.—For purposes of this paragraph, the term ‘extended supported elderly housing commitment’ means a commitment given the term ‘extended low-income housing commitment’ under section 42(h)(6).

"(J) APPLICATION OF CERTAIN RULES.—For purposes of this paragraph, rules similar to the rules of section 42(h)(7) shall apply.

"(K) OTHER DEFINITIONS.—For purposes of this subsection—

(A) SUPPORTED ELDERLY HOUSING CREDIT AGENCY.—The term ‘supported elderly housing credit agency’ means any agency authorized to carry out this subsection.

(B) CONSTRUCTION OF TAKINGS.—The term ‘State’ includes a possession of the United States.

"(L) SECTIONS REFERRED TO.—For purposes of this section—

(I) COMPLIANCE PERIOD.—The term ‘compliance period’ means, with respect to any building of the first 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(II) SUPPORTED ELDERLY UNIT.—The term ‘supported elderly unit’ means any unit in a building if—

(i) such unit is rent-restricted (as defined in subsection (c)(2)), and

(ii) the individual occupying such unit meets the income limitation applicable under subsection (c)(1) to the project of which such building is a part.

"(IV) TREATMENT OF CERTAIN SUBSIDIARIES.—

(i) IN GENERAL.—A unit shall not be treated as a supported elderly unit unless the unit...
is suitable for occupancy and used other than on a transient basis.

(ii) SUITABILITY FOR OCCUPANCY.—For purposes of clause (i), the suitability of a unit for occupancy determined by regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) TRANSITIONAL HOUSING FOR HOMELESS.—For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building:

(I) which is used exclusively to facilitate the temporary housing of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this Act) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (d)(5)(C)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) SINGLE-ROOM OCCUPANCY UNITS.—For purposes of clause (i), a single-room occupancy unit shall be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) OWNERSHIP.—When building housing 4 or fewer units.—In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a supported elderly unit if the units in such building are owned by—

(I) any individual who occupies a residential unit in such building, or

(II) a person related to the owner of the building (within the meaning of section 1224 of the Internal Revenue Code of 1986) who is related to the owner of the building (within the meaning of section 1224 of the Internal Revenue Code of 1986) to the extent that such individual occupies a residential unit in such building.

(2) Owner-occupied building having 4 or fewer units eligible for credit where development plan.—

(I) IN GENERAL.—Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (d)(5)(C)).

(ii) LIMITATION ON CREDIT.—In the case of a building subject to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the lesser of—

(A) the amount of the credit determined under subsection (a) for such building; and

(B) the amount of the credit determined under subsection (a) for such building if the units in such building are occupied as of the 1st day it is not rented.

(3) Application to estates and trusts.—In the case of an estate or trust, the amount of the credit determined under subsection (a) for such building shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

4. IMPACT OF TENANTS RIGHT OF 1ST REFUSAL TO ACQUIRE PROPERTY.—

(A) IN GENERAL.—No Federal income tax benefit under this chapter is payable to the taxpayer with respect to any qualified supported or supported elderly housing for which reason of a right of 1st refusal held by the tenants (in cooperative, condominium, or otherwise) or the management corporation of such building or by a qualified nonprofit organization (as defined in subsection (d)(5)(C)) or government agencies, the property at the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (E).

(B) MINIMUM PURCHASE PRICE.—For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

(i) the principal amount of outstanding indebtedness secured by the building (other than any indebtedness incurred within the 5-year period ending on the date of the sale to the tenant), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (I).

(i) RECAPTURE OF CREDIT.—

(I) IN GENERAL.—If—

(A) as of the close of any taxable year in the case of any supported or supported elderly housing unit the amount of the qualified basis of any building with respect to the taxpayer is less than.

(B) the amount of such basis as of the close of the preceding taxable year, then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount determined under rules similar to the rules of section 42(j).

(ii) APPLICATION OF AT-RISK RULES.—For purposes of this section, rules similar to the rules of section 42(e) shall apply.

(B) RESIDENTS OF AFFORDABLE HOUSING PROJECTS AND SUPPORTED ELDERLY HOUSING CREDIT AGENCIES.—For purposes of this section, subsection (b) applies. "Owner-occupied" shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) dealing with—

(A) any individual who occupies a residential unit in such building, or

(B) a person related to the owner of the building (within the meaning of section 1224 of the Internal Revenue Code of 1986) who is related to the owner of the building (within the meaning of section 1224 of the Internal Revenue Code of 1986) to the extent that such individual occupies a residential unit in such building.

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) the avoidance of the rules of this section, and

(i) granting the opportunity for supported elderly housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, and

(ii) the availability of regulations and other administrative guidance from the Secretary.

(3) Reconciliation.—

(a) CURRENT YEAR BUSINESS CREDIT CALCULATION.—Section 42(k) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (12), by striking the period at the end of subparagraph (b)(1), and inserting "plus", and by adding at the end the following:

(14) the supported elderly housing credit determined under section 42A(a)

(b) LIMITATION ON CAREBACK.—Subsection (d) of section 39 of the Internal Revenue Code of 1986 (relating to carrying back business credit available under section 42A) is amended by adding at the end the following:

(10) NO CARRYBACK OF SUPPORTED ELDERLY HOUSING CREDIT BEFORE EFFECTIVE DATE.—No carryback of supported elderly housing credit before the date of the enactment of this Act.

(c) CONFORMING AMENDMENTS.—

(1) Section 55(c)(1) of the Internal Revenue Code of 1986 is amended by inserting "or subsection (f) or (g) of section 42A" after "section 42".

(2) Subsections (C) of section 55(d) and (j)(1) of section 42A are each amended by inserting "or 42A" after "section 42".

(3) Section 774(b)(4) of such Code is amended by striking "and" at the end of subparagraph (a), by striking subparagraph (a) as a separate section, and by inserting after paragraph (10) the following:

(11) the supported elderly housing credit determined under section 42A.

(4) Section 774(b)(4) of such Code is amended by inserting "or 42A"

(e) CLERICAL AMENDMENT.—The table of sections for part D of title IV of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 42 a following:

Sec. 42A. Supported elderly housing credit.
Program in a fundamentally different way from contracts under the New Construction, Substantial Rehabilitation, and Loan Management Set-Aside programs.

Section 524(b)(3) of MAHRA provides a separate and distinct formula for calculating renewal rents for expiring contracts under the Moderate Rehabilitation program. The formula is more restrictive than the formula applicable to expiring contracts under other Section 8 programs, based on an assumption that the debt service payments on the original moderate rehabilitation financed by the project must be continued by the project’s mortgagor. The result is a higher renewal rent under the Section 8 program, thereby increasing the burden on the project. The only feasible avenue to financial survival of this facility, much less to its continued ability to serve its special population, is availability of “exception” project treatment.

Maison Marquette is a 128-unit congregate care facility located in Lewiston. The building was built originally in the 1920s as a nursing home on a hospital campus by the Sisters of Charity Health System.

Following construction of a new nursing home on the campus in the early 1980s, the Health System ground leased the 136-unit Moderate Rehabilitation project to a for-profit development group which renovated the facility into several discrete uses, including a kitchen and cafeteria facility for the health care campus, a warehousing facility for the hospital, and 128 one-bedroom congregate care units. The renovation was assisted by a 110-unit Moderate Rehabilitation award by the Lewiston Housing Authority; 18 units are private-pay.

A nonprofit subsidiary of Sisters of Charity Health System took over possession and operation of the facility following a Chapter 11 reorganization of the for-profit developer in the late 1980s. The bank debt on the facility was refinanced in 1998 by a tax-exempt bond financial intermediary, which state housing agencies have underwritten the tax-exempt bond issue and therefore non-insured mortgages—and therefore non-insured mortgage insurance. The third party, however, agreed to continue its commitment to very low-income elderly residents at “exception rent” pursuant to Section 524(b)(3) formula.

The property might appear to have the option of opting out and converting to all private-pay units at the higher rental, but that is not the desire of the nonprofit operator nor would it be consistent with the low-income use restrictions arising from the tax-exempt bond issue. The only feasible outcome is renewal of the existing Section 8 contract rents for the one-bedroom units are substantially lower than the private-pay rents for similar units in the facility. Nevertheless, contract renewal is not unprotected. The HAP contract under section 524(b)(3) formula would result in a 20 percent rent reduction, which clearly would threaten survival of the project. The financial risk, again, is borne solely by the Maine State Housing Authority.

Loring House is a 104-unit develop-ment in Portland. It was originally a 365-bed hospital, which was closed by the City in the early 1980s. It was converted to a residential facility for elderly and handicapped residents. The residents, as a condition of continued occupancy, were required to pay a substantial portion of the cost of the facility. The federal government provided substantial operating deficits, supported by public operating deficit financing, under the previous rents. The ultimate financial risk on this development is borne by the Maine State Housing Authority. Nevertheless, Congress has not reversed its position and must continue to fund the non-profit operator nor would it be consistent with the low-income use restrictions arising from the tax-exempt bond issue. The only feasible outcome is renewal of the existing Section 8 contract rents for the one-bedroom units are substantially lower than the private-pay rents for similar units in the facility. Nevertheless, contract renewal is not unprotected. The HAP contract under section 524(b)(3) formula would result in a 20 percent rent reduction, which clearly would threaten survival of the project. The financial risk, again, is borne solely by the Maine State Housing Authority. Nevertheless, Congress has not reversed its position and must continue to fund the non-profit operator nor would it be consistent with the low-income use restrictions arising from the tax-exempt bond issue. The only feasible outcome is renewal of the existing Section 8 contract rents for the one-bedroom units are substantially lower than the private-pay rents for similar units in the facility. Nevertheless, contract renewal is not unprotected. The HAP contract under section 524(b)(3) formula would result in a 20 percent rent reduction, which clearly would threaten survival of the project. The financial risk, again, is borne solely by the Maine State Housing Authority.
The legislation I am introducing today, therefore, would correct this inequity by simply striking subsection (b)(3) of Section 524. Under this legislation, the renewal of expiring contracts in the Moderate Rehabilitation program would be governed by the same renewal rent provisions as are applicable to expiring contracts in the New Construction and Substantial Rehabilitation programs, including the availability of “exception” project rents where the project financing is not FHA-insured. Furthermore, as the legislation would also strike one other current provision of the Section 8 renewal legislation which singles out Moderate Rehabilitation projects for unfavorable treatment and, more importantly, excludes these Rehabilitation projects from the important policy preference for encouraging Section 8 project owners to continue their participation in the program and thereby maintain the availability of the units for low-income occupancy.

An essential tool for the preservation program, as strengthened by amendments to MAHRA enacted in 1996, is the ability to permit Section 8 owners currently receiving below-market rents under expiring contracts to receive rent increases upon renewal up to the level of market rents in the area, in exchange for a commitment to remain in the program for not less than an additional 5 years. Expiring contracts under the Moderate Rehabilitation program are among this category. However, from the standpoint of lower-income families needing subsidized housing opportunities in their communities, I believe the preservation of units which happen to be subsidized under the Moderate Rehabilitation program is no less vital than preservation of units under other subdivisions of the Section 8 program.

The Section 8 Moderate Rehabilitation program is relatively small in comparison to the New Construction or Substantial Rehabilitation programs, is nevertheless widespread throughout the nation, in both large and small communities, and has sustained critical housing units, presumably due in large part to owner opt-outs in recent years. Information provided by HUD indicates that out of the total of approximately 120,000 units that we assisted under the Moderate Rehabilitation program, 52,000 units remained in the program in May 2000. HUD also indicated that 113 separate housing agencies in 42 States across the nation plus Puerto Rico, including State as well as local agencies, had 100 or more units under contracts. In Matthew Sires, Senate, not all Moderate Rehabilitation project owners receive rents under their original contracts that are lower than market rents, it cannot be doubted that the ability to receive market rents could encourage many owners to remain in the program and to continue to provide affordable housing opportunities for their communities.

Accordingly, I am introducing today would also strike the current exclusion of contracts under the Moderate Rehabilitation program from the ability to receive renewal rents increased to market rent levels.

The overall effect of my legislation is to place expiring contracts under the Moderate Rehabilitation program on the same footing as those expiring during the period would allow owners to receive rents under their original contracts in May 2000. Since many if not all of these contracts having similar characteristics in terms of comparison of contract rents with market rents and in terms of financing source—HUD-insured or non-insured—seem to be continuously employed before applying for admission to the United States; to the Committee on the Judiciary.

By Mr. HATCH:
S. 1889. A bill to provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States; to the Committee on the Judiciary.

By Mr. HATCH:
S. 1890. A bill to provide for work authorization for nonimmigrant spouses of treaty traders and treaty investors; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I wish to introduce companion measures to two other bills introduced this year and the Senate Judiciary Committee approved the House versions of both bills by unanimous consent earlier today.

The companion to H.R. 2277 amends the Immigration and Nationality Act to authorize the husbands and wives of treaty investors, and treaty investors working in the United States, or E visa holders, to work themselves. The companion to H.R. 2278 is very similar, granting employment authorization to the husbands and wives of treaty traders or treaty investors, or L visa holders. This measure would also allow individuals to apply for L visas after six months, rather than one year, of employment with the company in order to verify the employment of non-citizens. The United States. I believe that both of these bills are very reasonable and should be supported by a Governor if fifty percent or more of the members of the Senate were killed or incapacitated. I place this

By Mr. HATCH:
S. 1891. A bill to extend the basic pilot program for employment eligibility verification, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I stand to introduce a companion bill to H.R. 3030, the House bill that would extend a pilot program for employment eligibility verification of non-citizens. This bill had extendedonset to expire this year, for two more years. This basic pilot program, available to employers in California, Florida, Illinois, Nebraska, New York, and Texas, was authorized in 1996, and proved to be an incredibly effective resource since then. The program allows participating employers to electronically access certain government databases in order to verify the employment authorization of non-citizens. Electronic confirmation of this information provides a critical tool for employers to ensure that they are not hiring unauthorized aliens. This program allows employers to protect themselves from the employer sanction provisions of the Immigration and Nationality Act, while providing meaningful deterrence to would-be employers who lack appropriate authorization from the INS.

During this time of increased national security, we can all appreciate any tool that will facilitate enforcement of our laws. After communication between the House and the Senate on this issue, and the favorable report from the Senate Judiciary Committee this morning, I have little doubt that my colleagues in the House will recognize the useful nature of the Pilot Program and support its extension.

By Mr. SPECTER:
S.J. Res. 30. A joint resolution proposing an amendment to the Constitution of the United States regarding the appointment of individuals to serve as Members of the House of Representatives in the event a significant number of Members are unable to serve at any time because of death or incapacity; to the Committee on Immigration and Claims, for their hard work on these bills. Given the work between the House and Senate on these bills, I feel comfortable urging my colleagues to give these issues all due attention and support these measures.
language in the RECORD not with the intention of urging its passage this session, but rather to afford my colleagues an opportunity to offer their comments and suggestions, and to afford them the opportunity to consider co-sponsoring this proposed amendment.

The events of September 11 and the subsequent anthrax attacks directed against members of Congress and other Americans highlight the very real possibility that the Senate and House of Representatives could suffer catastrophic casualties that would prevent either or both bodies from fulfilling their essential roles in the governance of our Nation. Despite the morbidity of such a scenario, it is essential that we put in place a contingency plan for the effective continuance of our democracy. The Seventeenth Amendment to the Constitution allows for the temporary replacement of Senators by appointment by the Governor of their respective state. However, no such provision applies to members of the House. Only a proposed amendment to the United States Constitution would remedy this deficiency.

The only means to replace members of the House is by special election. Article I, Section 2, clause 14, states that "[w]hen vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies." My legislation proposes that if at any time, fifty percent or more of the Members of the House of Representatives are unable to carry out their duties because of death or incapacity, each Governor of a State represented by such Member would have the power to appoint an otherwise qualified individual to take the place of the Member as soon as practicable after certification of the Member’s death or incapacity. Article I, Section 4, clause I states that the "Majority of each House shall constitute a Quorum to do Business." Accordingly, this extraordinary measure giving a Governor the power of appointment of a replacement Member would be triggered, when due to death or incapacity, the House would not have a quorum to conduct business.

My proposed amendment requires an individual appointed to take the place of the Member to serve until a Member is elected to fill the vacancy by a special election held during the 90-day period which begins on the date of the individual’s appointment, except that if a regularly scheduled general election for the office was scheduled to be held during such period or 90 days thereafter, no special election could be held, and the Member elected in such regularly scheduled general election would fill the vacancy upon election. Further, my proposed amendment allows for the appointed individual to be a candidate in the special election or regularly scheduled general election.

The Governor would be required to appoint a person of the same party as the 'replaced' member. This stipulation would ensure that the citizens of a congressional district would continue to be represented by a Congressperson from the same party.

While I understand that this is an issue we would rather not grapple with, it is imperative that we deliberate and ensure that, in case of a catastrophe, our system of governance will continue to remain strong and stable. Similar legislation has been introduced in the House of Representatives. I welcome comments from my colleagues in both the House and Senate and look forward to passing meaningful legislation when Congress returns from its winter recess.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 194—CONGRATULATING THE PEOPLE AND GOVERNMENT OF KAZAKHSTAN ON THE TENTH ANNIVERSARY OF THE INDEPENDENCE OF THE REPUBLIC OF KAZAKHSTAN

Mr. BROWNBACK submitted the following resolution; which was considered and agreed to:

Whereas, on December 16, 2001, Kazakhstan will celebrate 10 years of independence; whereas, since gaining its independence, Kazakhstan has made significant strides in becoming a stable and peaceful nation that provides economic opportunity for its people; whereas Kazakhstan continues to face political, ethnic, economic, and environmental challenges; whereas Kazakhstan plays an important role in Central Asia by virtue of its large territory, ample natural resources, and strategic location; whereas the Department of Energy estimates that Kazakhstan has up to 17,600,000,000 barrels of proven petroleum reserves and up to 83,000,000,000 cubic feet of proven natural gas reserves; whereas Kazakhstan has successfully partnered with United States companies in the development of its petroleum and natural gas resources; whereas in November 2001, the Caspian Pipeline Consortium was inaugurated, providing the first major pipeline to bring the Caspian energy resources to the world market; whereas the United States private sector contributed nearly 50 percent of the $2,600,000,000 Caspian Pipeline Consortium investment; whereas Kazakhstan, under the leadership of President Nursultan Nazarbaev, has fully cooperated with the United States on national security concerns, including combating nuclear proliferation, international crime, and narcotics trafficking; whereas, since September 11, 2001, cooperation with Kazakhstan and other Central Asian States, specifically Tajikistan and Uzbekistan, has become even more important to the ability of the United States to protect the United States homeland; and whereas Kazakhstan has extended all due respect and respect for the United States on matters of national security and is grateful for the full cooperation of the United States on matters of national security and is grateful for the full cooperation of the United States in fighting international terrorism; (3) applauds the cooperation between the United States and Kazakhstan to continue to make progress in the areas of institutionalizing democracy, respecting human rights, reducing corruption, and implementing broad-based market reforms; and (5) looks forward to further enhancing the economic, political, and national security cooperation between Kazakhstan and the United States.

SENATE RESOLUTION 195—TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE FOR THE COURTEOUS, DIGNIFIED, AND IMPARTIAL MANNER IN WHICH HE HAS PRESIDED OVER THE DELIBERATIONS OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Richard B. Cheney, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred Seventh Congress.

SENATE RESOLUTION 196—TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE FOR THE COURTEOUS, DIGNIFIED, AND IMPARTIAL MANNER IN WHICH HE HAS PRESIDED OVER THE DELIBERATIONS OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the first session of the One Hundred Seventh Congress.

SENATE RESOLUTION 197—TO COMMEND THE EXEMPLARY LEADERSHIP OF THE MAJORITY LEADER

Mr. LOTT submitted the following resolution; which was considered and agreed to:

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from South Dakota,
the Honorable Thomas A. Daschle, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the 107th Congress.

**SENATE RESOLUTION 196—TO COMMEND THE EXEMPLARY LEADERSHIP OF THE REPUBLICAN LEADER**

Mr. Daschle submitted the following resolution; which was considered and agreed to:

> RESOLVED, That the thanks of the Senate are hereby tendered to the distinguished Republican Leader, the Senator from Mississippi, the Honorable Trent Lott, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the first session of the 107th Congress.

**AMENDMENTS SUBMITTED AND PROPOSED**

**SA 2689. Mr. Daschle** proposed an amendment to the bill H.R. 2884, an act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States, and for other purposes.

> **SA 2690. Mr. Hollings** (for himself, Mr. McCain, and Mr. Graham) proposed an amendment to the bill S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

> **SA 2691. Mr. Reid** (for Mr. Allen) proposed an amendment to the bill S. 1598, to permit the closed circuit televising of the criminal trial of Zacarias Moussaoui for the victims of September 11th.

> **SA 2692. Mr. Reid** (for Mr. Frist, Mr. Kennedy, and Mr. Gregg) proposed an amendment to the bill H.R. 3448, to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.

> **SA 2693. Mr. Reid** (for Mr. Brownback) proposed an amendment to the bill S. 194, congratulating the people and government of Kazakhstan on the tenth anniversary of the independence of the Republic of Kazakhstan.

> **SA 2694. Mr. Reid** (for Mr. Smith, of New Hampshire) proposed an amendment to the bill S. 990, to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes.

> **SA 2695. Mr. Reid** (for Mr. Biden, Mr. Helms, Mr. Hatch, Mr. Craig, Mr. Breaux, and Mr. Hatch) proposed an amendment to the bill H.R. 2215, to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes.

**TEXT OF AMENDMENTS**

**SA 2689. Mr. Daschle** proposed an amendment to the bill H.R. 2884, an act to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment to the text of the bill, insert the following:

**SECTION 1. SHORT TITLE; ETC.**

(a) **SHORT TITLE.—**This Act may be cited as the "Victims of Terrorism Tax Relief Act of 2001".

(b) **AMENDMENT OF 1986 CODE.—**Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.—**The table of contents for this Act is as follows:

**TITLE I—VICTIMS OF TERRORISM TAX RELIEF**

Subtitle A—Relief Provisions for Victims of Terrorist Attacks

Sec. 101. Income taxes of victims of terrorist attacks.

Sec. 102. Exclusion of certain death benefits.

Sec. 104. Payments by charitable organizations treated as exempt payments.

Sec. 105. Exclusion of certain cancellations of indebtedness.

Subtitle B—Other Relief Provisions

Sec. 111. Exclusion for disaster relief payment.

Sec. 112. Authority to postpone certain deadlines and required actions.

Sec. 113. Application of certain provisions to victims of certain terrorist attacks.

Sec. 114. Clarification of due date for airline excise tax deposits.

Sec. 115. Treatment of certain structured settlement payments.

Sec. 116. Personal exemption deduction for certain disability trusts.

**TITLE II—DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS**

Sec. 201. Disclosure of tax information in terrorism and national security investigations.

**TITLE III—NO IMPACT ON SOCIAL SECURITY TRUST FUNDS**

Sec. 301. No impact on social security trust funds.

**TITLE I—VICTIMS OF TERRORISM TAX RELIEF**

Subtitle A—Relief Provisions for Victims of Terrorist Attacks

Sec. 101. Income taxes of victims of terrorist attacks.

(a) **IN GENERAL.—**Section 692 (relating to income taxes of members of Armed Forces on death) is amended by adding at the end the following new subsection:

> (d) INDIVIDUALS DYING AS A RESULT OF CERTAIN ATTACKS.—In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply—

> (A) with respect to the taxable year in which falls the date of death, and

> (B) with respect to any prior taxable year in the period beginning before the last taxable year in which the wounds, injury, or illness referred to in paragraph (3) were incurred.

> (2) $10,000 MINIMUM BENEFIT.—If, but for this paragraph, the amount of tax not imposed by paragraph (1) with respect to a specified terrorist victim is less than $10,000, then such victim shall be treated as having made a payment against this chapter for such victim's last taxable year in an amount equal to the excess of $10,000 over the amount of tax not so imposed.

> (3) TAXATION OF CERTAIN BENEFITS.—Subject to such rules as the Secretary may prescribe, paragraph (1) shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts attributable to—

> (A) deferred compensation which would have been payable to the individual had died other than as a specified terrorist victim, or

> (B) amounts payable in the taxable year which would not have been payable in such taxable year but for an action taken after September 11, 2001.

> (4) SPECIFIED TERRORIST VICTIM.—For purposes of this subsection, the term ‘specified terrorist victim’ means any decedent—

> (A) who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or

> (B) who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.

Such term shall not include any individual identified by the Attorney General to have been a participant or conspirator in any such attack or a representative of such an individual.

> (b) CONFORMING AMENDMENTS.—

> (1) Section 5(b)(1) is amended by inserting "victims of certain terrorist attacks" before "on death".

> (2) Section 6013(f)(2)(B) is amended by inserting "and victims of certain terrorist attacks" before "on death".

> (c) CLERICAL AMENDMENTS.—

> (1) The heading of section 692 is amended to read as follows:

> "SEC. 692. INCOME TAXES OF MEMBERS OF ARMED FORCES AND VICTIMS OF CERTAIN TERRORIST ATTACKS ON DEATH."

> (2) The item relating to section 692 in the table of sections for part II of subchapter J of chapter 1 is amended to read as follows:

> "Sec. 692. Income taxes of members of Armed Forces and victims of certain terrorist attacks on death."

> (d) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

> (1) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending before, on, or after September 11, 2001.

> (2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata and the dangers of foreign and domestic sovereign immunity) nevertheless be made or allowed if claim therefor is filed before the close of such period.
(1) payments made by an organization described in section 501(c)(3) of such Code by reason of the death, injury, wounding, or illness of an individual incurred as the result of the attack occurring on or after September 11, 2001, or an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002, shall be treated as related to the purpose or function constituting the basis for such organization’s exemption under section 501 of such Code if such payments are made in good faith using a reasonable and objective formula which is consistently applied, and
(2) in the case of a private foundation (as defined in section 509(a)(1) of such Code), such payment described in paragraph (1) shall not be treated as made to a disqualified person for purposes of section 4941 of such Code.

(b) EFFECTIVE DATE.—This section shall apply to payments made on or after September 11, 2001.

SEC. 105. EXCLUSION OF CERTAIN CANCELLATIONS OF INDEBTEDNESS.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986—
(1) gross income shall not include any amount which (but for this section) would be includable in gross income by reason of the discharge (in whole or in part) of indebtedness of any taxpayer if the discharge is by reason of the death of an individual incurred as the result of an attack occurring on or after September 11, 2001, and before January 1, 2002, and
(2) return requirements under section 6061 of such Code shall not apply to any discharge described in paragraph (1).

(b) EFFECTIVE DATE.—This section shall apply to discharges made on or after September 11, 2001, and before January 1, 2002.

Subtitle B—Other Relief Provisions

SEC. 111. EXCLUSION FOR DISASTER RELIEF PAYMENTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of title 26 (relating to items specifically excluded from gross income) is amended by redesignating section 139 as section 140 and inserting after section 138 the following new section:

"SEC. 139. DISASTER RELIEF PAYMENTS.

"(a) GENERAL RULE.—Gross income shall not include any amount paid by a person engaged in the furnishing of disaster relief payments (as defined in section 139) for purposes of section 139, to an individual as a qualified disaster relief payment.

"(b) QUALIFIED DISASTER RELIEF PAYMENT DEFINED.—For purposes of this section, the term "qualified disaster relief payment" means any amount paid to or for the benefit of an individual—
(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster,
(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster,
(3) by a person engaged in the furnishing of a service of transportation as a common carrier by season on the person of the physical injuries incurred as a result of a qualified disaster, or
(4) such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare, but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.
“(c) QUALIFIED DISASTER DEFINED.—For purposes of this section, the term ‘qualified disaster’ means—

‘‘(1) a disaster which results from a terrorist or military action (as defined in section 692(c)(2))

‘‘(2) a Presidentially declared disaster (as defined in section 1033(h)(3)).

‘‘(3) a disaster which results from an accident involving a common carrier, or from any other event, which is determined by the Secretary to be of a catastrophic nature, or

‘‘(4) amounts described in subsection (b)(4), a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to joins from the Federal, State, or local government or agency or instrumentality thereof.

‘‘(d) COORDINATION WITH EMPLOYMENT TAXES.—For purposes of chapter 2 and subtitle C, a qualified disaster relief payment shall not be treated as net earnings from self-employment, wages, or compensation subject to tax.

‘‘(e) NO RELIEF FOR CERTAIN INDIVIDUALS.—

Subsections (a) and (f) shall not apply with respect to any individual identified by the Attorney General as having been a participant or conspirator in a terrorist action (as so defined), or a representative of such individual.

‘‘(f) EXCLUSION OF CERTAIN ADDITIONAL PAYMENTS.—Gross income shall not include any amount received as payment under section 406 of the Air Transportation Safety and System Stabilization Act.”

(b) CONFORMING AMENDMENTS.—The table of sections for part III of subchapter B of chapter 93 of subtitle B of title I of the Internal Revenue Code is amended by striking the item relating to section 139 and inserting the following new items:

“Sec. 139. Disaster relief payments.

Sec. 140. Cross references to other acts.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after September 11, 2001.

SEC. 112. AUTHORITY TO POSTPONE CERTAIN DEADLINES AND REQUIRED ACTIONS.

(a) EXPANSION OF AUTHORITY RELATING TO DISASTERS AND TERRORISTIC OR MILITARY ACTIONS.—Section 7508A is amended to read as follows:

“SEC. 7508A. AUTHORITY TO POSTPONE CERTAIN DEADLINES BY REASON OF PRESIDENTIALLY DECLARED DISASTER OR TERRORISTIC OR MILITARY ACTIONS.

‘‘(a) IN GENERAL.—In the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster (as defined in section 1033(h)(3)) or a terrorist or military action (as defined in section 692(c)(2)), the Secretary may specify a period of up to one year that may be disregarded in determining, under the internal revenue laws, in respect of any tax liability of such taxpayer—

‘‘(1) whether any of the acts described in paragraph (1) of section 7508(a) were performed within the time prescribed therefor (determined without regard to extensions under any other provision of this subtitle for periods after the date determined by the Secretary) of such disaster or action,

‘‘(2) the amount of any interest, penalty, additional amount, or addition to the tax for periods after such date, and

‘‘(3) the amount of any credit or refund.

‘‘(b) BROADENING PENSIONS, ETC.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of the Internal Revenue Code of 1986) or a terrorist or military action (as defined in such Code), the corporation may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

‘‘(c) APPLICATION OF CERTAIN PROVISIONS RELATING TO DISASTER OR TERRORISTIC ACTIONS.

‘‘For authority to suspend running of interest, etc., by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.”

‘‘(d) ADDITIONAL CONFORMING AMENDMENTS.—

‘‘(1) Section 6404 is amended—

(A) by striking subsection (h),

(B) by redesignating subsection (i) as subsection (h), and

(C) by adding at the end the following new subsection:

‘‘(1) SPECIAL RULES REGARDING DISASTERS, ETC.—In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3)) of the Internal Revenue Code of 1986) or a terrorist or military action (as defined in such Code), the corporation may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to one year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

‘‘(i) POSTPONEMENT OF CERTAIN ACTS.

‘‘For authority to suspend running of interest, etc., by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.”

‘‘(2) Section 6161(d) is amended by adding at the end the following new paragraph:

‘‘(3) POSTPONEMENT OF CERTAIN ACTS.

“For time for performing certain acts post-poned by reason of war, see section 7508, and by reason of Presidentially declared disaster or terrorist or military action, see section 7508A.”

‘‘(d) CLERICAL AMENDMENTS.—The item relating to section 7508A in the table of sections for chapter 77 is amended to read as follows:

“Sec. 7508A. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terrorist or military actions.”

‘‘(2) The table of contents for the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 818A the following:

“Sec. 518. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terrorist or military actions.”

‘‘(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disasters and terrorist or military actions occurring on or after September 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after the date of the enactment of this Act.

SEC. 113. APPLICATION OF CERTAIN PROVISIONS TO TERRORISTIC OR MILITARY ACTIONS.

(a) DISABILITY INCOME.—Section 104(a)(5) (relating to compensation for injuries or sickness) is amended by striking ‘‘a violent attack’’ and all that follows through the period and inserting ‘‘a terroristic or military action (as defined in section 692(c)(2)).’’

(b) EXEMPTION FROM INCOME TAX FOR CERTAIN MILITARY OR GOVERNMENT EMPLOYEES.—Section 692(c)(2) is amended—

(1) by striking ‘‘outside the United States’’ in paragraph (1), and

(2) by striking ‘‘SUSTAINED OVERSEAS’’ in the heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after September 11, 2001.

SEC. 114. CLARIFICATION OF DUE DATE FOR AIRLINE EXCISE TAX DEPOSITS.

(a) IN GENERAL.—Paragraph (3) of section 301 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42) is amended to read as follows:

“(3) AIRLINE-RELATED DEPOSIT.—For purposes of this subsection, the term ‘airline-related deposit’ means any deposit of taxes imposed by subsection C of chapter 31 of such Code (relating to transportation by air).”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 301 of the Air Transportation Safety and System Stabilization Act (Public Law 107–42).

SEC. 115. TREATMENT OF CERTAIN STRUCTURED SETTLEMENT PAYMENTS.

(a) IN GENERAL.—Subtitle E is amended by adding at the end the following new chapter:

“CHAPTER 55—STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

“Sec. 5891. Structured settlement factoring transactions.”

(b) IMPOSITION OF TAX.—There is hereby imposed on any person who acquires directly or indirectly any structured settlement payment rights in a structured settlement factoring transaction a tax equal to 40 percent of the
factoring discount as determined under subsection (c)(4) with respect to such factoring transaction.

(b) EXCEPTION FOR CERTAIN APPROVED TRANSFERS.

"(1) IN GENERAL.—The tax under subsection (a) shall not apply in the case of a structured settlement factoring transaction in which the transfer of structured settlement payment rights is approved in advance in a qualified order.

"(2) QUALIFIED ORDER.—For purposes of this section, the term ‘qualified order’ means a final order, judgment, or decree which—

(A) finds that the transfer described in paragraph (1)—

(i) does not contravene any Federal or State statute or the order of any court or responsible administrative authority, and

(ii) is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents, and

(B) is issued—

(i) under the authority of an applicable State statute by an applicable State court, or

(ii) by the responsible administrative authority (if any) which has exclusive jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement.

"(3) APPLICABLE STATE STATUTE.—For purposes of this section, the term ‘applicable State statute’ means a statute providing for the entry of an order, judgment, or decree described in paragraph (2)(A) which is enacted by—

(A) the State in which the payee of the structured settlement is domiciled, or

(B) if there is no statute described in subparagraph (A), the State in which either the party to the structured settlement (including an assignee under a qualified assignment under section 130) or the person issuing the funding asset for the structured settlement is domiciled or has its principal place of business.

"(4) APPLICABLE STATE COURT.—For purposes of this section—

(A) IN GENERAL.—The term ‘applicable State court’ means, with respect to any applicable State statute, a court of the State which enacted such statute.

(B) GENERAL RULE.—In the case of an applicable State statute described in paragraph (3)(B), such term also includes a court of the State in which the payee of the structured settlement is domiciled.

"(5) QUALIFIED UNDER DISPOSITIVE.—A qualified order shall be treated as definitive for purposes of the exception under this subsection.

"(c) DEFINITIONS.—For purposes of this section—

"(1) STRUCTURED SETTLEMENT.—The term ‘structured settlement’ means an arrangement—

(A) which is established by—

(i) suit or agreement for the periodic payment of compensation under any workers’ compensation law excluding the gross income of the recipient under section 104(a)(2), or

(ii) agreement for the periodic payment of compensation under any workers’ compensation law excluding the gross income of the recipient under section 104(a)(1), and

(B) under which the periodic payments are—

(i) of the character described in subparagraphs (A) and (B) of section 130(c)(2), and

(ii) payable by a person who is a party to the settlement agreement and the workers’ compensation claim or by a person who has assumed the liability for such periodic payments under a qualified assignment in accordance with section 130.

"(2) STRUCTURED SETTLEMENT PAYMENT RIGHTS.—The term ‘structured settlement payment rights’ means rights to receive payments under a structured settlement.

"(3) STRUCTURED SETTLEMENT FACTORING TRANSACTION.—

"(A) IN GENERAL.—The term ‘structured settlement factoring transaction’ means a transfer of structured settlement payment rights (including portions of structured settlement under consideration) by means of sale, assignment, pledge, or other form of encumbrance or alienation for consideration.

"(B) EXCEPTION.—Such term shall not include—

(i) the creation or perfection of a security interest in structured settlement payment rights under an agreement to enter into with an insured depository institution in the absence of any action to redirect the structured settlement payments to such institution (or agent or successor thereof) or otherwise to enforce such blanket security interest as against the structured settlement payment rights, or

(ii) a subsequent transfer of structured settlement payment rights acquired in a structured settlement factoring transaction.

"(4) FACTORING DISCOUNT.—The term ‘factoring discount’ means an amount equal to the excess of—

(A) the aggregate undiscounted amount of structured settlement payments being acquired in the structured settlement factoring transaction, over

(B) the total amount actually paid by the acquirer to the person from whom such structured settlement payments are acquired.

"(5) RESPONSIBLE ADMINISTRATIVE AUTHORITY.—The term ‘responsible administrative authority’ means—

(A) the administrative authority which had jurisdiction over the underlying action or proceeding which was resolved by means of the structured settlement;

(B) STATE.—The term ‘State’ includes the Commonwealth of Puerto Rico and any possession of the United States.

"(d) COORDINATION WITH OTHER PROVISIONS.—

"(1) IN GENERAL.—If the applicable requirements of sections 72, 104(a)(1), 104(a)(2), 130, and 461 and (h) were in effect at the time the structured settlement involving structured settlement payment rights was entered into, the subsequent occurrence of a structured settlement factoring transaction shall not affect the application of the provisions of such sections to the parties to the structured settlement (including an assignee under a qualified assignment under section 130) in any taxable year.

"(2) NO WITHHOLDING OF TAX.—The provisions of section 3405 regarding withholding of tax shall not apply to the person making the payments in the event of a structured settlement factoring transaction.

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E is amended by adding at the end the following new item:

“Chapter 55. Structured settlement factoring transactions.”.

(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—The amendments made by section 151(d) of the Internal Revenue Code of 1986, as added by this section shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into or after the 30th day following the date of the enactment of this Act.

"(2) CLARIFICATION OF EXISTING LAW.—Section 5891(d) of the Internal Revenue Code (as so added) shall apply to structured settlement factoring transactions (as defined in section 5891(c) of such Code (as so added)) entered into before, on, or after such 30th day.

"(3) TRANSITION RULE.—In the case of a structured settlement factoring transaction entered into during the period beginning on the 30th day following the date of the enactment of this Act and ending on July 1, 2002, no tax shall be imposed under section 5891(a) of such Code if—

(A) the structured settlement payee is domiciled in a State (or possession of the United States) which has not enacted a statute providing that the structured settlement factoring transaction is ineffective unless the transaction has been approved by an order, judgment, or decree of a court (or responsible administrative authority) which finds that such transaction—

(i) does not contravene any Federal or State statute or the order of any court (or responsible administrative authority), and

(ii) is in the best interest of the structured settlement payee or is appropriate in light of a hardship faced by the payee, and

(B) the person acquiring the structured settlement payment rights discloses to the structured settlement payee in advance of the structured settlement factoring transaction the amounts and due dates of the payments to be transferred, the aggregate amount to be transferred, the consideration to be received by the structured settlement payee for the transferred payments, the discounted present value of the transferred payments (including the present value as determined in section 7520 of such Code), and the expenses required under the terms of the structured settlement factoring transaction to be paid by the structured settlement payee or deducted from the proceeds of such transaction.

SEC. 116. PERSONAL EXEMPTION DEDUCTION FOR CERTAIN DISABILITY TRUSTS.

(a) IN GENERAL.—Subsection 642 (relating to deduction for personal exemption) is amended to read as follows:

"(b) DEDUCTION FOR PERSONAL EXEMPTION—

"(1) ESTATES.—An estate shall be allowed a deduction of $600.

"(2) TRUSTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, a trust shall be allowed a deduction of $100.

(B) TRUSTS DISTRIBUTING INCOME CURRENTLY.—A trust which, under its governing instrument, is required to distribute all of its income currently shall be allowed a deduction of $300.

(c) DISABILITY TRUSTS.—

"(1) IN GENERAL.—A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 151(d), determined—

(i) by treating such trust as an individual described in section 151(d)(3)(C)(iii), and

(ii) by applying section 67(e)(6) (without the reference to section 652(b)) for purposes of determining the adjusted gross income of the trust.

"(2) QUALIFIED DISABILITY TRUST.—For purposes of clause (1), the term ‘qualified disability trust’ means any trust if—

"(i) such trust is a disability trust described in subsection (c)(2)(B) of title 2 of the Social Security Act (42 U.S.C. 1396p), and

(ii) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of subclause (II) merely because the
corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.

(3) DEDUCTIONS IN LIEU OF PERSONAL EXEMPTION.—The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(b) Amendment.—The amendment made by this section shall apply to taxable years ending on or after September 11, 2001.

TITLE II—DISCLOSURE OF TAX INFORMATION RELATING TO TERRORIST ACTIVITIES AND NATIONAL SECURITY INVESTIGATIONS

SEC. 201. DISCLOSURE OF TAX INFORMATION IN TERRORISM AND NATIONAL SECURITY INVESTIGATIONS.

(a) Disclosure Without a Request of Information Relating to Terrorist Activities, Etc.—(3) DEDUCTIONS IN LIEU OF PERSONAL EXEMPTION.—The deductions allowed by this subsection shall be in lieu of the deductions allowed under section 151 (relating to deduction for personal exemption).

(ii) Termination.—No disclosure may be made under this subparagraph after December 31, 2003.

(b) Disclosure Upon Request of Information Relating to Terrorist Activities, Etc.—(1) Section 6103(i) is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) Disclosure Upon Request of Information Relating to Terrorist Activities, Etc.—(A) Disclosure to Law Enforcement Agencies.—(i) General.—Except as provided in paragraph (6), upon receipt by the Secretary of a written request which meets the requirements of this clause, the Secretary may disclose return information (other than taxpayer return information) to officers and employees of any Federal law enforcement agency who are personally and directly engaged in the collection, analysis, and in any judicial, administrative, or grand jury proceedings, pertaining to such terrorist incident, threat, or activity.

(ii) Application for Order.—The Attorney General, the Deputy Attorney General, any Assistant Attorney General, any Assistant Attorney General, or any United States attorney may authorize an application to a Federal district court judge or magistrate for such order referred to in subparagraph (A). Upon the grant of such application, such judge or magistrate may grant such order if he determines on the basis of the facts submitted by the applicant that the requirements of subparagraph (A)(ii)(I) are met.

(iii) Disclosure Under Ex Parte Orders.—Information disclosed under clause (i) may be disclosed only to the extent necessary to apprise such Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity, and shall be solely for use in a Federal investigation, analysis, or proceeding concerning any terrorist incident, threat, or activity.

The head of such Federal agency may disclose such information to officers and employees of such agency to the extent necessary to investigate or respond to such terrorist incident, threat, or activity.

(ii) Termination.—No disclosure may be made under this paragraph after December 31, 2003.

(c) Conforming Amendments.—(1) Section 6103(a)(2) is amended by inserting "or (7)" after "or (8)".

(2) Section 6103(b) is amended by adding the following new paragraph:

"(7) a request sets forth the specific reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(v) Termination.—No disclosure may be made under this paragraph after December 31, 2003.

(ii) LIMITATION ON USE OF INFORMATION.—Information disclosed under this subparagraph shall not be treated as taxpayer return information.

The head of any Federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity.

(ii) Termination.—No disclosure may be made under this paragraph after December 31, 2003.

(c) Conforming Amendments.—(1) Section 6103(a)(2) is amended by inserting "or (7)" after "or (8)".

(2) Section 6103(b) is amended by adding the following new paragraph:

"(7) a request sets forth the specific reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(c) Conforming Amendments.—(1) Section 6103(a)(2) is amended by inserting "or (7)" after "or (8)".

(2) Section 6103(b) is amended by adding the following new paragraph:

"(7) a request sets forth the specific reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(c) Conforming Amendments.—(1) Section 6103(a)(2) is amended by inserting "or (7)" after "or (8)".

(2) Section 6103(b) is amended by adding the following new paragraph:

"(7) a request sets forth the specific reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(2) Section 6103(b) is amended by adding the following new paragraph:

"(7) a request sets forth the specific reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.

(c) Conforming Amendments.—(1) Section 6103(a)(2) is amended by inserting "or (7)" after "or (8)".

(2) Section 6103(b) is amended by adding the following new paragraph:

"(7) a request sets forth the specific reasons why such disclosure may be relevant to a terrorist incident, threat, or activity.

(iv) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.
(B) in subparagraph (C) by striking "(i)(3)(B)(i)" and inserting "(i)(8)(A)(ii)".

(7) Section 6105(p)(6)(B)(i) is amended by striking "(i)(7)(A)(ii)" and inserting "(i)(8)(A)(ii)".

(9) Section 6105(p)(h) is amended—

(A) by striking "or" at the end of paragraph (2),

(B) by striking paragraphs (1) or (2) in paragraph (3) and inserting paragraph (1), (2), or (3) in paragraph (4), and

(C) by redesigning paragraph (3) as paragraph (4), and

(D) by inserting after paragraph (2) the following new paragraph:

"(3) to the disclosure of tax convention information on the same terms as return information may be disclosed under paragraph (3)(C) or (7) of section 6103(h), except that in that case the tax convention information provided by a foreign government, no disclosure may be made under the following paragraph unless the written consent of the foreign government, or",.

(10) Section 7223(a)(3) is amended by striking "(i)(4)(B)(i)", and inserting "(i)(8)(A)(ii)".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on the date of enactment of this act.

TITLE III—NO IMPACT ON SOCIAL SECURITY TRUST FUNDS

SEC. 301. NO IMPACT ON SOCIAL SECURITY TRUST FUNDS.

(a) IN GENERAL.—Nothing in this Act or an amendment made by this Act shall be construed to alter or amend title II of the Social Security Act (42 U.S.C. 401).

(b) TRANSFERS.—(1) ESTIMATE OF SECRETARY.—The Secretary of the Treasury shall annually estimate the impact that the enactment of this Act has on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401).

(2) TRANSFER OF FUNDS.—If, under paragraph (1), the Secretary estimates that the enactment of this Act has a negative impact on the income and balances of the trust funds established under section 201 of the Social Security Act (42 U.S.C. 401), the Secretary shall transfer, not less frequently than quarterly, from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of such trust funds are not reduced as a result of the enactment of this Act.

SA 2690. Mr. HOLLINGS (for himself, Mr. MCCAIN, and Mr. GRAHAM) proposed an amendment to the bill S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Port and Maritime Security Act of 2001.”

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PORT AND MARITIME SECURITY

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) There are 361 public ports in the United States which have a broad range of characteristics, and which are an integral part of our Nation’s commerce.

(2) United States ports conduct over 95 percent of United States overseas trade. Over the next 20 years, the total volume of imported and exported goods at ports is expected to more than double.

(3) The variety of trade and commerce that are carried on public roads throughout the United States has greatly expanded. Bulk cargo, containerized cargo, passenger transport and tourism, intermodal transportation systems, and complex domestic and international trade routes have significantly changed the nature, conduct, and complexity of port commerce.

(4) The United States is increasingly dependent on imported energy for a substantial share of supply, and a disruption of supply would seriously harm consumers and our economy.

(5) The top 50 ports in the United States account for about 90 percent of all the cargo tonnage. Twenty-five United States ports account for 98 percent of all container shipments. Cruise ships visiting foreign destinations embark from 16 ports. Ferries in the United States transport 113,000,000 passengers and 2,000,000 vehicles per year.

(6) In the larger ports, the activities can stretch along a coast for many miles, including public roads with their geographic boundaries. The facilities used to support arriving and departing cargo are sometimes miles from the coast.

(7) Ports often are a major locus of Federal crime, including drug trafficking, cargo theft, and smuggling of contraband and aliens. The criminal conspiracies often associated with these crimes can pose threats to the people and critical infrastructures of port cities. Ports that accept international cargo have a higher risk of international crimes like drug and alien smuggling and trade fraud.

(8) Ports are often very open and exposed, and, by the very nature of their role in promoting the free flow of goods, they are susceptible to large scale terrorism that could pose a threat to coastal, Great Lake or inshore populations. Port terrorism could be significantly less tangible to the average American than the national terrorism threat to the United States to pursue its national security objectives.

(9) United States ports are international boundaries, however, unlike United States airports and land borders, United States ports receive no Federal funds for security infrastructure.

(10) Current inspection levels of containerized cargo are insufficient to counter potential security risks. Technology is currently not adequately deployed to allow for the non-intrusive inspection of containerized cargo. Additional promising technology is in the process of being developed that could inspect cargo in a non-intrusive and efficient fashion.

(11) The burgeoning cruise ship industry poses a special risk from a security perspective.

(12) Effective physical security and access control in ports is fundamental to deterring and preventing potential threats to port operations, and cargo shipments.

(13) Securing entry points, open storage areas, and warehouses throughout the port, controlling the movement of trucks transporting cargo through the port, and examining or inspecting containers, warehouses, and ships at berth or in the harbor are all important requirements that should be implemented.

(14) Identification procedures for arriving workers are important tools to deter and prevent cargo crimes, smuggling, and terrorist actions.

(15) On April 27, 1999, the President established the Interagency Commission on Crime and Security in United States Ports to undertake a comprehensive study of the nature and extent of the problem of crime in our ports, as well as the ways in which government agencies at all levels are responding.

(16) The Commission has issued findings that indicate the following:

(A) Frequent crimes in ports include drug smuggling, illegal cargo (including Intellectual Property Rights and other trade violations), and cargo theft.

(B) Data about crime in ports has been very difficult to collect.

(C) Internal conspiracies are an issue at many ports, and contribute to Federal crime.
(D) Intelligence and information sharing among law enforcement agencies needs to be improved and coordinated at many ports.

(E) Many ports do not have any idea about the threats they face from crime, terrorism, and other security-related activities because of a lack of credible threat information.

(F) A lack of minimum physical, procedural, and personnel security standards at ports and at terminals, warehouses, trucking firms, and related facilities leaves many ports and port users vulnerable to theft, pilferage, and unauthorized access by criminals.

(G) Access to ports and operations within ports is often uncontrolled.

(H) Coordination and cooperation between law enforcement agencies in the field is often fragmented.

(I) Meetings between law enforcement personnel, carriers, marine terminal operators, and port authorities regarding security are not being held routinely in the ports. These meetings could increase coordination and cooperation at the local level.

(J) Security-related equipment such as small boats, cameras, and vessel tracking devices is lacking at many ports.

(K) Detection equipment such as large-scale sensors or machines is lacking at many high-risk ports.

(L) A lack of timely, accurate, and complete manifest (including in-bond) and trade entry data significantly impacts law enforcement’s ability to function effectively.

(M) Criminal organizations are exploiting weak security in ports and related intermodal connections to commit a wide range of cargo crimes. Levels of containerized cargo volumes are forecasted to increase significantly, which will create more opportunities for crime while lowering the statistical risk of detection and interdiction.

(N) United States ports are international boundaries that—

(A) are particularly vulnerable to threats of drug smuggling, illegal alien smuggling, cargo theft, illegal entry of cargo and contraband;

(B) may present weaknesses in the ability of the United States to realize its national security and trade interests; and

(C) may serve as a vector or target for terrorist attacks aimed at the population of the United States.

(O) United States ports are in the best interests of the United States—

(A) to be mindful that United States ports are international ports of entry and that the principal responsibility for the security of international ports of entry lies with the Federal government;

(B) to be mindful of the need for the free flow of interstate and foreign commerce and the need to ensure the efficient movement of cargo in interstate and foreign commerce and the need for increased efficiencies to address objections to security; and

(C) to increase United States port security by establishing a better method of communication amongst law enforcement officials responsible for port boundary, security, and trade issues;

(D) to formulate requirements for physical port security, recognizing the different characteristics of the Security Advisory Committee to be established pursuant to the National Maritime Transportation Security Act of 2002 (33 U.S.C. 1226) and to require the establishment of security programs at ports;

(E) to provide financial incentives to help the private and public sectors invest in the non-intrusive timely detection of crime or potential crime; and

(F) to harmonize data collection on port-related and other cargo theft, in order to address areas of potential threat to safety and security.

(G) to create shared inspection facilities to help facilitate the timely and efficient inspection of people and cargo in United States ports;

(H) to improve Customs reporting procedures to enhance the potential detection of crime in advance of arrival or departure of cargoes; and

(I) to promote private sector procedures that provide for in-transit visibility and support law enforcement efforts directed at managing the security risks of cargo shipments.

SEC. 102. NATIONAL MARITIME SECURITY ADVISORY COMMITTEE.

(a) IN GENERAL.—The Secretary shall establish a National Maritime Security Advisory Committee, comprised of not more than 21 members appointed by the Secretary. The Secretary may require that a prospective member undergo a background check or obtain an appropriate security clearance before appointment.

(b) ORGANIZATION.—The Secretary—

(1) shall designate a chairperson of the Advisory Committee; and

(2) shall establish a law enforcement subcommittee and, with the consent of the Attorney General, respectively, include as members of the subcommittee representatives from the Customs Service and the Immigration and Naturalization Service.

(c) DEVELOPMENT OF STANDARDS.—The Secretary shall designate a chairperson of the Advisory Committee.

(1) shall establish a law enforcement subcommittee and, with the consent of the Attorney General, respectively, include as members of the subcommittee representatives from the Customs Service and the Immigration and Naturalization Service.

(d) NATIONAL MARITIME SECURITY ADVISORY COMMITTEE.—

(1) IN GENERAL.—The Secretary shall establish a National Maritime Security Advisory Committee, comprised of not more than 21 members appointed by the Secretary. The Secretary may require that a prospective member undergo a background check or obtain an appropriate security clearance before appointment.

(2) ORGANIZATION.—The Secretary—

(II) shall designate a chairperson of the Advisory Committee; and

(III) shall establish a law enforcement subcommittee.

(e) MATERIAL AND MISSION SUPPORT.—In carrying out this subsection, the Secretary may accept contributions of funds, material, services, and the use of personnel and facilities in support of the United States ports at the port security officers or committee, including—

(A) law enforcement agencies, with an interest or expertise in anti-terrorism or maritime and port security and related safety issues.

(B) maritime industry representatives—

(i) to participate in the development and implementation of port security plans;

(ii) to submit security information for review by the Secretary.

(c) AUTHORIZATION OF APPROPRIATIONS FOR FY 2002.—There are authorized to be appropriated to the Secretary of Transportation—

(1) for fiscal year 2002—

(A) an amount of $3,000,000 for the Department of Transportation to carry out this section.

(B) $1,000,000 for each of fiscal years 2003 through 2005, such sums to be derived from miscellaneous receipts in the general fund of the Treasury.

SEC. 103. INITIAL SECURITY EVALUATIONS AND PORT VULNERABILITY ASSESSMENTS.

(a) IN GENERAL.—Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226) is amended by adding at the end the following:

"(4) FUNCTIONS.—The Advisory Committee shall—

(A) advise, consult with, report to, and make recommendations to the Secretary on issues related to the security and safety of United States ports; and

(B) provide advice and recommendations to the Secretary on matters related to maritime and port security and safety, including—

(i) longterm solutions for maritime and port security issues;

(ii) coordination of security and safety operations and information between and among Federal, State, and local government and area and local port security committees; and

(iii) conditions for maritime security and safety loan guarantees and grants; and

(iv) development of the National Maritime Transportation Security Plan; and

(v) development and implementation of area and local maritime security plans;

(vi) assessment of port energy transportation facilities; and

(vii) helping to ensure that the public and area and local port security committees are informed about maritime security enhancement developments.

(b) FUNDING FOR FY 2003-2005.—Of the amounts made available under section 122(b) there may be made available to the Secretary of Transportation for activities of the National Maritime Security Advisory Committee established under section 7(d) of the Ports and Waterways Safety Act (33 U.S.C. 1226(d)) $1,000,000 for each of fiscal years 2003 through 2005, such sums to remain available until expended.

SEC. 104. INITIATION SECURITY EVALUATIONS AND PORT VULNERABILITY ASSESSMENTS.—

(a) IN GENERAL.—Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226), as amended by section 102, is further amended by adding at the end the following:

"(D) may establish other subcommittees to facilitate consideration of specific issues, including maritime and port security, border protection, and maritime domain awareness issues, the potential effects on national energy security, the United States economy, and the environment of disruptions of crude oil, liquefied natural gas, and other energy sources; and

"(E) may invite the participation of other Federal agencies and of State and local government agencies, including law enforcement agencies, with an interest or expertise in anti-terrorism or maritime and port security and safety related issues.

(b) FUNDING FOR FY 2002.—There are authorized to be appropriated to the Secretary of Transportation—

(1) an amount of $3,000,000 for the Department of Transportation to carry out this section.
“(5) UNAUTHORIZED DISCLOSURE.—The Secretar y shall ensure that all initial security evaluations, port vulnerability assessments, and any associated materials are properly safeguarded and not disclosed.

“(6) MATERIAL AND MISSION SUPPORT.—In carrying out responsibilities under this Act, the Secretary may accept contributions of funds, personnel, and facilities from public and private entities by contract or other arrangement if the confidentiality of security-sensitive information is maintained and access to such information is limited appropriately. The Secretary shall deposit any funds accepted under this section as miscellaneous receipts in the general fund of the United States Treasury.

“(b) FUNDING.—Of the amounts made available under section 122(b) there may be made available to the Secretary $10,000,000 for each of fiscal years 2003 through 2006 to carry out section 7(e) of the Ports and Waterways Safety Act (33 U.S.C. 1226(e)), such sums to remain available until expended.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $20,000,000 for fiscal year 2003 to carry out section 7(e) of the Ports and Waterways Safety Act (33 U.S.C. 1226(e)), such sums to remain available until expended.

“SEC. 104. ESTABLISHMENT OF LOCAL PORT SECURITY COMMITTEES.

“(a) IN GENERAL.—Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226), as amended by this Act, requires that each port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment (as defined in section 2101(15) of title 46, United States Code) establish local port security committees.

“(b) FUNDING.—Of the amounts made available under section 122(b) there may be made available to the Secretary $3,000,000 for each of fiscal years 2003 through 2006 to carry out section 7(f) of the Ports and Waterways Safety Act (33 U.S.C. 1226(f)), such sums to remain available until expended.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $5,000,000 for each of fiscal years 2002 and 2003 to carry out section 7(f) of the Ports and Waterways Safety Act (33 U.S.C. 1226(f)), such sums to remain available until expended.

“SEC. 105. MARITIME FACILITY SECURITY PLANS.

“Section 7 of the Ports and Waterways Safety Act (33 U.S.C. 1226), as amended by section 104, is further amended by adding at the end the following:

“(i) MARITIME FACILITY SECURITY PLANS.—

“(1) ESTABLISHMENT.—The Secretary shall establish maritime facility security plans for a port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment.

“(2) CONTENT.—A maritime facility security plan shall provide for:

“(A) a security program of a marine terminal operator or other entity required to submit a maritime facility security plan, or an amendment thereof, under this section as miscellaneous receipts in the general fund of the United States Treasury.

“(3) APPROVAL PROCESS.—If the Secretary disapproves a maritime facility security plan submitted under regulations promulgated under this subsection, and

“(4) RESUBMISSION OF DISAPPROVED PLANS.—If the Secretary disapproves a maritime facility security plan—

“(A) the Secretary shall notify the plan submitter in writing of the reasons for the disapproval; and

“(B) the submitter shall submit a revised maritime facility security plan within 180 days after receiving the notification of disapproval.

“(5) PERIODIC REVIEW AND RESUBMISSION.—Where appropriate, but no less frequently than once every 5 years, each port authority, marine terminal operator or other entity required to submit a maritime facility security plan under regulations promulgated under this subsection shall review its plan, make necessary or appropriate revisions, and submit the results of its review and revised plan to the Secretary.

“(6) INTRÆM SECURITY MEASURES.—The Secretary shall require each port authority, waterfront facility operator, or operator of a public or commercial structure located within or adjacent to the marine environment to implement any necessary security measures, including the establishment of a secure perimeter, to ensure the safety and security of port areas or facilities required to submit a maritime facility security plan for that port authority, waterfront facility operator,
or operator of a public or commercial structure located within or adjacent to the marine environment is approved.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $3,500,000 for each of fiscal years 2002 through 2006 to carry out section 106 of this title.

SEC. 106. EMPLOYMENT INVESTIGATIONS AND RESTRICTIONS FOR SECURITY-SENSITIVE POSITIONS.

Section 7 of the Ports and Waterways Safety Act, (33 U.S.C. 1226), as amended by section 105, is further amended by adding at the end of subsection (g) the following:

"(h) DESIGNATION OF CONTROLLED ACCESS AREAS; PROTECTION OF SECURITY-SENSITIVE INFORMATION; EMPLOYMENT INVESTIGATIONS AND CRIMINAL HISTORY RECORD CHECKS.—

(1) ACCESS AREAS; RESTRICTED INFORMATION REGULATIONS.—The Secretary, after consultation with the Secretary of the Treasury and the Attorney General, shall prescribe regulations to—

(A) require, as necessary, the designation of controlled access areas in the maritime facility security plan for each waterfront facility or other public or commercial structure located within or adjacent to the marine environment; and

(B) limit access to security-sensitive information, such as passenger and cargo manifests.

(2) SCREENING; BACKGROUND CHECKS.—In prescribing access limitations under this section, the Secretary may—

(A) require that persons entering or exiting secure, restricted, or controlled access areas undergo physical screening;

(B) require appropriate escorts for persons without proper clearances or credentials; and

(C) require employment investigations and criminal history record checks to ensure that individuals who have unrestricted access to controlled areas or have access to security-sensitive information do not pose a threat to national security or to the safety and security of maritime commerce.

(3) DISQUALIFICATION FROM NEW OR CONTINUING EMPLOYMENT.—An individual may be disqualified from employment in a security-sensitive position if—

(A) the individual does not meet other criteria established by the Secretary; or

(B) a background investigation or criminal record check reveals that—

(i) within the previous 7 years the individual was convicted, or found not guilty by reason of insanity of an offense described in subparagraph (A) or (B); or

(ii) within the previous 5 years was released from incarceration for committing an offense described in paragraph (A) or (B).

(4) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—

(A) SECRETARY MAY GIVE RESULTS OF INVESTIGATION TO EMPLOYERS.—The Secretary may transmit the results of a background check or criminal records check to a port authority, or, for other entities the Secretary determines necessary for carrying out the requirements of this subsection.

(B) POLA NOT TO APPLY.—Information obtained by the Secretary under this subsection may not be made available to the public under section 552 of title 5, United States Code.

(C) CONFIDENTIALITY.—Except to the extent necessary to carry out this subsection, any information other than criminal acts or offenses may not be disseminated, including background checks for ineligibility for employment under paragraph (3) that is included notice and an opportunity for a hearing.

(7) ACCESS TO DATABASES.—Notwithstanding any other provision of law to the contrary, but subject to existing or new procedural safeguards imposed by the Attorney General, the Secretary is authorized to access the Federal Bureau of Investigation’s Integrated Automated Fingerprint Identification System, the Fingerprint IdentificationRecord System, the Interstate Identification Index, the National Crime Information Center, the Integrated Entry and Exit Data System for the purpose of conducting or verifying the results of any background investigation or criminal records check required under this subsection.

(8) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—

(A) SECRETARY MAY GIVE RESULTS OF INVESTIGATION TO EMPLOYERS.—The Secretary may transmit the results of a background check or criminal records check to a port authority, or, for other entities the Secretary determines necessary for carrying out the requirements of this subsection.

(B) POLA NOT TO APPLY.—Information obtained by the Secretary under this subsection may not be made available to the public under section 552 of title 5, United States Code.

(C) CONFIDENTIALITY.—Except to the extent necessary to carry out this subsection, any information other than criminal acts or offenses may not be disseminated, including background checks for ineligibility for employment under paragraph (3) that is included notice and an opportunity for a hearing.

(9) EFFECTIVENESS AUDITS.—The Secretary shall provide for the periodic audit of the effectiveness of employment investigations and criminal history record checks required by this subsection.

(10) USER FEES.—

(A) IN GENERAL.—The Secretary and the Attorney General shall establish and collect reasonable fees to pay expenses incurred by the Federal government in carrying out any investigation or criminal history record check, fingerprinting, or identification verification services provided for under this subsection.

(B) DISPOSAL OF AMOUNT RECEIVED.—Amounts received by the Attorney General or Secretary under this subsection shall be credited to the account in the Treasury from which the expenses were incurred as offsetting collections and shall be available to the Attorney General and the Secretary upon the approval of Congress.

(11) SUBSECTION NOT IN DEGREATION OF OTHER RIGHTS.—Nothing in this subsection restricts any agency, instrumentality, or department of the United States from exercising, or limits its authority to exercise, any administrative, regulatory, or criminal authority to initiate or enforce port security standards.

SEC. 107. MARITIME DOMAIN AWARENESS.

(a) IN GENERAL.—The Secretary shall conduct a study on ways to enhance maritime domain awareness through improved collection, coordination, and dissemination of maritime intelligence and submit a report on the findings of that study to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Transportation and Infrastructure.

(b) SPECIFIC MATTERS TO BE ADDRESSED.—

In the study, the Secretary shall—

(1) identify actions that may be necessary for multi-agency cooperative efforts to improve the maritime security of the United States; and

(2) specifically address measures necessary to ensure the effective collection, dissemination, and interpretation of maritime intelligence and data, information resource management and database requirements, architectural measures for cross-agency integration, data sharing, correlation and safeguarding of data, and cooperative analysis to identify and effectively respond to threats to maritime security;

(3) estimate the potential costs of establishing and operating such a new or linked database and provide for the funding on what agencies should contribute to the cost of its operation;

(4) evaluate the feasibility of establishing a joint interagency task force on maritime intelligence;

(5) estimate of potential costs and benefits of utilizing commercial supercomputing platforms and data bases to enhance information collection and analysis capabilities across multiple Federal agencies; and

(6) provide a suggested timetable for the development of such a system or database.

(c) PARTICIPATION OF OTHER AGENCIES.—The Secretary shall consult with the Director of Central Intelligence, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of the Energy, the Director of the Federal Emergency Management Agency, and the heads of other departments and agencies as necessary and invite their participation in the preparation of the study and report required by subsection (a).

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $500,000 in fiscal year 2002 to carry out this section.

SEC. 108. INTERNATIONAL PORT SECURITY.

(a) IN GENERAL.—Part A of subtitle II of title 46, United States Code, is amended by adding at the end the following:

"CHAPTER 25. INTERNATIONAL PORT SECURITY.

"Sec. 2501. Assessment.

"2502. Notification by foreign authorities.

"2503. Actions when ports not maintaining security systems.

"2504. Travel advisories concerning security at foreign ports.

"2505. Suspensions.

"2506. Acceptance of contributions; joint venture arrangements.

"2501. Assessment.

"(a) IN GENERAL.—At intervals the Secretary of Transportation considers necessary, the Secretary shall—

(1) conduct a study on ways to enhance maritime domain awareness through improved collection, coordination, and dissemination of maritime intelligence and submit a report on the findings of that study to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Transportation and Infrastructure.

(2) APORTS TO BE ADDRESSED.—

(1) served by vessels of the United States;
§ 2503. Actions when ports not maintaining effective security measures in use at the port up to the Secretary is conducting the assessment; and
(2) a port does not maintain and carry out effective security measures, or any vessel carrying cargo originating from or transshipped through such a port, including refusing entry, inspection, or any other condition as the Secretary determines may be necessary to ensure the safety of United States ports and waterways;
(3) the Secretary may prohibit a United States vessel from providing transportation between the United States and any other foreign port that is served by vessels navigating to or from a port found not to maintain and carry out effective security measures;
(4) EFFECTIVE DATE FOR SANCTIONS.—Any action taken by the Secretary under subsection (a) for a particular port shall take effect—
(1) 90 days after the day on which the Secretary notifies the foreign country with jurisdiction or control over the United States port of the finding of the Secretary that a port does not maintain and carry out effective security measures so that the Secretary of State may issue a travel advisory.
(2) CONGRESSIONAL NOTIFICATION REQUIRED.—The Secretary promptly shall submit to Congress a report (and classified annex if necessary) identifying any port that the Secretary finds does not maintain and carry out effective security measures and describe any action taken under this section with regard to that port.
(3) ACTION CANCELED.—An action required under this section is no longer required if the Secretary, in consultation with the Secretary of State, determines that effective security measures are maintained and carried out at the port. The Secretary shall notify Congress when the action is no longer required.
§ 2504. Travel advisories concerning security at foreign ports
(a) IN GENERAL.—Upon being notified by the Secretary of Transportation that the Secretary has determined that a condition exists that threatens the safety or security of passengers, vessels, or crew, the Secretary shall immediately issue a travel advisory to the United States and any port to which the Secretary has determined that effective security measures are maintained and carried out.
(b) WRITTEN TRAVEL ADVISORY MAY BE CANCELLED.—The travel advisory required to be issued under subsection (a) of this section may specify the crew identity or qualifications, registration or classification of their flag vessels;
(c) CONGRESSIONAL NOTIFICATION.—The Secretary of State shall immediately notify Congress of any change in the status of a travel advisory imposed pursuant to this section.
adequate control over safety and security concerns; or

(D) whose laws or regulations are not sufficient to allow tracking of ownership and registration of vessels.

(3) Actions taken by the United States, whether through domestic action or international negotiation, including agreements at the International Maritime Organization under section 902 of the International Maritime and Port Security Act (46 U.S.C. App. 1801), to improve transparency and security of passenger or vessel registration procedures in nations on the list under paragraph (2).

(4) Recommendations for legislative or other actions needed to improve security of United States ports against potential threats posed by flag vessels of nations named in paragraph (2).

SEC. 109. COUNTER-TERRORISM AND INCIDENT CONTINGENCY PLANS.

(a) In General.—The Secretary, in coordination with the Director of the Federal Bureau of Investigation, shall ensure that all area maritime counter-terrorism and incident contingency plans are reviewed, revised, and updated no less frequently than once every 3 years.

(b) LOCAL PORT SECURITY COMMITTEES.—The Secretary shall ensure that port security committees established under section 7(d) of the Ports and Maritime Safety Act (33 U.S.C. 2181) or similar committees in existence in the review, revision, and updating of the plans.

(c) SIMULATION EXERCISES.—The Secretary shall ensure that:

(1) simulation exercises are conducted annually for all such plans; and

(2) actual practice drills and exercises are conducted at least once every 3 years.

(d) USE OF CONTRACT RESOURCES.—There are authorized to be appropriated to the Secretary $1,000,000 for each of fiscal years 2002 through 2006 to carry out this section, such sums to remain available until expended.

SEC. 110. MARITIME SECURITY PROFESSIONAL TRAINING.

(a) In General.—

(1) DEVELOPMENT OF STANDARDS.—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall establish standards and curriculum to allow for the training and certification of maritime security professionals. In developing these standards and curriculum, the Secretary, in coordination with the International Maritime Security Advisory Committee established under section 7(d) of the Ports and Maritime Safety Act (33 U.S.C. 2181d), shall:

(1) train and certification courses and certified personnel at United States and foreign ports used by United States-flagged vessels, or by foreign-flagged vessels with United States citizens as passengers or crewmembers, to develop and enhance security awareness and practices.

(b) COUNTER-TERRORISM AND INCIDENT CONTINGENCY PLANS.

(1) TRAINING PROVIDED TO LAW ENFORCEMENT PERSONNEL.—The Secretary is authorized to make the training opportunities provided under this section available to state and local law enforcement agencies.

(2) USE OF CONTRACT RESOURCES.—The Secretary may, without regard to the requirements of the Department of Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section.

(3) TRAINING PROVIDED TO LAW ENFORCEMENT PERSONNEL.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure concerning the following:

(1) The name of the individual or entity responsible for conducting the project.

(2) A comprehensive description of the need for the project, and a statement of the project's relationship to the security plan.

(3) A description of the qualifications of the individuals who will conduct the project.

(4) An estimate of the time required to complete the project.

(5) Evidence of support of the project by appropriate representatives of States or territories of the United States or other governments in which the project will be conducted.

(6) Information regarding the source and amount of matching funding available to the project as appropriated.

(7) Any other information the Secretary considers to be necessary for evaluating the project.

(8) A description of the qualifications of the individuals who will conduct the project.

(9) An estimate of the time required to complete the project.

(10) Evidence of support of the project by appropriate representatives of States or territories of the United States or other governments in which the project will be conducted.

(11) Information regarding the source and amount of matching funding available to the project as appropriated.

(12) Any other information the Secretary considers to be necessary for evaluating the project.

(13) A description of the qualifications of the individuals who will conduct the project.

(14) An estimate of the time required to complete the project.

(15) Evidence of support of the project by appropriate representatives of States or territories of the United States or other governments in which the project will be conducted.

(16) Information regarding the source and amount of matching funding available to the project as appropriated.

(17) Any other information the Secretary considers to be necessary for evaluating the project.
eligibility of the project for funding under this title.

**SEC. 1403. ALLOCATION OF RESOURCES.**—In carrying out this title, the Secretary may not use less than $2,000,000 in loan and guarantee under section 1401, and not less than $6,000,000 in grants under section 1402, are made available for eligible projects in each of fiscal years 2002 through 2006.**

**§ 114. Shared Dockside Inspection Facilities.**—In addition to the amounts made available under section 122(b), there may be made available to the Secretary of Transportation—

1. $9,000,000 for each of the fiscal years 2003, 2004, 2005, and 2006 as guaranteed loan costs (as defined in section 502(b) of the Federal Credit Reform Act of 1990; 2 U.S.C. 661a(b)) under section 1401 of the Merchant Marine Act, 1936, and grants made under section 1402 of that Act, to the Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure and the Advisory Committee through appropriate media of communication, including the Internet.

2. $10,000,000 for each of such fiscal years for grants under section 1402 of the Merchant Marine Act, 1936, and

3. $1,000,000 for each such fiscal year to cover administrative expenses related to loan guarantees and grants under section 1402 of that Act, such amounts to remain available until expended.

**§ 115. MANDATORY ADVANCED ELECTRONIC DOCUMENTATION OF WATERBORNE CARGO.**—There are authorized to be appropriated to the Secretary of Transportation $1,000,000 for each of fiscal years 2002 through 2006 to the Secretary to cover administrative expenses related to loan guarantees and grants under paragraphs (a), (b), (c), (d), and (e).

**§ 113. REPORTING ON PORT SECURITY PLANNING GUIDE.**—The Secretary of Transportation, acting through the Maritime Administration and after consulting with the Advisory Committee and the United States Coast Guard, shall publish a revised version of the document entitled “Port Security: A National Plan” that incorporates the requirements promulgated under section 7(g) of the Ports and Waterways Security Act (33 U.S.C. 2116(g)), within 3 years after the date of enactment of this Act, and make that revised document available on the Internet.

**§ 114. Shared Dockside Inspection Facilities.**—In general—

(a) In general.—The Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Transportation, the Attorney General, the Secretary of the General Services Administration shall act with each other, the Advisory Committee, and the States to establish shared dockside inspection facilities at United States ports for Federal and State agencies.

(b) Funding.—Of the amounts made available under section 122(b), there may be made available to the Secretary of the Department of Transportation, $1,000,000 for each of fiscal years 2003, 2004, 2005, and 2006, such sums to remain available until expended, to establish shared dockside inspection facilities at United States ports in consultation with the Secretary of the Treasury, the Secretary of Agriculture, and the Attorney General.

(c) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Transportation $1,000,000 for fiscal year 2002 to establish shared dockside inspection facilities at United States ports for Federal and State agencies.

**§ 113. REPORTING ON PORT SECURITY PLANNING GUIDE.**—The Secretary of Transportation, acting through the Maritime Administration and after consulting with the Advisory Committee and the United States Coast Guard, shall publish a revised version of the document entitled “Port Security: A National Plan” that incorporates the requirements promulgated under section 7(g) of the Ports and Waterways Security Act (33 U.S.C. 2116(g)), within 3 years after the date of enactment of this Act, and make that revised document available on the Internet.

**§ 114. Shared Dockside Inspection Facilities.**—In general—

(a) In general.—The Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Transportation, the Attorney General, the Secretary of the General Services Administration shall act with each other, the Advisory Committee, and the States to establish shared dockside inspection facilities at United States ports for Federal and State agencies.

(b) Funding.—Of the amounts made available under section 122(b), there may be made available to the Secretary of the Department of Transportation, $1,000,000 for each of fiscal years 2003, 2004, 2005, and 2006, such sums to remain available until expended, to establish shared dockside inspection facilities at United States ports for Federal and State agencies.

**§ 115. MANDATORY ADVANCED ELECTRONIC DOCUMENTATION OF WATERBORNE CARGO.**—There are authorized to be appropriated to the Secretary of Transportation $1,000,000 for each of the fiscal years 2002 through 2006 to the Secretary to cover administrative expenses related to loan guarantees and grants under section 1402(b) of the Merchant Marine Act, 1936, and grants made under section 1402 of that Act, such sums to remain available until expended.

**§ 116. ADDITIONAL APPROPRIATIONS AUTHORIZED.**—In addition to the amounts made available under subsection (c)(2), there are authorized to be appropriated to the Secretary of Transportation—

1. $26,000,000 for each of fiscal years 2002 through 2006 to the Secretary as guaranteed loan costs (as defined in section 502(b) of the Federal Credit Reform Act of 1990; 2 U.S.C. 661a(b)) under section 1401 of the Merchant Marine Act, 1936, and grants made under section 1402 of that Act, such amounts to remain available until expended.

2. To cover administrative expenses related to loan guarantees and grants under paragraphs (a) and (c).
shippers shall transmit documents or information required under this subsection to the Customs Service.

(c) LOADING UNDOCUMENTED CARGO PROHIBITED.—

(1) No marine terminal operator (as defined in section 314 of the Shipping Act of 1984 (46 U.S.C. App. 1702(14))) may load, or cause to be loaded, a cargo subject to this section on a vessel unless instructed by the vessel common carrier operating the vessel that such cargo has been properly documented in accordance with this section.

(2) When cargo is booked by one vessel common carrier to be transported on the vessel of another vessel common carrier, the booking acknowledges the original vessel and cargo to the Customs Service.

(3) The marine terminal operator shall be subject to search, seizure, and forfeiture.

(d) REPORTING OF UNDOCUMENTED CARGO.—A vessel common carrier shall notify the United States Customs Service of any cargo tendered to such carrier that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal.

For vessels that are operators of vessels sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier's vessel), the vessel common carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.

(e) ASSESSMENT OF PENALTIES.—Whoever violates subsection (b) of this section shall be liable to the United States for civil penalties assessed in an amount up to the cost of the cargo, or the actual cost of the transportation, whichever is greater.

(f) MIXED CARGO.—

(1) Any cargo that is not properly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal operator shall be subject to search, seizure, and forfeiture.

(2) The shipper of any such cargo is liable to the United States for civil penalties assessed in an amount up to the cost of the cargo, or the actual cost of the transportation, whichever is greater.

(g) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall be construed, interpreted, or applied to relieve or excuse any government agency that has a regulatory or enforcement function or that provides information, services, or support to the Customs Service.

(c) PASSANGER INFORMATION.—Part II of title IV of the Tariff Act of 1930, as amended by subsection (b), is further amended by inserting after section 451A the following new section:

SEC. 431B. PASSENGER AND CREW MANIFEST INFORMATION REQUIRED FOR CARRIERS.

(1) In General.—For each person arriving or departing on an air or land carrier or vessel required to make entry or obtain clearance under the customs laws of the United States, the pilot, master, operator, or owner of such carrier (or the authorized agent of such carrier) shall provide to the Customs Service, by electronic transmission manifest information described in subsection (b) in advance of such entry or clearance in such manner, time, and form as the Secretary shall prescribe.

(b) INFORMATION DESCRIBED.—The information described in this subsection shall include for each person:

(1) Full name.

(2) Date of birth and citizenship.

(3) Gender.

(4) Passport number and country of issuance.

(5) United States visa number or resident alien card number, as applicable.

(6) Passenger name record.

(7) Such additional information that the Secretary, by regulation, determines is reasonably necessary to ensure aviation and maritime safety pursuant to the laws enforced or administered by the Customs Service:

(c) DEFINITION.—Section 401 of the Tariff Act of 1930 is amended by adding at the end the following new subsection:

(1) LAND AIR AND VESSEL CARRIER.—The terms 'land carrier', 'air carrier', and 'vessel carrier' mean a carrier that transports by land, air, or water, respectively, goods or persons for hire or reward.

(2) VESSEL COMMON CARRIER.—The term 'vessel common carrier' has the meaning, including the terms 'ocean vessel common carrier' and 'vessel common carrier operating the vessel', as defined in section 1 of the Shipping Act, 1916 (46 U.S.C. App. 801).''.

(d) REQUIREMENTS FOR IMPROVED REPORTING PROCEDURES.—In addition to the promulgation of manifest information, the United States Customs Service shall improve reporting of goods arriving at United States ports:

(1) by promulgating regulations to require, notwithstanding sections 552 and 553 of the Tariff Act of 1930 (19 U.S.C. 1552 and 1553), at such times as Customs may require prior to the arrival of an in-bond movement of goods at the initial port of unloading, that—

(a) information shall be filed electronically identifying the consignee, consignor, country of origin, and the Harmonized Tariff Schedule of the United States 6-digit classification of the goods; and

(b) such information shall be to the best of the filer's knowledge, and shall not be considered the entry for the goods under section 484 of that Act (19 U.S.C. 1484) or subject to any duties for a period of 90 days of that Act (19 U.S.C. 1992 or 1995a); and

(2) by distributing the information required under the regulations promulgated under paragraph (1) or section 451B(b)(2), 451A, or 431B of the Tariff Act of 1930 on a real-time basis to any Federal, State, or local government agency that has a regulatory or law enforcement function or that provides information, services, or support to the Customs Service.

(f) EFFECTIVE DATE.—The amendments made by subsections (a) through (d) of this section shall apply on or after the date of enactment of this Act.

(g) PILOT PROGRAM FOR PRE-CLEARING INBOUND SHIPMENTS OF WATERBORNE CARGO.—

(1) In General.—If the Commissioner of Customs determines that information from a pilot program for inspecting, monitoring, tracking, and pre-clearing inbound shipments of waterborne goods on or after the date of enactment of this Act would improve the security and safety of ports, the Commissioner may develop and implement such a pilot program.

(2) PILOT PROGRAM CHARACTERISTICS.—

(a) IN GENERAL.—Any such pilot program shall—

(i) take into account, and may be organized around such information as that commercial vessels entering the territorial waters of the United States are destined for United States ports are required to transmit under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.); and

(ii) be designed to meet the requirements of United States customs laws and other regulations requiring the importation of goods into the United States, and shall coordinate mechanisms for the collection of applicable duties upon entry or removal from warehouse of such goods.

(f) CONCLUSION WITH OTHER INTERESTED AGENCIES.—In developing and implementing a pilot program under paragraph (1) the Commissioner of Customs shall consult with representatives of other Federal agencies with responsibilities related to the entry of commercial goods into the United States to ensure that those agencies' missions are not compromised by the pre-clearance.

(h) PILOT PROGRAM TO BE TESTED AT MULTIPLE PORTS.—Any such pilot program developed and implemented by the Commissioner may conduct pre-clearance inspections at United States ports in a manner that permits analysis and evaluation of different technologies and takes into account different types of goods and ports with different infrastructure, climatic, geographical, and other characteristics.

(i) REPORT TO THE CONGRESS.—Within a year after a pilot program is implemented under paragraph (1), the Commissioner of Customs shall transmit a report to the Senate Committee on Finance, the House of Representatives Committee on Transportation and Infrastructure that—

(A) evaluates the pilot program and its components;

(B) states the Commissioner's view as to whether any procedure, system, or technology evaluated as part of the program offers a higher level of security than requiring imported goods to clear customs under existing procedures;

(C) states the Commissioner's view as to the integrity of the procedures, technology, or systems evaluated as part of the pilot program;

(D) makes a recommendation with respect to whether the pilot program, or any procedure, system, or technology should be incorporated in a nationwide system for prescreening of imports of waterborne goods.

(E) describes the impact of the pilot program on staffing levels at the Customs Service and the potential effect full implementation of the program on goods under the rules of such port would have on Customs Service staffing levels; and

(F) states the Commissioner's views as to whether there is a method by which the United States could validate foreign ports so that cargo from those ports is pre-approved for United States Custom Service purposes.

(j) SEC. 116. PRE-ARRIVAL MESSAGES FROM VESSELS DESTINED TO UNITED STATES COASTAL PORTS.

The Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) is amended—

(1) by striking "environment" in section 2(a) (33 U.S.C. 1221(a)) and inserting "environment, and the safety and security of United States ports and waterways.";

(2) by striking paragraph (5) of section 4(a) (33 U.S.C. 1220(a)) and inserting the following:

"(5) require—"
“(A) the receipt of pre-arrival messages from any vessel destined for a port or place subject to the jurisdiction of the United States;

“(B) the message to include any information the Secretary determines to be necessary for the control of the vessel and the safety and security of the port, waterways, facilities, vessels, and marine environment; and

“(C) the message to be transmitted in electronic form, or otherwise as determined by the Secretary, in sufficient time to permit a review before the vessel’s entry into port, and deny port entry to any vessel that fails to comply with the requirements of this paragraph.”.

(3) by striking “environment” in section 5(a)(3) (33 U.S.C. 1224(a)) and inserting “environment, and the safety and security of United States ports and waterways”;

(4) by adding at the end of section 5 (33 U.S.C. 1224) the following: “Nothing in this section interferes with the Secretary’s authority to require information under section 4(a)(5) before a vessel’s arrival at United States ports with respect to the transfer of technology to enhance security and protection agencies.”

SEC. 119. EXTENSION OF SEAWARD JURISDIC-

TIONS.

(a) DEFINITION OF TERRITORIAL WATERS.—Section 1 of title VIII of the Act of June 15, 1917 (50 U.S.C. 190) is amended—

(1) by striking “The term ‘United States’ as used in this Act includes” and inserting the following: “In this Act:”;

(2) by adding at the end the following: “(a) United States.—The term ‘United States’ includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.”;

(b) MISSION.—Each maritime safety and security team shall be trained, equipped and capable of being deployed to:

1. deter, protect against, and rapidly respond to threats of maritime terrorism;

2. enforce moving or fixed safety or security zones established pursuant to law; and

3. conduct high speed intercepts;

4. board, search, and seize any article or thing on a vessel or waterfront facility found to present a risk to the vessel, facility or port;

5. rapidly deploy to supplement United States armed forces domestically or overseas;

6. respond to criminal or terrorist acts within the port as to minimize, insofar as possible, the disruption caused by such acts;

7. assist with port vulnerability assessments required under this Act; and

8. carry out other such missions as are assigned to it in support of the goals of this Act.

(c) COORDINATION WITH OTHER AGENCIES.—To the maximum extent feasible, each maritime safety and security team shall coordinate with the Secretaries of the other Federal, State, and local law enforcement and emergency response agencies.

SEC. 118. RESEARCH AND DEVELOPMENT FOR CRIME AND TERRORISM PREVEN-

TION AND DETECTION TECH-

(a) GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary, in consultation with the Advisory Committee, shall establish a grant program to fund eligible projects for the development, testing, and transfer of technology to enhance security at United States ports with respect to security risks, including—

(A) detection of explosives;

(B) weapons of mass destruction;

(C) chemical and biological weapons;

(D) drug and illegal alien smuggling;

(E) trade fraud; and

(F) other criminal activity.

(2) MATCHING FUNDS REQUIRED.—The maximum amount of grant funds made available under the program to a participant other than a department or agency of the United States for a technology development project shall not exceed 75 percent of costs of that project.

(b) ELIGIBLE PROJECTS.—A project is eligible for a grant under subsection (a) if it is for the construction, acquisition, or deployment of surveillance equipment and technology capable of preventing or detecting terrorist activities, or performing terrorist activities as determined by the Secretary.

(c) ANNUAL ACCOUNTING; DISSEMINATION OF INFORMATION.—The Secretary shall submit an annual summary under subsection (a), together with a general description of the tests and any technology transferred under the program, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $15,000,000 for each of fiscal years 2002 and 2003 and such sums to remain available until expended.

SEC. 121. ADDITIONAL REPORTS.

(a) ADDITIONAL SECURITY NEEDS.—Within 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the need for any additional enforcement measures under this title in order to provide for national security and protect the flow of commerce.

(b) ANNUAL STATUS REPORT TO CONGRESS.—

(1) IN GENERAL.—Notwithstanding section 7(c) of the Ports and Waterways Safety Act (33 U.S.C. 1226(c)), the Secretary shall report annually to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of port security plans and any improvements in port security measures and for any additional enforcement measures necessary to ensure compliance with the port security plan requirements of this title.

(2) SPECIFIC PORT EVALUATION.—The Secretary shall select a port for the purpose of conducting annual security plan reviews and, in the first annual report under this subsection, the Secretary shall report on the progress and enhancements of security plans and improvements at that port and on any increased or improved security at that port. The Secretary shall provide annual updates for that port in subsequent annual reports.

(c) ANNUAL REPORT ON MARITIME SECURITY AND TERRORISM.—Section 905 of the International Maritime and Port Security Act (6 U.S.C. 1201) is amended by adding at the end thereof the following: “Beginning with the first report submitted under this section after the date of enactment of the Port and Maritime Security Act of 2002, the Secretary shall include a description of activities undertaken under title I of that Act and an analysis of the effect of those activities on port security against terrorism.”

(d) ANNUAL REPORT OF EXPENDITURE OF FUNDS FOR TRAINING OF MARITIME SECURITY
(e) ACCOUNTING.—The Commissioner of Customs shall submit a report for each of fiscal years 2002 through 2006 to the Senate Committee on Finance, and the House of Representatives Committee on Ways and Means, on the expenditure of appropriated funds and the development of training and certification programs under section 111 of this title.

(2) REPORT ON TRAINING CENTER.—The Commandant of the United States Coast Guard, in conjunction with the Secretary of the Navy, shall submit to Congress a report, at the time they submit their fiscal year 2004 budget, on the life cycle costs and benefits of creating a Center for Coastal and Maritime Security. The purpose of the Center would be to provide an integrated training complex to prevent and mitigate terrorist threats against maritime assets of the United States, including ports, harbors, ships, dams, reservoirs, and transport nodes.

SEC. 122. 4-YEAR REAUTHORIZATION OF TONNAGE DUTIES.

(a) IN GENERAL.—

(1) EXTENSION OF DUTIES.—Section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended by striking “through 2002,” each place it appears and inserting “through 2006”.


(b) AVAILABILITY OF FUNDS.—Amounts deposited in the general fund of the Treasury as receipts of tonnage charges collected as a result of the amendments made by subsection (a) shall be made available, only to the extent provided in advance in appropriations Acts, in each of fiscal years 2003 through 2006 to carry out this title, as provided in section 102(b), 103(b), 104(b), 110(f), 111(c), 112(a) and 114(b) of this title.

(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—No amounts deposited under section 3302 of title 31, United States Code, duties collected under section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121) as amended by subsection (a) of this section, shall be credited as offsetting collections to the account that finances the activities and services authorized by sections 110, 112, and 114 of this Act, section 7(d), (e), and (f) of the Ports and Waterways Safety Act (33 U.S.C. 2116(d), (e), and (f)) (as added by sections 102(b), 103(b), 110(f), 111(c), 112(a) and 114(b) of this title).

SEC. 123. DEFINITIONS.

In this title:
SEC. 207. ENHANCED CARGO IDENTIFICATION AND TRACKING.

(a) TRACKING PROGRAM.—The Secretaries of the Treasury and Transportation shall establish a joint task force to work with ocean shippers and ocean carriers in the development of performance standards for systems to track data for shipments, containers, and contents—

(1) to improve the capacity of shippers and others to limit cargo theft and tampering; and

(2) to track the movement of cargo, through the Global Positioning System or other systems, within the United States, particularly for in-bond shipments.

(b) PERFORMANCE STANDARDS FOR ANTI-TAMPERING DEVICES.—The Secretaries of the Treasury and Transportation shall work with the National Institutes of Standards and Technology to develop enhanced performance standards for in-bond seals and locks for use on or in containers used for water-borne cargo shipments.

SEC. 208. ENHANCED CREWMEMBER IDENTIFICATION.

The Secretary of Transportation, in consultation with the Attorney General, may require crewmembers aboard vessels calling on United States ports to carry and present upon demand such identification as the Secretary determines.

SEC. 209. ENHANCED CARGO IDENTIFICATION AND TRACKING.

(a) TRACKING PROGRAM.—The Secretaries of the Treasury and Transportation shall establish a joint task force to work with ocean shippers and ocean carriers in the development of performance standards for systems to track data for shipments, containers, and contents—

(1) to improve the capacity of shippers and others to limit cargo theft and tampering; and

(2) to track the movement of cargo, through the Global Positioning System or other systems, within the United States, particularly for in-bond shipments.

(b) PERFORMANCE STANDARDS FOR ANTI-TAMPERING DEVICES.—The Secretaries of the Treasury and Transportation shall work with the National Institutes of Standards and Technology to develop enhanced performance standards for in-bond seals and locks for use on or in containers used for water-borne cargo shipments.

SEC. 210. VESSEL SECURITY PLANS.

(a) In general.—Section 4(a) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)) is amended—

(1) by striking “and” after the semicolon in paragraph (4); and

(2) by striking “environment.” in paragraph (5) and inserting “environment; and”; and

(b) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of the department in which the Coast Guard is operating $2,000,000 for each of fiscal years 2002 through 2006 to carry out section 4(a) of the Ports and Waterways Safety Act.”

SEC. 211. PROTECTION OF SECURITY-RELATED INFORMATION.

Section 7(c) of the Ports and Waterways Safety Act (33 U.S.C. 1226(c)) is amended to read as follows:

“(c) NONDISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, information developed under this section, and vessel security plan information developed under section 4(a)(6) of this Act (33 USC 1223(a)(6)), is not required to be disclosed to the public. This includes information related to security plans, procedures, or programs for passenger vessels or passenger terminals authorized under this Act, and any other information, including maritime facility security plans, vessel security plans and port vulnerability assessments.”
Congress finds that the United States should further develop and implement a coordinated strategy to prevent, and if necessary, to respond to biological threats or attacks against the United States. Such strategy should include measures for—

(1) enabling the Federal Government to provide health care assistance to States and localities in the event of a biological threat or attack;

(2) improving public health, hospital, laboratory, communications, and emergency response preparedness and responsiveness at the State and local levels;

(3) rapidly developing and manufacturing needed therapies, vaccines, and medical supplies; and

(4) enhancing the protection of the nation’s food supply and protecting agriculture against biological threats or attacks.

TITLE II—IMPROVING THE FEDERAL RESPONSE TO BIOTERRORISM

Subtitle A—Additional Authorities

SEC. 201. ADDITIONAL AUTHORITIES OF THE SECRETARY. [42 U.S.C. app. 266c–4] Title XXVIII of the Public Health Service Act, as added by section 101, is amended by adding at the end the following:

“Subtitle A—Improving the Federal Response to Bioterrorism

SEC. 2811. AUTHORITY OF THE SECRETARY RELATED TO BIOTERRORISM PREPAREDNESS.

“(a) PLAN.—To meet the objectives of this title (and the amendments made by the Bioterrorism Preparedness Act of 2001), and to help the United States fully prepare for a biological threat or attack, the Secretary, consistent with the recommendations and activities of the working group established under section 319F(a), shall develop and implement a coordinated plan to meet such objectives that are within the jurisdiction of the Secretary. Such plan shall include the development of specific criteria that will enable the Secretary to be made in the future.

(b) BIPARTISAN REPORT.—

(1) In general.—Not later than 1 year after the date of enactment of this title, and biennially thereafter, the Secretary shall prepare and submit to Congress a report concerning the progress made and the steps taken by the Secretary to further the purposes of this title (and the amendments made by the Bioterrorism Preparedness Act of 2001). Such report shall include an assessment of the activities conducted under section 319F(c).

(2) Additional authority.—In the biennial report submitted under paragraph (1), the Secretary may make recommendations concerning—

(A) additional legislative authority that the Secretary determines is necessary to meet the objectives of this title (and the amendments made by the Bioterrorism Preparedness Act of 2001); and

(B) additional administrative authority that the Secretary determines is necessary under section 319 to protect the public health in the event that a condition described in section 319 is in effect.

(c) OTHER REPORTS.—Not later than 1 year after the date of enactment of this title, the Secretary shall prepare and submit to Congress a report concerning—

“(1) activities conducted under section 319F(b);

“(2) the characteristics that may render a rural community uniquely vulnerable to a biological threat or attack, including distance, lack of emergency transport, hospital capacity, emergency laboratory capabilities of Federal or State public health networks, workforce deficits, or other relevant conditions;

“(3) in any case in which the Secretary determines that additional legislative authority is necessary to effectively strengthen the preparedness of rural communities for responding to a biological threat or attack, the recommendations of the Secretary with respect to such legislative authority; and

“(4) the need for and benefits of a National Disaster Response Medical Volunteer Service that would be a private-sector, community-based rapid response corps of medical volunteers.

SEC. 2812. STRATEGIC NUCLEAR AND CHEMICAL STOCKPILE.

“(a) IN GENERAL.—The Secretary, in coordination with the Secretaries of Energy, Labor, and the Department of Homeland Security, to the extent that the United States population, including children and other vulnerable populations, for use at the direction of the Secretary, in the event of a biological threat or attack or other public health emergency.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to prohibit the Secretary from including in the stockpile described in such subsection such vaccines, therapies, or medical supplies as may be necessary to meet the needs of the United States population, including children and other vulnerable populations, for use at the direction of the Secretary, in the event of a biological threat or attack or other public health emergency.

(c) DEFINITION.—In this section, the term ‘stockpile’ means—

“(1) a physical accumulation of the material described in subsection (a); or

“(2) a contractual agreement between the Secretary and a vendor or vendors under which such vendor or vendors agree to provide to the Secretary such medical supplies as shall be described in the contract at such time as shall be described in the contract.

(d) PROCEDURES.—The Secretary, in managing the stockpile under this section, shall—

“(1) ensure that adequate procedures are followed with respect to the stockpile maintained under subsection (a) for inventory management, accounting, and the physical security of such stockpile; and

“(2) in consultation with State and local officials, take into consideration the timing and location of special events, including designated national security events.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $450,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

SEC. 202. IMPROVING THE ABILITY OF THE CENTER FOR DISEASE CONTROL AND PREVENTION TO RESPOND EFFECTIVELY TO BIOTERRORISM

(a) REVISED AUTHORITY.—Section 319D of the Public Health Service Act (42 U.S.C. 247d–4) is amended—

(1) in subsection (a), by inserting “, and expanded capabilities of the Centers related to biological threats or attacks,” after “modern facilities”;

(2) in subsection (b), by inserting “including preparing for or responding to biological threats or attacks,” after “public health activities”;

(b) AUTHORITY.—The Secretary may award grants, contracts, or cooperative agreements to carry out paragraph (1).

(c) LOCAL DISCRETION.—Use of regional laboratories, if established under paragraph (1), shall be at the discretion of the public health agencies of such laboratories.

(d) PROHIBITED USES.—An eligible entity may not use amounts received under this subsection to—

(1) purchase or improve land or purchase any building or other facility; or

(2) construct, repair, or alter any building or other facility.

SEC. 211. ASSISTANT SECRETARY FOR EMERGENCY PREPAREDNESS.

(a) APPOINTMENT OF ASSISTANT SECRETARY FOR EMERGENCY PREPAREDNESS.—The President, with the advice and consent of the Senate, shall appoint an individual to serve as the Assistant Secretary for Emergency Preparedness, who shall perform the duties of an Assistant Secretary for Emergency Preparedness. Such Assistant Secretary shall report to the Secretary.

(b) DUTIES.—Subject to the authority of the Secretary, the Assistant Secretary for Emergency Preparedness shall—

(1) serve as the principal adviser to the Secretary on matters relating to emergency preparedness, including preparing for and responding to biological threats or attacks and for developing policy; and

(2) coordinate all functions within the Department of Health and Human Services relating to emergency preparedness, including preparing for and responding to biological threats or attacks.
SEC. 213. PUBLIC HEALTH PREPAREDNESS AND REACTOR RESPONSE ACT.

(a) Provision of Declaration to Congress.—Section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)) is amended by striking the footnotes to such section (as added by section 901 of the Public Health and zation Act of 1988 (42 U.S.C. 247d–6)) and inserting the following:

"(d) Waiver of Data Submittal and Reporting Deadlines.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been declared pursuant to subsection (a), individuals or public or private entities are unable to comply with deadlines for submission of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, extend such deadlines as the circumstances reasonably require, and may waive any sanctions otherwise applicable to such failure to comply."

(b) Advisory to Congress.—Section 319 of the Public Health Service Act (42 U.S.C. 247d) is amended by adding at the end the following:

"(d) Waiver of Data Submittal and Reporting Deadlines.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been declared pursuant to subsection (a), individuals or public or private entities are unable to comply with deadlines for submission of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, extend such deadlines as the circumstances reasonably require, and may waive any sanctions otherwise applicable to such failure to comply."

(c) Temporary Disaster-response Appointee.—For purposes of section 224(a) and the remedies described in such section, an individual appointed under paragraph (1) shall, while acting within the scope of such appointment, be considered to be an employee of the Public Health Service performing medical, surgical, dental, or related functions. Participation in training programs of the Public Health Service, including research or medical service, does not constitute employment for purposes of this section. An individual appointed under paragraph (1) shall, in accordance with the subchapter I of chapter 57 of title 5, United States Code, be eligible for travel, subsistence, and other necessary expenses incurred in carrying out services for which the individual was appointed, including per diem in lieu of subsistence.

SEC. 214. EXPANDED AUTHORITY OF THE SECRETARY TO PROVIDE RESPONSE AND RECOVERY SERVICES TO RESPOND TO PUBLIC HEALTH EMERGENCIES.

(a) Provision of Declaration to Congress.—Section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)) is amended by striking the footnotes to such section (as added by section 901 of the Public Health and zation Act of 1988 (42 U.S.C. 247d–6)) and inserting the following:

"(d) Waiver of Data Submittal and Reporting Deadlines.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been declared pursuant to subsection (a), individuals or public or private entities are unable to comply with deadlines for submission of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, extend such deadlines as the circumstances reasonably require, and may waive any sanctions otherwise applicable to such failure to comply."

(b) Advisory to Congress.—Section 319 of the Public Health Service Act (42 U.S.C. 247d) is amended by adding at the end the following:

"(d) Waiver of Data Submittal and Reporting Deadlines.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been declared pursuant to subsection (a), individuals or public or private entities are unable to comply with deadlines for submission of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, extend such deadlines as the circumstances reasonably require, and may waive any sanctions otherwise applicable to such failure to comply."

(c) Temporary Disaster-response Appointee.—For purposes of this section, the term ‘temporary disaster-response appointee’ means an individual appointed by the Secretary under subsection (b).

(d) Compensation for Work Injuries.—A temporary disaster-response appointee, as designated by the Secretary, shall be deemed an employee, and an injury sustained by such an individual while actually serving or while participating in a uncompensated training exercise related to such service shall be deemed ‘in the performance of duty’, for purposes of chapter 81 of title 5, United States Code, pertaining to compensation for work injuries. In the event of an injury to such a temporary disaster-response appointee, the Secretary of Labor shall be responsible for making determinations as to whether the claimants are entitled to compensation or other benefits in accordance with chapter 81 of title 5, United States Code.

(e) Employment and Retention Rights.—

"(1) IN GENERAL.—A temporary disaster-response appointee, as designated by the Secretary, shall, when performing service as a temporary disaster-response appointee or participating in an uncompensated training exercise related to such service, be deemed a person performing service in the uniformed services for purposes of title 38, United States Code, pertaining to employment and reemployment rights of members in the uniformed services. All rights and obligations under this section shall be made pursuant to regulations prescribed by the Secretary, in consultation with the Secretary of Defense, and shall not be subject to judicial review.

"(2) LITIGATION.—A temporary disaster-response appointee shall not be deemed an employee of the Public Health Service or the Office of Emergency Preparedness for purposes of title 38, United States Code, or any other provision of such title (other than those specifically set forth in this section)."

SEC. 215. PUBLIC HEALTH PREPAREDNESS AND REACTOR RESPONSE ACT.

(a) Provision of Declaration to Congress.—Section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)) is amended by striking the footnotes to such section (as added by section 901 of the Public Health and zation Act of 1988 (42 U.S.C. 247d–6)) and inserting the following:

"(d) Waiver of Data Submittal and Reporting Deadlines.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been declared pursuant to subsection (a), individuals or public or private entities are unable to comply with deadlines for submission of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, extend such deadlines as the circumstances reasonably require, and may waive any sanctions otherwise applicable to such failure to comply."

(b) Advisory to Congress.—Section 319 of the Public Health Service Act (42 U.S.C. 247d) is amended by adding at the end the following:

"(d) Waiver of Data Submittal and Reporting Deadlines.—In any case in which the Secretary determines that, wholly or partially as a result of a public health emergency that has been declared pursuant to subsection (a), individuals or public or private entities are unable to comply with deadlines for submission of data or reports required under any law administered by the Secretary, the Secretary may, notwithstanding any other provision of law, extend such deadlines as the circumstances reasonably require, and may waive any sanctions otherwise applicable to such failure to comply."

(c) Temporary Disaster-response Appointee.—For purposes of this section, the term ‘temporary disaster-response appointee’ means an individual appointed by the Secretary under subsection (b).

(d) Compensation for Work Injuries.—A temporary disaster-response appointee, as designated by the Secretary, shall be deemed an employee, and an injury sustained by such an individual while actually serving or while participating in a uncompensated training exercise related to such service shall be deemed ‘in the performance of duty’, for purposes of chapter 81 of title 5, United States Code, pertaining to compensation for work injuries. In the event of an injury to such a temporary disaster-response appointee, the Secretary of Labor shall be responsible for making determinations as to whether the claimants are entitled to compensation or other benefits in accordance with chapter 81 of title 5, United States Code.
SEC. 214. THE OFFICIAL FEDERAL INTERNET SITE ON BIOTERRORISM.

It is the recommendation of Congress that there be established an official Federal Internet site on bioterrorism, either directly or through provision of a grant to an entity that has demonstrated an expertise in bioterrorism and the development of websites that include information relevant to diverse populations (including messages directed at the general public and such relevant groups as medical personnel, public safety workers, and agricultural workers) and links to appropriate State and local government sites.

Section 319C of the Public Health Service Act (42 U.S.C. 247d–3) is amended—

(1) in subsection (a), by striking “competitive”;

(2) in subsection (b), by inserting “$120,000,000 for fiscal year 2002, after 2001,” after

SEC. 216. REGULATION OF BIOLOGICAL AGENTS AND TOXINS.

(a) BIOLOGICAL AGENTS PROVISIONS OF THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996: CODIFICATION IN THE PUBLIC HEALTH SERVICE ACT. WITH AMENDMENTS.—

(1) PUBLIC HEALTH SERVICE ACT.—Subpart 1 of part F of title III of the Public Health Service Act (42 U.S.C. 262 et seq.) is amended by inserting after section 351 the following:

“SEC. 351A. ENHANCED CONTROL OF BIOLOGICAL AGENTS AND TOXINS.—

“(a) REGULATORY CONTROL OF BIOLOGICAL AGENTS AND TOXINS.—

“(1) LIST OF BIOLOGICAL AGENTS AND TOXINS.—

“(A) IN GENERAL.—The Secretary shall by regulation establish and maintain a list of each biological agent and each toxin that has the potential to pose a severe threat to public health and safety.

“(B) CRITERIA.—In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall—

“(i) consider—

“(I) the effect on human health of exposure to the agent or toxin;

“(II) the potential for the transfer of restricted persons in research, development, and education; and

“(ii) the availability and effectiveness of pharmacotherapies and immunitizations to treat and prevent any illness resulting from infection by the agent or toxin; and

“(IV) account for the inclusion of such agents and toxins in the Strategic National Stockpile, to meet the special needs of children with respect to a biological threat or attack; and

“(ii) consult with appropriate Federal departments and agencies, and scientific experts representing appropriate professional groups, including those with pediatric expertise.

“(2) BIENNIAL REVIEW.—The Secretary shall review and republish the list under paragraph (1) biennially, or more often as needed, and shall timely reissue the list as necessary to incorporate additions or deletions to ensure public health, safety, and security.

“(b) REGULATIONS.—The Secretary shall by regulation provide for—

“(1) the establishment and enforcement of safety procedures for the transfer of biological agents and toxins pursuant to subsection (a)(1), including measures to ensure—

“(A) proper training and appropriate skills to handle such agents and toxins; and

“(B) proper laboratory procedure to contain and dispose of such agents and toxins;

“(2) safeguards to prevent access to such agents and toxins for use in domestic or international terrorism or for any other criminal purpose;

“(3) the establishment of procedures to protect the public safety in the event of a transfer or potential transfer of a biological agent or toxin in violation of the safety procedures established under paragraph (1) or the safeguards established under paragraph (2); and

“(4) appropriate availability of biological agents and toxins for research, education, and other legitimate purposes.

“(c) POSSESSION AND USE OF LISTED BIOLOGICAL AGENTS AND TOXINS.—The Secretary shall by regulation provide for the establishment and enforcement of standards and procedures governing the possession and use of biological agents and toxins listed pursuant to subsection (a)(1) in order to protect the public health and safety, including the measures, safeguards, procedures, and availability of such agents and toxins described in paragraphs (1) through (4) of subsection (b), respectively.

“(d) REGISTRATION AND TRACKABILITY MECHANISMS.—Regulations under subsections (b) and (c) shall require registration for the possession, use, transfer, and disposal of such biological agents and toxins listed pursuant to subsection (a)(1) in order to protect the public health and safety, including the measures, safeguards, procedures, and availability of such agents and toxins described in paragraphs (1) through (4) of subsection (b), respectively.

“(e) LIMITING ACCESS TO LISTED AGENTS AND TOXINS.—Regulations issued under subsections (b) and (c) only when—

“(A) such agents or toxins are present for diagnosis, verification, or proficiency testing;

“(B) the identification of such agents and toxins is, when required under Federal or State law, reported to the Secretary or other public health authorities; and

“(C) such agents or toxins are transferred or destroyed in a manner set forth by the Secretary in regulations.

“(f) SECURITY REQUIREMENTS FOR REGISTERED PERSONS.—

“(1) SECURITY.—In carrying out paragraphs (2) and (3) of subsection (b), the Secretary shall establish appropriate security requirements for persons possessing, using, or transferring biological agents and toxins listed pursuant to subsection (a)(1), including existing standards developed by the Attorney General for the security of government facilities and operations with such requirements as a condition of registration under regulations issued under subsections (b) and (c).

“(2) LIMITING ACCESS TO LISTED AGENTS AND TOXINS.—Regulations issued under subsections (b) and (c) shall include provisions—

“(A) to restrict access to biological agents and toxins listed pursuant to subsection (a)(1) only to those individuals who need to handle or use such agents or toxins; and

“(B) to provide that registered persons promptly submit the identifying information for such individuals to the Attorney General, with which information the Attorney General shall enter into agreements with the Federal Government to identify whether such individuals—

“(i) are restricted persons, as defined in section 175b of title 18, United States Code; or

“(ii) are named in a warrant issued to a Federal or State law enforcement agency for participation in any domestic or international act of terrorism.

“(3) CONSULTATION AND IMPLEMENTATION.—Regulations under subsections (b) and (c) shall be developed in consultation with research-performing organizations, including universities, and implemented with timeframes that take into account the need to continue research and education using biological agents and toxins listed pursuant to subsection (a)(1).

“(4) DISCLOSURE OF INFORMATION.—

“(1) IN GENERAL.—Any information in the possession of any Federal agency that identifies a person, or the geographic location of a person who is registered for regulations under this section (including regulations promulgated before the effective date of this subsection), or any site-specific information relating to the characterization of a biological agent or toxin listed pursuant to subsection (a)(1) or
TITLE III—IMPROVING STATE AND LOCAL PREPAREDNESS

Subtitle A—Emergency Measures to Improve State and Local Preparedness

SEC. 301. STATE BIOTERRORISM PREPAREDNESS AND RESPONSE BLOCK GRANT.

(a) IN GENERAL.—Section 319F of the Public Health Service Act (42 U.S.C. 247d-6) is amended by striking subsection (c) and inserting the following:

"(c) STATE BIOTERRORISM PREPAREDNESS AND RESPONSE BLOCK GRANTS.—

"(1) IN GENERAL.—The Secretary shall establish the State Bioterrorism Preparedness and Response Block Grant Program (referred to in this subsection as the 'Block Grant Program') under which the Secretary shall award grants to, or enter into cooperative agreements with, States, the District of Columbia, and territories (referred to in this section as 'eligible entities') to enable such entities to prepare for and respond to biological threats or attacks. The Secretary shall ensure that activities conducted under this section are coordinated with the activities conducted under section 319C.

"(2) ELIGIBILITY.—To be eligible to receive an award under paragraph (1), an eligible entity shall submit an application that includes an assessment under section 319B(a), or an assessment that is substantially equivalent as determined by the Secretary unless such assessment has already been performed; and

"(A) not later than 180 days after the date on which a grant or contract is received under this subsection, prepare and submit to the Secretary a Bioterrorism Preparedness and Response Plan in accordance with subsection (c);

"(B) not later than 180 days after the date on which a grant or contract is received under this subsection, complete an assessment under section 319B(a), or an assessment that is substantially equivalent as determined by the Secretary unless such assessment has already been performed; and

"(C) establish a means by which to obtain public comment and input on the plan and implementation that shall include an advisory committee or other similar mechanism for obtaining input from the public at large as well as other stakeholders;

"(D) use amounts received under paragraph (1) in accordance with paragraph (3), including making expenditures to carry out the strategy contained in the plan;

"(E) use amounts received under paragraph (1) to supplement and not supplant funding at levels in existence prior to September 11, 2001 for public health capacities or bioterrorism preparedness; and

"(F) with respect to the plan under paragraph (3), establish reasonable criteria to evaluate the effectiveness of entities that receive funds or grants under this section and shall include relevant benchmarks in the plan.

"(2) ELIGIBILITY.—To be eligible to receive a grant under this section, an eligible entity shall submit an application that includes the following:

"(A) a description of the program that the entity intends to develop under this section;

"(B) a description of the mechanism for obtaining input from the public at large as well as other stakeholders;

"(C) a description of the strategy that the entity intends to implement under this section; and

"(D) a description of the mechanism for obtaining input from the public at large as well as other stakeholders;
“(B) a description (including amounts expended by the eligible entity for such purpose) of the programs, projects, and activities that the eligible entity will implement using amounts received in order to detect and respond to biological threats or attacks, including the manner in which the eligible entity will manage State surveillance and response efforts to coordinate such efforts with national efforts;

“(C) a description of the training initiatives that the eligible entity has carried out in order to improve its ability to detect and respond to biological threats or attacks, including training and planning to protect the health and safety of personnel conducting such detection and response activities;

“(D) a description of the cleanup and contamination prevention efforts that may be implemented in the event of a biological threat or attack;

“(E) a description of efforts to ensure that hospitals and health care providers have adequate capacity and plans in place to provide health care items and services (including mental health services and services to meet the needs of children and other vulnerable populations) and include the training of telehealth services) in the event of a biological threat or attack; and

“(F) other information the Secretary may require by regulation.

“Nothing in subparagraph (E) shall be construed to require or recommend that States establish or maintain stockpiles of vaccines, therapeutic agents, or medical supplies.

“(4) USE OF FUNDS.—In coordination with the activities conducted under this section, an eligible entity shall use amounts received under this subsection to—

“(i) conduct the assessment under section 319A, make improvements to contain such disease or provide training in the event of a biological threat or attack;

“(ii) provide emergency services to families in receiving timely information;

“(iii) procure land or purchase any building or other facility;

“(iv) construct, repair, or alter any building or other facility; or

“(v) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

“(5) AMOUNT OF GRANT.—Except as provided in paragraph (2), the amount awarded to a State, the District of Columbia, or a territory under this subsection shall be the amount determined under subparagraph (A) and subject to the extent of the amount appropriated under paragraph (9) for such fiscal year and remaining after amounts are made available under subparagraph (B) for such fiscal year which meets such criteria as the Secretary may prescribe.

“(6) INDIAN TRIBES.—In coordination with the activities described in subparagraph (A), an eligible entity may use amounts received under this subsection to—

“(i) improve surveillance, detection, and response activities to prepare for emergency response activities including biological threats or attacks, including training personnel in these and other necessary functions;

“(ii) carry out activities to improve communications and coordination efforts within the eligible entity and the Federal Government, including activities to improve information technology and communications equipment available to health care and public health officials for use in responding to a biological threat or attack or other public health emergency and including early warning and surveillance systems that use advanced information technology to provide early detection of biological threats or attacks;

“(iii) plan for triage and transport management in the event of a biological threat or attack;

“(iv) meet the special needs of children and other vulnerable populations during and after a biological threat or attack, including the expansion of 2-1-1 call centers or other universal hotlines, or an alternative communication plan to assist victims and their families in receiving timely information.

“(v) improve the ability of hospitals and other health care facilities to provide effective health care (including mental health care) during a biological threat or attack, including the development of model hospital preparedness plans by a hospital accreditation organization or similar organizations; and

“(vi) enhance the safety of workplaces in the event of a biological threat or attack, except that the Secretary shall be non-obligated for the necessity to create a new, or deviate from an existing, authority to regulate, modify, or otherwise effect safety and health rules and standards.

“(C) PROHIBITED USES.—An eligible entity may not use amounts received under this subsection to—

“(i) provide inpatient services;

“(ii) make cash payments to intended recipients of health services;

“(iii) procure land or purchase any building or other facility;

“(iv) construct, repair, or alter any building or other facility; or

“(v) satisfy any condition for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

“(D) AVAILABILITY OF FUNDS.—Any amount paid to an eligible entity for a fiscal year under this subsection and remaining unobligated at the end of such year shall remain available for the purposes for which it was made.

“(E) INDIAN TRIBES.—

“(i) IN GENERAL.—If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subsection be provided directly by the Secretary to the tribe or tribal organization; and

“(ii) determines that the members of such tribe or tribal organization would be better served by the grants or agreements made directly by the Secretary under this subsection;

the Secretary shall reserve from amounts made available under this subsection for the fiscal year the amount determined under subparagraph (B).

“(B) AMOUNT.—The Secretary shall reserve for the purpose of subparagraph (A) from amounts that would otherwise be paid to such State under paragraph (1) an amount equal to the same ratio to the amount awarded to the State for such fiscal year which involves the population of the Indian tribe or the individuals represented by the tribal organization bears to the total population of the United States.

“(F) RULE WITH RESPECT TO UNEXPENDED FUNDS .—An eligible entity shall use amounts received under this subsection in accordance with the requirements of this subsection.

“(G) SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—

“(i) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subsection be provided directly by the Secretary to the tribe or tribal organization; and

“(ii) determines that the members of such tribe or tribal organization would be better served by the grants or agreements made directly by the Secretary under this subsection;

the Secretary shall reserve from amounts made available under this subsection for the fiscal year the amount determined under subparagraph (B).

“(H) AMOUNT.—The Secretary shall reserve for the purpose of subparagraph (A) from amounts that would otherwise be paid to such State under paragraph (1) an amount equal to the same ratio to the amount awarded to the State for such fiscal year which involves the population of the Indian tribe or the individuals represented by the tribal organization bears to the total population of the United States.

“(I) I N GENERAL .—The Secretary shall, on the basis of a determination under paragraph (1), provide additional funds to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made in the amount each such tribe or organization would be better served by the grants or agreements made directly by the Secretary under this paragraph than by the grants or agreements made directly by the Secretary to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

“(J) WITHHOLDING.—

“(i) IN GENERAL.—The Secretary shall, upon adequate notice and an opportunity for a hearing conducted within the affected eligible entity, withhold or recoup funds from any eligible entity that has not used the full amount awarded under this paragraph, or has otherwise failed to meet the conditions and requirements of this paragraph.

“(ii) WITHHOLDING.—The Secretary may not institute proceedings to withhold or recoup funds under clause (i) unless the Secretary has conducted an investigation concerning the alleged failure to meet the conditions and requirements of this paragraph, and

“(iii) MAKE PAYMENT.—The Secretary shall make payments to any such entity that does not use amounts received under this subsection in accordance with the requirements of this subsection.

“(K) WITHHOLDING.—

“(i) IN GENERAL.—The Secretary shall, upon adequate notice and an opportunity for a hearing conducted within the affected eligible entity, withhold or recoup funds from any eligible entity that has not used the full amount awarded under this paragraph, or has otherwise failed to meet the conditions and requirements of this paragraph.

“(ii) WITHHOLDING.—The Secretary may not institute proceedings to withhold or recoup funds under clause (i) unless the Secretary has conducted an investigation concerning the alleged failure to meet the conditions and requirements of this paragraph, and

“(iii) MAKE PAYMENT.—The Secretary shall make payments to any such entity that does not use amounts received under this subsection in accordance with the requirements of this subsection.

“(L) SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—

“(i) SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—

“(ii) IN GENERAL.—The Secretary shall, upon adequate notice and an opportunity for a hearing conducted within the affected eligible entity, withhold or recoup funds from any eligible entity that has not used the full amount awarded under this paragraph, or has otherwise failed to meet the conditions and requirements of this paragraph.

“(iii) MAKE PAYMENT.—The Secretary shall make payments to any such entity that does not use amounts received under this subsection in accordance with the requirements of this subsection.

“(M) WITHHOLDING.—

“(i) IN GENERAL.—The Secretary shall, upon adequate notice and an opportunity for a hearing conducted within the affected eligible entity, withhold or recoup funds from any eligible entity that has not used the full amount awarded under this paragraph, or has otherwise failed to meet the conditions and requirements of this paragraph.

“(ii) WITHHOLDING.—The Secretary may not institute proceedings to withhold or recoup funds under clause (i) unless the Secretary has conducted an investigation concerning the alleged failure to meet the conditions and requirements of this paragraph, and

“(iii) MAKE PAYMENT.—The Secretary shall make payments to any such entity that does not use amounts received under this subsection in accordance with the requirements of this subsection.
entity which has received funds under this section, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefore.

"(C) LIMITATION ON REQUESTS FOR INFORMATION.—"(i) IN GENERAL.—In conducting any investigation in an eligible entity, the Secretary or the Comptroller General of the United States may not make a request for any information to an entity, or an entity which has received funds under this subsection, or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

"(ii) JUDICIAL PROCEEDING.—Clause (i) does not apply to the collection, compilation, or transmission of data in the course of a judicial proceeding.

"(8) DEFINITION.—In this subsection, the term 'State' means any of the several States, the District of Columbia, or a political subdivision (including an intergovernmental organization) thereof.

"(b) AUTHORIZATION OF OTHER PROGRAMS.—Section 319F(f) of the Public Health Service Act (42 U.S.C. 247d-6a) is amended to read as follows:

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

"(i) to carry out subsection (d), $370,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year through 2006; and

"(ii) to carry out subsections (a), (b), and (e) thereof, such sums as may be necessary for each of fiscal years 2002 through 2006.

Subtitle B—Improving Local Preparedness and Response Capabilities

SEC. 311. DESIGNATED BIOTERRORISM RESPONSE MEDICAL CENTERS.

Section 319F of the Public Health Service Act (42 U.S.C. 247d-4) is amended—

(1) by redesignating subsections (d) through (h), as subsections (e) through (i), respectively; and

(2) by inserting after subsection (c), the following:

"(d) Designated Bioterrorism Response Medical Centers.—"(1) Grants.—The Secretary shall award project grants to eligible entities to establish such entities, in a manner consistent with applicable provisions of the Bioterrorism Preparedness and Response Act, to improve local and bioterrorism response medical center preparedness.

"(2) Eligibility.—To be eligible for a grant under this section an entity shall—

"(A) be a hospital including children's hospitals, clinic, health center, or primary care facility;

"(B) be prepared, in consultation with the Chief Executive Officer of the State, District, or territory in which the hospital, clinic, health center, or primary care facility is located, and submits to the Secretary, an application in such form, in such manner, and containing such information as the Secretary may require;

"(C) be within a reasonable period of time after receiving a grant under paragraph (1), meet such technical guidelines as may be applicable under paragraph (4); and

"(D) provide assurances satisfactory to the Secretary that such entity shall, upon the request of the Secretary and the Chief Executive Officer of the State, District, or territory in which the entity is located, during the emergency period, serve the needs of the entity in maintaining adequate health care capacity, serving as a regional resource in the diagnosis, treatment, or care for persons, including children and other vulnerable populations, exposed to a biological threat or attack, and accepting the transfer of patients, where appropriate.

"(3) Authorization of appropriations.—An eligible entity that receives a grant under paragraph (1) shall use funds received under the grant for activities that include—

"(A) the training of health care professionals to enhance the ability of such personnel to recognize the symptoms of exposure to a potential biological threat or attack and to provide treatment to those so exposed;

"(B) the training of health care professionals to recognize and treat the mental health consequences of a biological threat or attack;

"(C) increasing the capacity of such entity to provide appropriate health care for large numbers of individuals exposed to a biological threat or attack;

"(D) the purchase of reserves of vaccines, therapies, and other medical supplies to be used until the National Strategic National Pharmaceutical Stockpile arrives;

"(E) training and planning to protect the health and safety of personnel involved in responding to a biological threat or attack;

"(F) other activities determined appropriate by the Secretary.

"(4) PROHIBITED USES.—An eligible entity may not use amounts received under this subsection to—

"(A) purchase or improve land or purchase any building or other facility; or

"(B) construct, repair, or alter any building or facility.

"(6) TECHNICAL ASSISTANCE.—Not later than 180 days after the date of enactment of the Bioterrorism Preparedness Act of 2001, the Secretary shall develop and publish technical guidelines relating to equipment, training, and reimbursement relevant to the status as a bioterrorism response medical center and the Secretary may provide technical assistance to eligible entities and entities being designated to address the needs of children and other vulnerable populations.

SEC. 312. DESIGNATED STATE PUBLIC EMERGENCY ANNOUNCEMENT PLAN.

Section 613(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5169(b)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period and inserting "; and";

(3) by adding at the end the following:

"(7) include a plan for providing information to the public in a coordinated manner.

SEC. 313. TRAINING FOR PEDIATRIC ISSUES SURROUNDING BIOLOGICAL AGENTS USED IN WARFARE AND TERRORISM.

Section 319F(1) of the Public Health Service Act (42 U.S.C. 247d-4a), as so redesignated by section 311, is amended—

(1) in paragraph (1)—

"(A) by inserting "(including mental health care)" after "and care"; and

"(B) by striking "and" at the end;

(2) in paragraph (2), by striking the period and inserting "; and";

(3) by adding at the end the following:

"(3) develop educational programs for health care professionals, recognizing the special needs of children and other vulnerable populations.

SEC. 314. GENERAL ACCOUNTING OFFICE REPORT.

Section 319F(b) of the Public Health Service Act (42 U.S.C. 247d-6(g)), as so redesignated by section 311, is amended—

(1) by striking "Not later than 180 days after the date of enactment of this subsection, the" and inserting "The";

(2) in paragraph (3), by striking "and" at the end;

(3) in paragraph (4), by striking the period and inserting a semicolon; and

(4) by adding at the end the following:

"(5) the activities and cost of the Civilian Health and Medical Care Program of the Department of Veterans Affairs; and

"(6) the activities of the working group described in subsection (a) and the efforts made by such group to carry out the activities described in such subsection;

"(7) the activities and cost of the 2–1–1 call centers and other universal hotlines; and

"(8) the activities and cost of the development and improvement of public health laboratory systems.

SEC. 315. ADDITIONAL RESEARCH.

Section 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671) is amended by adding at the end the following:

"(A) RESEARCH ON BIOLOGICAL THREATS OR ATTACKS IN THE WORKPLACE.—The Director shall enhance and expand research as deemed appropriate by the Director on the health and safety of workers who are at risk for biological threats or attacks in the workplace.

SEC. 316. SENSE OF THE SENATE.

It is the sense of the Senate that—

"(1) many excellent university-based programs are already functioning and developing important biodefense products and solutions throughout the United States;

"(2) accelerating the crucial work done at university centers and laboratories will contribute significantly to the United States capacity to defend against any biological threat or attack;

"(3) maximizing the effectiveness of, and extending the mission of, established university programs would be the use of the additional resources provided for in the Bioterrorism Preparedness Act of 2001; and

"(4) Congress recognizes the importance of existing public and private university-based research, training, public awareness, and sabotage related biodefense and bioterrorism programs in the awarding of grants and contracts made in accordance with this Act.

Title IV—Developing New Countermeasures Against Bioterrorism

SEC. 319. LIMITED ANTITRUST EXEMPTION.

Section 2 of the Clayton Act (15 U.S.C. 13) is amended by adding at the end the following:

"(A) COUNTERMEASURES DEVELOPMENT MEETINGS.

"(B) COUNTERMEASURES PROCUREMENT MEETINGS.

"(C) COUNTERMEASURES PROCUREMENT CONSULTATIONS.

The Secretary may conduct meetings and consultations with parties involved in the development of priority countermeasures for the purpose of the development, manufacture, distribution, purchase, or sale of priority countermeasures consistent with the purposes of this title. The Secretary shall give notice of such meetings and consultations to the Attorney General and the Chairperson of the Federal Trade Commission (referred to in this subsection as the 'Chairperson').

MEETINGS AND CONSULTATIONS.—A meeting or consultation conducted under this subsection (A) shall—
“(i) be chaired or, in the case of a consultation, facilitated by the Secretary;

(ii) be open to parties involved in the development, manufacture, distribution, purchase, or sale of priority countermeasures, as determined by the Secretary;

(iii) be open to the Attorney General and the Chairperson;

(iv) provide for any combination of the purposes described in clauses (i) through (vi); and

(v) be renewed (with modifications, as appropriate) considering the factors described in paragraph (4).

(4) LIMITATION ON PARTIES.—The use of any information acquired under an exempted agreement by the parties to such an agreement for any purposes other than those specified in paragraph (1) and that is consistent with this paragraph shall be subject to the antitrust laws and any other applicable laws.

(5) DETERMINATION.—The Attorney General shall be subject to the antitrust laws and the Attorney General shall file a written agreement regarding covered activities referred to in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12 et seq.) commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the antitrust laws referred to in paragraph (A).

(6) COVERED ACTIVITIES.—

(A) GENERAL.—Except as provided in subparagraph (B), the term ‘covered activities’ includes any group of activities or conduct, including attempting to make, marketing, or performing a contract or agreement or engaging in any other conduct for the purpose of—

(i) theoretical analysis, experimentation, or the systematic study of phenomena or observable facts necessary to the development of priority countermeasures;

(ii) the development or testing of basic engineering techniques necessary to the development of priority countermeasures;

(iii) the development of a new process, product, or service if such information is not reasonably necessary to carry out the purposes of the agreement.

(7) DEVELOPMENT.—The term ‘development’ includes the identification of suitable compounds or biological materials, the conduct of preclinical and clinical studies, the preparation of an application for marketing approval, and any other actions related to preparation of a countermeasure.
Title XXVIII of the Public Health Service Act, as added by section 101 and amended by section 201, is further amended by adding at the end the following:

"Subtitle B—Developing New Countermeasures Against Bioterrorism"

SEC. 2841. SMALLPOX VACCINE AND OTHER VACCINE DEVELOPMENT.

"(a) In General.—The Secretary shall award contracts into cooperative agreements, or carry out such other activities as may reasonably be required in order to ensure that the stockpile described in section 2812 includes an adequate number of doses of vaccine against smallpox and other such vaccines determined by the Secretary to be sufficient to meet the needs of the population of the United States.

"(b) Rule of Construction.—Nothing in this section shall be construed to limit the private distribution, purchase, or sale of vaccine or biological products other than the stockpile described in subsection (a).

"(c) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $509,000,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.

"Subtitle C—Miscellaneous Provisions"

SEC. 2851. SUPPLEMENT NOT SUPPLANT.

"A State or local government, or other entity to which a grant, contract, or cooperative agreement is awarded under this title, may use amounts under the grant, contract, or cooperative agreement to supplant expenditures by the entity for activities provided for under this title, but shall only use such amounts to supplant such expenditures at a level at least equal to the level of such expenditures for fiscal year 2001 (excluding those additional, extraordinary expenditures made after September 10, 2001)."

TITLE V—PROTECTING THE SAFETY AND SECURITY OF THE FOOD SUPPLY

Subtitle A—General Provisions to Expand and Upgrade Security

SEC. 511. FOOD SAFETY AND SECURITY STRATEGY.

"(a) In General.—The President's Council on Food Safety (as established by Executive Order 13109), the Secretary of Commerce, and the Secretary of Transportation, shall, in consultation with the food industry and consumer and producer groups, and the States, develop and implement an education strategy with respect to bioterrorist threats to the food supply. Such strategy shall address threat assessments, response and notification procedures, and risk communications to the public.

"(b) Authorization of Appropriations.—There is authorized to be appropriated $500,000 for fiscal year 2002, and such sums as may be necessary in each subsequent fiscal year to implement the strategy developed under subsection (a) in cooperation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the Administrator of the Environmental Protection Agency.

SEC. 512. EXPANSION OF ANIMAL AND PLANT HEALTH INSPECTION SERVICE ACTIVITIES.

"(a) In General.—The Secretary of Agriculture (referred to in this section as the "Secretary") shall expand and enhance the capacity of the Animal and Plant Health Inspection Service through the conduct of activities to—

"(1) increase the inspection capacity of the Service at international points of origin;

"(2) improve surveillance at ports of entry and customs;

"(3) enhance methods of protecting against the introduction of plant and animal disease caused by terrorists;

"(4) adopt new strategies and technologies for dealing with intentional outbreaks of..."
(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $15,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

SEC. 514. EXPANSION OF FOOD AND DRUG ADMINISTRATION ACTIVITIES.

(a) IN GENERAL.—The Secretary of Health and Human Services is authorized to provide for the reliable tracking of the status of these shipments, including those shipments on hold at ports of entry and customs. The Secretary shall consider the possibility that such a system be fully accessible to the public to be registered with the Food Safety Inspection Service.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $30,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $50,000 each, to land grant universities to enhance the protection of the food and agriculture system of the United States. To facilitate the expansion of the system, the Secretary shall award grants to States.

(c) AUTOMATED RECORDKEEPING SYSTEM.—The Administrator of the Animal and Plant Health Inspection Service shall implement a central automated recordkeeping system to provide for the reliable tracking of the status of these shipments, including those shipments on hold at ports of entry and customs. The Secretary shall ensure that such a system shall be fully accessible to the public to be registered with the Food Safety Inspection Service.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $20,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

SEC. 515. EXPANSION OF FOOD SAFETY INSPECTION SERVICE ACTIVITIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $50,000 each, to land grant universities to:

1. Develop a comprehensive surveillance, incident management, and emergency response system.

2. Expand the system implemented under paragraphs (1) as soon as practicable to include Federal agencies and States where appropriate and necessary to enhance the protection of the food and agriculture system of the United States. To facilitate the expansion of the system, the Secretary shall award grants to States.

3. Develop and implement a program to provide education relating to farms, livestock confinement operations, and livestock auction biosecurity to prevent the intentional or accidental introduction of a foreign animal disease and to attempt to discover the introduction of such a disease before it can spread into an outbreak. Biosecurity for livestock includes the following:

(a) Animal quarantine procedures, and

(b) Training and education relating to farms, livestock confinement operations, and livestock auction facilities.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out each of fiscal years 2002, and such sums as may be necessary for each subsequent fiscal year.

SEC. 516. BIOSECURITY UPGRADES AT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $20,000,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $20,000,000 for each subsequent fiscal year, of which not less than the following amounts may be available in each fiscal year:

1. $80,000,000 for planning and design of an Agricultural Research Service/Animal and Plant Health Inspection Service facility in Laramie, Wyoming.

2. $80,000,000 for laboratory of hazardous biological agents and toxins contained in agricultural research facilities.

3. $80,000,000 for the planning, updating, and renovation of the Arthropod-Borne Animal Disease Laboratory in Greenport, New York.

4. $80,000,000 for the planning and renovation of the Federal Laboratory for Animal Disease Control in Laramie, Wyoming.

The Secretary shall award grants, contracts, or cooperative agreements to institutions of higher learning and shall emphasize the economic benefits of biosecurity and the profound negative impact of an outbreak.

SEC. 517. AGRICULTURAL BIOSECURITY.

(a) LAND GRANT ASSESSMENT.—

(1) IN GENERAL.—The Secretary of Agriculture shall require land grant universities to conduct security needs assessment and to plan for improvement of:

(A) the security of all facilities where hazardous biological agents and toxins are stored or used for agricultural research purposes; and

(B) communication networks that transmit information about hazardous biological agents and toxins.

(2) AVAILABILITY OF STANDARDS.—Not later than 45 days after the establishment of security standards under paragraph (1), the Secretary shall make such standards available to land grant universities.

(3) GRANTS.—Not later than 45 days after the date of enactment of this Act, the Secretary shall award grants, not to exceed $50,000 each, to land grant universities to enable such universities to conduct security needs assessment and plan to improve security. Such an assessment shall be completed not later than 45 days after the date on which such grant is received.

(b) NATIONAL HAZARDOUS AGENT INVENTORY.—The Secretary shall carry out activities necessary to develop a national inventory of hazardous biological agents and toxins contained in agricultural research facilities. Such activities shall include developing and implementing a method for, or a procedure, developing and secure means of transmitting inventory information, and conducting annual inventory activities. The inventory information shall be distributed to the Federal Government, States, and Indian tribes through the Department of Agriculture and with other entities in the Federal Government, the States, and Indian tribes through the sharing of information and technology; and

(2) The Secretary shall ensure that the service to protect against the threat of bioterrorism.
“(b) Administrative Detention of Foods.—

“(1) Authority.—Any officer or qualified employee of the Food and Drug Administration may order any article of food that is found during an inspection, examination, or investigation under this Act conducted or qualified by the Secretary if the officer or qualified employee has credible evidence or information indicating that the article is in violation of this Act and presents a threat of serious adverse health consequences or death to humans or animals.

“(2) Period of Detention; Approval by Secretary or Secretary’s Designee.—

“(A) Duration.—An article of food may be detained under this subsection for a reasonable period, not to exceed 20 days, unless a greater period of time, not to exceed 30 days, is necessary to enable the Secretary to institute an action under subsection (a) or section 302.

“(B) Secretary’s Approval.—Before an article of food may be ordered detained under this subsection, the Secretary or an officer or qualified employee designated by the Secretary must approve such order, after determining that the article presents a threat of serious adverse health consequences or death to humans or animals.

“(3) Security of Detained Article.—A detention order under subsection (b)(1) with respect to an article of food may require that the article be labeled or marked as detained, and may require that the article be removed to a secure facility. An article subject to a detention order under this subsection shall not be moved by any person from the place at which it is ordered detained until released by the Secretary or the expiration of the detention period applicable to such order, whichever occurs first.

“(4) Appeal and Detention Order.—Any person who would be entitled to claim a detained article if it were seized under subsection (a) may appeal to the Secretary the detention order under this subsection. Within 15 days after such an appeal is filed, the Secretary, after afford­ing opportunity for an informal hearing, shall order the detention order or revoke it.

“(5) Perishable Foods.—The Secretary shall provide in or in guidance for procedures for instituting and appealing on an expedited basis administrative detention of perishable foods.

“(b) Prohibited Act.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following new subsection:

“SEC. 301A. DEBARMENT FOR REPEATED OR SERIOUS FOOD IMPORT VIOLATIONS.

“(a) Debarment Authority.—

“(1) PERMISSIVE DEBARMENT.—Section 306(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(b)(1)) is amended—

“(A) by striking the period at the end of subparagraph (B) and inserting ‘‘or’’; and

“(B) by adding at the end the following:

“(C) in paragraph (1), by striking ‘‘or’’ and inserting ‘‘and’’.

“(2) CONFORMING AMENDMENT.—Section 306(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(b)(2)) is amended—

“(A) in the paragraph heading, by inserting ‘‘RELATING TO FOOD APPLICATIONS’’ after ‘‘DEBARMENT’’; and

“(B) in the matter preceding subparagraph (A), by striking ‘‘paragraph (1)’’ and inserting ‘‘subparagraphs (A) and (B) of paragraph (1)’’.

“(3) DEBARMENT PERIOD.—Section 306(c)(2)(A)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(c)(2)(A)(iii)) is amended by striking ‘‘subsection (b)(2)’’ and inserting ‘‘subsection (b)(1)(C) or (b)(2)’’.

“(4) TERMINATION OF DEBARMENT.—Section 306(d)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(d)(4)) is amended—

“(A) in subparagraph (A)(i), by striking ‘‘or’’ and inserting ‘‘or’’; and

“(B) in subparagraph (A)(ii) by inserting ‘‘in applicable cases’’, before ‘‘sufficient audio’’; and

“(C) in subparagraph (B), in each of clauses (i) and (ii), by inserting ‘‘or (b)(1)(C)’’ after ‘‘(b)(2)’’.

“(5) EFFECTIVE DATES.—Section 306(l)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 335a(l)(2)) is amended—

“(A) in the first sentence, by inserting ‘‘and subsection (b)(1)(C)’’ after ‘‘(b)(2)’’; and

“(B) in the second sentence, by striking ‘‘and subsections (f) and (g) of this section’’ and inserting ‘‘and subsection (b)(1)(C)’’.

“(6) CONFORMING AMENDMENT.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

“(b) If it is an article of food imported or offered for import into the United States by, with the assistance of, or at the direction of, a person who was debarred under section 306(b)(1)(C).

“SEC. 533. MAINTENANCE AND INSPECTION OF RECORDS FOR FOODS.

“(a) IN GENERAL.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

“SEC. 414. MAINTENANCE AND INSPECTION OF RECORDS.

“(a) IN GENERAL.—If the Secretary has reason to believe that an article of food is adulterated or misbranded under this Act and presents a threat of serious adverse health consequences or death to humans or animals, each person that manufactures, processes, packs, transports, distributes, receives, holds, or imports such food shall, at the request of an officer or employee duly designated by the Secretary, permit such person to present a true copy of all records relating to such food that may assist the Secretary to determine the cause and scope of the violation. Such records may be produced at reasonable times and within reasonable limits and in a reasonable manner to enable such person to copy all records relating to such food that may assist the Secretary to determine the cause and scope of the violation. Such records may be produced at reasonable times and within reasonable limits and in a reasonable manner to enable such person to copy all records relating to such food that may assist the Secretary to determine the cause and scope of the violation.

“(b) REGISTRATION.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended—

“(1) in paragraph (1), by striking ‘‘by section 412, 504, or 703’’ and inserting ‘‘by section 412, 414, 504, 703, and 704(a)’’; and

“(2) by striking ‘‘under section 412, 414(b)’’; and

“(3) in paragraph (2), by striking ‘‘subsection (b)(2)’’ and inserting ‘‘subsection (b)(1)(C)’’.

“(3) In General.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

“(d) Expedited Rulemaking.—Not later than 18 months after the date of enactment of this Act, the Secretary shall promulgate proposed and final regulations establishing recordkeeping requirements under subsection 412(b)(1) of the Federal Food, Drug, and Cosmetic Act.
“(a) for a domestic facility, the owner, operator, or agent in charge of the facility shall submit a registration to the Secretary; and

“(b) for a foreign facility, the owner, operator, or agent in charge of the facility shall submit a registration to the Secretary and shall include with the registration the name of the United States agent for the facility.

“(2) REGISTRATION.—An entity referred to in this section as the ‘registrant’ shall submit a registration under paragraph (1) to the Secretary and shall maintain an up-to-date list of facilities that are registered under this section.

“(3) PROCEDURE.—Upon receipt of a completed registration described in paragraph (1), the Secretary shall notify the registrant of the registration and assign a registration number to each registered facility.

“(4) LIST.—The Secretary shall compile and maintain an up-to-date list of facilities that are registered under this section. Such list and other information required to be submitted under this subsection shall not be subject to the requirements of section 552 of title 5, United States Code.

“(b) EXEMPTION AUTHORITY.—The Secretary may by regulation exempt types of retail establishments or farms from the requirements of this section.

“(c) EFFECTIVE DATE.—The amendment made by this section shall be construed to authorize the Secretary to impose any requirements with respect to a facility that is within the exclusive jurisdiction of the Secretary of Agriculture pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.).

“Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351), as amended by this title, is further amended by adding after subsection (b) the following:

“(c) Knowingly making a false statement in documentation required under section 801(a).”.

“SEC. 536. AUTHORITY TO MARK REFUSED ARTICLES.

“(a) MISHANDLED FOODS.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343), as amended by section 534(b), is further amended by adding at the end the following:

“(u) If—

“(i) it has been refused admission under section 801(a);

“(ii) it has been refused admission under section 801(a); and

“(iii) the quantity to be imported; and

“(ii) it has been refused admission under section 801(a); and

“(iii) it presents a threat of serious adverse health consequences or death to humans or animals.

“(b) REQUIREMENT.—Section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) is amended by adding at the end the following:

“The Secretary of Health and Human Services or the Secretary of the Treasury to require the marking of refused articles under any other provision of law.”

“SEC. 537. AUTHORITY TO COMMAND OTHER FEDERAL OFFICIALS TO CONDUCT INSPECTIONS.

“Section 702(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(a)) is amended—

“(1) by inserting ‘qualified’ before ‘employees’; and

“(2) by inserting ‘or of other Federal Departments or agencies, notwithstanding any other provision of law restricting the use of a Department’s or agency’s officers, employees, or funds,’ after ‘officers and qualified employees of the Department’.

“SEC. 538. PROHIBITION AGAINST PORT SHOPPING.

“Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), as amended by section 532(b), is further amended by adding at the end the following:

“(i) It is an article of food imported or offered for importation into the United States and the article of food has previously been refused admission under section 801(a), unless the person reoffering the article affirmatively establishes, at the expense of the owner or consignee of the article, that the article complies with the applicable requirements of this Act, as determined by the Secretary.”.

“SEC. 539. GRANTS TO STATES FOR INSPECTIONS.

“Chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 1031 et seq.) is amended by adding at the end the following:

“(c) RULING ON GRANTS.—Nothing in this title, or any amendment made by this title, shall be construed to authorize the Secretary to make grants to States, territories, or Federally recognized Indian tribes that undertake examinations, inspections, and investigations, and related activities under section 702. The funds provided under such grants shall only be used to conduct such examinations, inspections, investigations, and related activities.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 2002, and such sums as may be necessary to carry out this section for each subsequent fiscal year.”.

“SEC. 540. RULE OF CONSTRUCTION.

“Nothing in this title, or any amendment made by this title, shall be construed to—

“(1) provide the Food and Drug Administration with additional authority related to the regulation of meat, poultry, and egg products; or

“(2) limit the authority of the Secretary of Agriculture with respect to regulations issued under chapter 1 of title 21, Code of Federal Regulations.

“Subtitle C—Research and Training to Enhance Food Safety and Security

“SEC. 541. SURVEILLANCE AND INFORMATION GRANTS AND AUTHORIZED.

“Part B of title III of the Public Health Service Act (42 U.S.C. 245 et seq.) is amended by inserting after section 317P the following:

“SEC. 317Q. FOOD SAFETY GRANTS.

“(a) IN GENERAL.—The Secretary may award food safety grants to States to expand the number of States participating in Pulsenet, the Foodborne Diseases Active Surveillance Network, and other networks to enhance Federal, State, and local food safety efforts.

“(b) USE OF FUNDS.—Funds awarded under this section shall be used by States to assist in establishing and maintaining the food safety surveillance, technical, and laboratory capacity needed to participate in Pulsenet, Foodborne Diseases Active Surveillance Network, and other networks to enhance Federal, State, and local food safety efforts.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $19,500,000 for fiscal year 2002, and such sums as may be necessary for each of fiscal years 2003 through 2006.”

“SEC. 317R. SURVEILLANCE OF ANIMAL AND HUMAN HEALTH.

“The Secretary, through the Commissioner of the Food and Drug Administration and the Administrator of the Center for Disease Control and Prevention, and the Secretary of Agriculture shall develop and implement a plan for coordinating the surveillance for zoonotic disease and human disease.

“SEC. 542. AGRICULTURAL BIOTERRORISM RESEARCH AND DEVELOPMENT.

“(a) IN GENERAL.—The Secretary of Agriculture, to the maximum extent practicable, shall utilize existing authorities to expand Agricultural Research Service, and Cooperaive State Research Education and Extension Service, programs, projects, and the food supply of the United States by conducting activities to—

“(1) enhance the capability of the Service to respond immediately to the threats of an attack by agricultural and related regulatory agencies involved in protecting the food and agricultural system;
(2) continue existing partnerships with institutions of higher education (including partnerships with 3 institutions of higher education that are national centers for counterterrorism and agricultural or food security); and

(3) strengthen linkages with the intelligence community to better identify research needs and evaluate acquired materials;

(4) expand Service involvement with international organizations and activities; and

(5) otherwise expand the capacity of the Service to protect against the threat of bioterrorism.

(b) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to the Secretary under subsection (c)'' before a species recovery agreement entered into by the Secretary, pursuant to any such authorization under this section, for each of the fiscal years 2002 and subsequent fiscal years.

SEC. 206. CONGRESSIONAL NOTIFICATION OF SMALL ARMS AND LIGHT WEAPONS LICENSE APPROVALS: ANNUAL REPORT.

(a) CONGRESSIONAL NOTIFICATION OF EXPORT LICENSE APPROVALS.—Section 36(c) of the Arms Export Control Act (22 U.S.C. 2778(c)) is amended by inserting after "the Arms Control and Disarmament Agency" the following:

"(1) in the first sentence of subsection (a)(1),'' after "the Account"; and

(ii) by inserting "with the Department of State, the Department of Defense, and other government agencies" before "or derived from";

(b) REPORT.—Not later than six months after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit a report to the appropriate congressional committees on the number of small arms and light weapons that were transferred, or in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, a statement of the aggregate dollar value and quantity of semi-automatic assault weapons, or related equipment, that were transferred, the manner and circumstances of which is unlawful under section 922 of title 18, United States Code, that were licensed for export during the period covered by the report, and any data in the report on the number of such articles.

(c) ANNUAL MILITARY ASSISTANCE REPORTS.—Section 655(b)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2155(b)(3)) is amended by inserting before the period at the end thereof the following: 

"(i) by inserting "(other than the Account)" after "license approval"; and

(ii) by inserting "with the Secretary, the authorizing committees of Congress, the Department of State, and other federal agencies" before "or derived from".

(d) ANNUAL REPORT ON ARMS BROKERING.—

Not later than six months after the date of enactment of this Act, and annually thereafter, the Secretary of State, after consulting with the appropriate congressional committees on the number of small arms and light weapons and related equipment that were transferred, the manner and circumstances of which is unlawful under section 922 of title 18, United States Code, that were licensed for export during the period covered by the report, and any data in the report on the number of such articles.

SEC. 404. IMPROVEMENTS TO THE AUTOMATED EXPORT SYSTEM.

(a) CONTRIBUTION TO THE AUTOMATED EXPORT SYSTEM.—Not less than $300,000 of the amounts provided under section 302 for each fiscal year shall be available for the purpose of—

(1) providing the Department of State with full access to the Automated Export System;

(2) ensuring that the system is modified to the needs of the Department of State, if such modifications are consistent with the needs of the United States Government agencies; and

(b) MANPOWER.—The Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Treasury, shall publish regulations in the Federal Register to prescribe, by the date set forth in section (c), such regulations as are necessary to effectuate the provisions of this section.

(c) REQUIREMENT FOR INFORMATION SHARING.—The Secretary shall conclude an information-sharing agreement with the heads of United States Customs Service and the Census Bureau—

(1) to allow the Department of State to access information on controlled exports made through the United States Postal Service; and

(2) to adjust the Automated Export System to parallel information currently collected by the Department of State.

(d) SECRETARY OF TREASURY FUNCTIONS.—

Section 303 of title 13, United States Code, is amended by striking "or other than by mail," and inserting "or other than by mail, through the United States Postal Service; and

(e) FILING EXPORT INFORMATION, DELAYED FILINGS, PENALTIES FOR FAILURE TO FILE.—

Section 304 of title 13, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence, by striking "the penal sum of $1,000" and inserting "a penal sum of $10,000"; and

(B) in the third sentence, by striking "a penalty not to exceed $100 for each day's delinquency beyond the prescribed period, but not more than $1,000," and inserting "a penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation";

(2) in subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following:

"(b) Any person, other than a person described in subsection (a), required to submit export information, shall file such information in accordance with any rule, regulation, or order issued under this section. In the event any such information or reports are not filed within such prescribed period, the Secretary of Commerce (and officers of the United States Government designated by the Secretary) may impose a civil penalty not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.";

(f) ADDITIONAL PENALTIES.—

(1) IN GENERAL.—Section 305 of title 13, United States Code, is amended to read as follows:

"(a) CRIMINAL PENALTIES.—(1) Any person who knowingly fails to file or knowingly submits false or misleading export information through the Shippers Export Declaration (SED) or any successor document or the Automated Export System (AES) shall be subject to a fine not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.

(2) Any person who knowingly reports any information on or uses the SED or the AES for any illegal activity shall be subject to a fine not to exceed $1,000 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.

(3) Any person who is convicted under this subsection shall, in addition to any other penalty, be subject to forfeiting to the United States—

(A) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible items that were the subject of the violation; and

(B) any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible items that were the subject of the violation; and

(C) any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of the violation.

(b) CIVIL PENALTIES.—The Secretary of Commerce (and officers of the United States Government specified by the Secretary) may impose a civil penalty not to exceed $10,000 per violation or imprisonment for not more than 5 years, or both.
per violation on any person violating the provisions of this chapter or any rule, regulation, or order issued thereunder, except as provided in section 304. Such penalty may be in addition to any other penalty imposed by law.

"(c) Penalty Procedure.—(1) When a civil penalty is sought for a violation of this section, the Attorney General, the Secretary, or an administrative law judge, as the Attorney General may delegate, or the party entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of title 5, United States Code.

"(2) The Attorney General fails to pay a civil penalty imposed under this chapter, the Secretary may ask the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at current prevailing rates from the date of the final order). No such action may be commenced more than 5 years after the order imposing the civil penalty becomes final. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(3) The Secretary may remit or mitigate any penalties imposed under paragraph (1) if, in his or her opinion:

(A) the penalties were incurred without willful negligence or fraud; or

(B) other circumstances exist that justify a remission or mitigation.

"(4) If, pursuant to section 306, the Secretary delegates functions under this section to another agency, the provisions of law relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of actions and compromise of claims, shall apply.

"(5) Any amount paid in satisfaction of a civil penalty imposed under this section or section 304 shall be deposited into the general fund of the Treasury and credited as miscellaneous receipts.

"(d) Enforcement.—(1) The Secretary of Commerce may designate officers or employees of the Office of Export Enforcement to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

"(2) The Commissioner of Customs may designate officers or employees of the Customs Service to enforce the provisions of this chapter, or to conduct investigations pursuant to this chapter.

"(e) Regulations.—The Secretary of Commerce may promulgate regulations for the implementation and enforcement of this section.

"(f) Exemption.—The criminal fines provided for in this section are exempt from the provisions of section 3571 of title 18, United States Code."

SEC. 1101. BOYS AND GIRLS CLUBS OF AMERICA.

SEC. 1102. MENTAL HEALTH SERVICES. (a) In General.—Subtitle A of title II of the Patient Protection and Affordable Care Act (42 U.S.C. 13901 et seq.) is amended—

"(2) by redesignating section 11001 as section 11010;

"(3) in subparagraph (A), by striking "1,000" and inserting "1,200"; and

(b) Data Collection Grants.—(1) The Secretary of Health and Human Services shall establish a program to collect and disseminate data to provide information on the following:

"(i) the types of programs and services provided under this title; and

"(ii) the funding sources for such programs and services.

"(c) sunset Authority.—The authority under this section shall expire on December 31, 2020.

"(d) Administration.—The Secretary shall administer the program established under this section in accordance with the provisions of section 1901 of the Family Violence Prevention and Services Act.

"(e) Report.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit to the appropriate congressional committees a report describing the activities under this section.
“(iii) the implementation of residential drug treatment programs that are effective and science-based; and

(iv) drug testing of inmates upon intake and periodic release from incarceration as appropriate; and

(B) may include a system of incentives for prisoners to participate in counter-drug programs, treatment and drug-free wings with privileges, except that incentives under this paragraph may not include the early release of any prisoner convicted of a crime that is not part of a policy of a State concerning good-time credits or criteria for the granting of supervised release.

(d) APPLICATION.—In order to be eligible to receive a grant under this section, a State, unit of local government, or Indian tribe shall submit to the Attorney General an application, in such form and containing such information, including rates of positive drug tests among inmates upon intake and release from incarceration, as the Attorney General may reasonably require.

(e) USE OF FUNDS.—Amounts received by a State, unit of local government, or Indian tribe from a grant under this section may be used—

(1) to implement the program under subsection (c)(2); or

(2) for any other purpose permitted by this section.

(f) ALLOCATION OF FUNDS.—Grants awarded under this section shall be in addition to any other grants a State, unit of local government, or Indian tribe may be eligible to receive under this subtitle or under part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.).

(g) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a fiscal year for which such section has been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts allocated under this section, there are authorized to be appropriated to carry out this section such sums as are necessary for each of the fiscal years 2002, 2003, and 2004.

SEC. 2102. JAIL-BASED SUBSTANCE ABUSE TREATMENT PROGRAMS.

(a) USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT indicates a program to provide aftercare services to a local correctional facility. —Section 1902 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff-1) is amended by adding at the end the following:

“(f) USE OF GRANT AMOUNTS FOR NONRESIDENTIAL AFTERCARE SERVICES.—A State may use amounts received under this part to provide nonresidential substance abuse treatment aftercare services for inmates or former inmates that meet the requirements of subsection (c), if the chief executive officer of the State certifies to the Attorney General that the State is providing, and will continue to provide, an adequate level of residential treatment services.

SEC. 1906. JAIL-BASED SUBSTANCE ABUSE TREATMENT.

(a) DEFINITIONS.—In this section:

(b) JAIL-BASED SUBSTANCE ABUSE TREATMENT.—Part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.) is amended by adding at the end the following:

“(c) a description of the manner in which amounts received by the local correctional facility from the State under this section shall be used to supplement, and not to supplant, non-Federal funds that would otherwise be available for jail-based substance abuse treatment programs assisted with amounts made available under paragraph (1) for the purpose of assisting jail-based substance abuse treatment programs that are effective and science-based established by those local correctional facilities; and

“(d) FEDERAL SHARE.—The Federal share of a grant made by a State under this section to a local correctional facility may not exceed 75 percent of the total cost of the jail-based substance abuse treatment program described in the application submitted under subsection (c)—(1) for the fiscal year for which the program receives assistance under this section.

(e) APPLICATION.—Each application submitted under paragraph (1) shall include—

“(1) with respect to the jail-based substance abuse treatment program for which assistance is sought, a description of the program and a written certification that the local correctional facility will—

(i) coordinate the design and implementation of the program between local correctional facility representatives and the appropriate State and local alcohol and substance abuse agencies;

(ii) implement (or continue to require) urinalysis or other proven reliable forms of substance abuse testing of individuals participating in the program, including the testing of individuals released from the jail-based substance abuse treatment program who remain in the custody of the local correctional facility; and

(iii) carry out the program in accordance with criteria to be established by the State, in order to guarantee each participant in the program access to consistent, continual care if transferred to a different local correctional facility or for the purpose of rehabilitation of program participants, such as—

(i) educational and job training programs;

(ii) parole supervision programs;

(iii) half-way house programs; and

(iv) participation in self-help and peer group programs; and

(iv) assist in placing jail-based substance abuse treatment program participants with appropriate community substance abuse treatment facilities upon release from the facility at the end of a sentence or parole term.

(f) COORDINATION AND CONSULTATION.—(1) COORDINATION.—Each State that makes 1 or more grants under this section in any fiscal year shall, to the maximum extent practicable, implement a statewide communications network with the capacity to track the participants in jail-based substance abuse treatment programs established by local correctional facilities to ensure that those participants move between local correctional facilities within the State.
(2) Consultation.—Each State described in paragraph (1) shall consult with the Attorney General and the Secretary of Health and Human Services to ensure that each jail-based substance abuse treatment program assisted with a grant made by the State under this section incorporates applicable components of comprehensive approaches, including relapse prevention and aftercare services.

(3) Use of Grant Amounts.—

(a) In General.—Each local correctional facility that receives a grant under this section shall use the grant amount solely for the purpose of carrying out the jail-based substance abuse treatment program described in the application submitted under subsection (c).

(b) Administration.—Each local correctional facility that receives a grant under this section may not use any amount of a grant under this section for land acquisition, a construction project, or facility renovations.

(c) Reporting Requirement; Performance Review.—

(1) Reporting Requirement.—Not later than March 1 each year, each local correctional facility that receives a grant under this section shall submit to the Attorney General, through the State, a description and an evaluation report of the jail-based substance abuse treatment program carried out by the local correctional facility with the grant amount, in such form and containing such information as the Attorney General may reasonably require.

(2) Performance Review.—The Attorney General shall conduct an annual review of each jail-based substance abuse treatment program assisted under this section, in order to verify the compliance of local correctional facilities with the requirements of this section.

(d) Minimum Allocation.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 75 percent of the total amounts appropriated to the fiscal year for grants pursuant to this section.

(e) Eligibility for Substance Abuse Treatment.—Part S of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.), as amended by subsection (b), is further amended by adding at the end the following:

"SEC. 1907. Definitions.

"In this part:

"(1) The term 'inmate' means an adult or a juvenile who is incarcerated or detained in any State or local correctional facility.

"(2) The term 'correctional facility' includes a secure detention facility and a secure correctional facility (as those terms are defined in the definition of the term 'juvenile' in section 196 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603))."

(f) Clerical Amendment.—The table of contents in the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended in the matter relating to part S by adding at the end the following "1906. Jail-based substance abuse treatment. '1907. Definitions.'"

SEC. 2201. DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS ADMINISTERED BY STATE OR LOCAL PROSECUTORS.

(a) Prosecution Drug Treatment Alternative to Prison Programs.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff et seq.) is amended by adding at the end the following:

"PART CC—PROSECUTION DRUG TREATMENT ALTERNATIVE TO PRISON PROGRAMS

 SEC. 2201. PILOT PROGRAM AUTHORIZED.—

"(a) In General.—The Attorney General may make grants to State or local prosecutors for the purpose of developing, implementing, or expanding drug treatment alternative to prison programs which comply with the requirements of this part.

"(b) Use of Funds.—A State or local prosecutor who receives a grant under this part shall use amounts provided under the grant to develop, implement, or expand the drug treatment alternative to prison program for which the grant was made, which may include payment of the following expenses:

"(1) Salaries, personnel costs, equipment costs, and other costs directly related to the operation of the program, including the enforcement unit.

"(2) Payments to licensed substance abuse treatment providers for providing treatment to offenders participating in the program for which the grant was made.

"(3) Payments to public and nonprofit private entities for provision of treatment to offenders participating in the program for which the grant was made.

"(4) Grants shall be used under the grant to develop, implement, or expand the drug treatment alternative to prison program for which the grant was made.

SEC. 2202. PROGRAM REQUIREMENTS.

"A drug treatment alternative to prison program with respect to which a grant is made under this part shall comply with the following requirements:

"(1) A State or local prosecutor shall administer the program.

"(2) Each eligible offender who participates in the program shall, as an alternative to incarceration, be sentenced to or placed with a substance abuse provider.

"(3) Each eligible offender who participates in the program shall, as an alternative to incarceration, be sentenced to or placed with a substance abuse provider.

"(4) Each eligible offender who participates in the program shall serve a sentence of imprisonment with respect to the underlying crime if that offender successfully completes treatment provided by the residential substance abuse provider.

"(5) Such substance abuse provider treating an offender under this part shall comply with the following:

"(A) Make periodic reports of the progress of treatment of that offender to the State or local prosecutor carrying out the program in which the defendant was convicted; and

"(B) notify that prosecutor and that court if that offender absconds from the facility of incarceration, is sentenced to or placed with a residential substance abuse provider.

"(6) The program shall have an enforcement unit comprised of law enforcement officers under the supervision of the State or local prosecutor carrying out the program, the duties of which shall include verifying an
SEC. 2928. APPLICATIONS.  
(a) IN GENERAL.—In order to receive a grant under this part, the chief executive or the chief justice of a State, or the chief executive or judge of a unit of local government within such State, shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(b) CERTIFICATIONS.—Each such application shall be accompanied by the certification of the Attorney General that the program for which the grant is requested shall meet all of the requirements of this part.

SEC. 2929. FEDERAL SHARE.  
(a) GRANT AUTHORITY.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

"""SEC. 2929. FEDERAL SHARE.  
"""(a) APPROPRIATE SUBSTANCE ABUSE COURT PROGRAMS.—The Attorney General may make grants to States, political subdivisions of States, Indian tribes, or local units of government to establish programs that—
"""(1) involve continuous judicial supervision over juvenile offenders (other than violent juvenile offenders) with substance abuse problems;
"""(2) implement a noncustodial administration of other sanctions and services, which include—
"""(A) mandatory random testing for the use of controlled substances or other addictive substances;
"""(B) supervision of substance abuse services for offenders on supervised release or probation for each participant;
"""(C) probation, diversion, or other supervised release involving the possibility of prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress; and
"""(D) programmatic offender management, and aftercare services such as relapse prevention; and
"""(3) may include—
"""(A) payment, in whole or in part, by the offender or his or her parent or guardian of treatment costs, to the extent practicable, such as costs for urinalysis or counseling;
"""(B) payment, in whole or in part, by the offender or his or her parent or guardian of restitution, to the extent practicable, to either a victim of the offender’s offense or to a restitution or similar victim support fund; and
"""(C) economic sanctions shall not be at a level that would interfere with the juvenile offender’s education or rehabilitation.

(b) USE OF GRANTS FOR NECESSARY SUPPORT AND CONTINUING PROGRAMS.—A recipient of a grant under this part may use the grant to pay for treatment, counseling, and other related and necessary expenses not covered by other Federal, State, Indian tribal, and local sources of funding that would otherwise be available.

(c) IN-KIND CONTRIBUTIONS.—In-kind contributions may constitute a portion of the Federal share of a grant under this part.

SEC. 2930. DISTRIBUTION OF FUNDS.  
(a) GEOGRAPHICAL DISTRIBUTION.—The Attorney General shall allocate not less than 0.75 percent of the total amount appropriated under this part to grants for Indian tribes.

(b) INDIAN TRIBES.—The Attorney General shall allocate 0.75 percent of amounts made available under this part for grants to Indian tribes.

(c) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a grant under this part have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this part not less than 0.75 percent of the total amount appropriated in the fiscal year for grants pursuant to this part.

SEC. 2931. REPORT.  
(a) IN GENERAL.—Each recipient of a grant under this part shall submit to the Attorney General a description and an evaluation of the effectiveness of programs established with the grant on the date specified by the Attorney General.
SEC. 2932. TECHNICAL ASSISTANCE, TRAINING, AND EVALUATION.

(a) Technical Assistance and Training.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

(b) Evaluations.—In addition to any evaluation requirement that may be prescribed for recipients of grants under this part, the Attorney General may carry out or make arrangements for evaluations of programs that receive assistance under this part.

(c) Administration.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.

SEC. 2933. REGULATIONS.

The Attorney General shall issue any regulations and guidelines necessary to carry out this part, which shall ensure that the programs funded with grants under this part do not permit participation by violent juvenile offenders.

SEC. 2934. EXPANDED AUTHORIZED FUNDS.

The Attorney General may reallocate any grant funds that are not awarded for juvenile substance abuse courts under this part for use for other juvenile delinquency and crime prevention initiatives.

SEC. 2935. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for each of fiscal years 2002 through 2004, such sums as are necessary to carry out this part.

(b) Clerical Amendment.—The table of contents for title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

PART DD—JUVENILE SUBSTANCE ABUSE COURTS

Sec. 2936. Definitions.
Sec. 2937. Grant authority.
Sec. 2938. Application.
Sec. 2939. Federal share.
Sec. 2940. Distribution of funds.
Sec. 2941. Report.
Sec. 2942. Technical assistance, training, and evaluation.
Sec. 2943. Regulations.
Sec. 2944. Unawarded funds.
Sec. 2945. Authorization of appropriations.

SEC. 2920. EXPANSION OF SUBSTANCE ABUSE PREVENTION EFFORTS.

(a) Expansion of Efforts.—Section 515 of the Public Health Service Act (42 U.S.C. 200b) is amended by adding at the end the following:

(b) Grants, Contracts, and Cooperative Agreements.—

(1) In General.—The Administrator may make grants to and enter into contracts and cooperative agreements with public and non-profit private entities to enable such entities—

(A) to carry out school-based programs concerning the dangers of abuse of and addiction to illicit drugs, using methods that are effective and evidence-based, including initiatives that give students the responsibility to create their own antidrug abuse education programs for their schools; and

(B) to carry out community-based abuse and addiction education and prevention programs relating to illicit drugs that are effective and evidence-based. 

(2) Authorization of Appropriations for Contract, or Cooperative Agreement Funds.—Amounts made available under a grant, contract, or cooperative agreement under paragraph (1) shall be used for planning, establishing, or administering education and prevention programs relating to illicit drugs in accordance with paragraph (a).

(3) Uses of Amounts.—

(A) In General.—Amounts provided under this subsection may be used—

(i) to expand school-based programs that are focused on those districts with high or increasing rates of drug abuse and addiction and targeted at populations which are at-risk to drug abuse;

(ii) to carry out community-based education and prevention programs and environmental change strategies that are focused on those populations that are at-risk to addiction;

(iii) to assist local government entities and community antidrug coalitions and parents on the signs and symptoms of abuse of and addiction to illicit drugs; and

(iv) to train and educate State and local law enforcement officials, prevention and education officials, members of community antidrug coalitions and parents on the signs and symptoms of abuse of and addiction to illicit drugs, and the options for treatment and prevention.

(B) Priority in Making Grants.—The Administrator shall carry out school-based programs pursuant to subsection (a) and make grants under this subsection only if the agency has certified to the Director that—

(1) the applicant has the capacity to carry out the program described in paragraph (1) of subparagraph (A);

(2) the plans of the applicant for such a program are consistent with the policies of that agency regarding the treatment of substance abuse; and

(3) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements for the provision of the services involved.

(c) Requirement of Matching Funds.—

(1) In General.—With respect to the costs of the program to be authorized by an applicant pursuant to subsection (a), a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

(B) for any second fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

(C) for any subsequent fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

(2) Determination of Amount Contributed.—Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) Reports to Director.—A funding agreement for an award under subsection (a) shall be submitted to the Director a report that—

(1) describing the utilization and costs of services provided under the award;(2) the number of individuals served and the type and costs of services provided; and

(3) providing such other information as the Director may require.
such other agreements and such assurances and information as the Director determines to be necessary to carry out this section. (i) EQUITABLE ALLOCATION OF AWARDS.—In making an award under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards. (j) DEFINITION OF RURAL STATE.—In this section, the term ‘rural State’ has the same meaning as in section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(b)).

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2002, 2003, and 2004. SEC. 2205. FUNDING FOR RESIDENTIAL TREATMENT CENTERS FOR WOMEN AND CHILDREN. (a) IN GENERAL.—The Director of the Center for Substance Abuse Treatment shall provide grants, cooperative agreements, contracts, or other agreements to public and nonprofit private entities for the purpose of providing treatment facilities that—

(1) provide residential treatment for methamphetamine, heroin, and other drug addicted women with minor children; and

(2) offer specialized treatment for methamphetamine-, heroin-, and other drug-adicted mothers and allow the minor children of those mothers to reside with them in the facility or nearby while treatment is ongoing.

(b) MINIMUM QUALIFICATIONS FOR RECEIPT OF AWARD.—With respect to the principal agency involved in administering programs relating to substance abuse, the Director may make an award under subsection (a) to an applicant only if the agency has certified to the Director that—

(1) the applicant has the capacity to carry out a program described in subsection (a);

(2) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

(3) the applicant, or any entity through which the program will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

(c) EQUITABLE ALLOCATION OF AWARDS.—In making an award under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards. (d) DURATION OF AWARD.—The period during which payments are made to an entity from an award under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director, the recipients and the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity.

(e) REQUIREMENT OF APPLICATION.—The Director shall ensure that the applications for the award described in subsection (a) include the following:

(1) a description of the need for the program and the methodology proposed for achieving the purposes of the program; and

(2) a description of the qualifications of the applicants to carry out the program.

(f) DURATION OF AWARD.—The period during which payments are made to an entity from an award under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director, the recipients and the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity. (g) EQUITABLE ALLOCATION OF AWARDS.—In making an award under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards. (h) DURATION OF AWARD.—The period during which payments are made to an entity from an award under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director, the recipients and the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity. (i) EQUITABLE ALLOCATION OF AWARDS.—In making an award under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards. (j) DURATION OF AWARD.—The period during which payments are made to an entity from an award under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director, the recipients and the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity. (k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2002, 2003, and 2004. SEC. 2206. DRUG TREATMENT FOR JUVENILES. Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding after the following the following:

"PART G—RESIDENTIAL TREATMENT PROGRAMS FOR JUVENILES "SEC. 575. RESIDENTIAL TREATMENT PROGRAMS FOR JUVENILES. (a) IN GENERAL.—The Director of the Center for Substance Abuse Treatment shall award grants to, or enter into cooperative agreements or contracts, with public and nonprofit private entities for the purpose of providing treatment to juveniles for substance abuse through programs that are effective and science-based in which, during the course of receiving such treatment the juveniles reside in facilities made available by the programs.

(b) AVAILABILITY OF SERVICES FOR EACH PARTICIPANT.—A funding agreement for an award under subsection (a) for an applicant is that, in the program operated pursuant to such subsection—

(1) treatment services will be available through the applicant, either directly or through agreements with other public or nonprofit private entities; and

(2) the services will be made available to each person admitted to the program.

(c) INDIVIDUALIZED PLAN OF SERVICES.—A funding agreement for an award under subsection (a) for an applicant is that—

(1) in providing authorized services for an eligible person pursuant to such subsection, the applicant will, in consultation with the juvenile and, if appropriate, the parent or guardian of the juvenile, prepare an individualized plan for the provision to the juvenile or young adult of the services; and

(2) treatment services under the plan will include—

(A) individual, family, and group counseling, as appropriate, regarding substance abuse; and

(B) followup services to assist the juvenile or young adult in preventing a relapse into such abuse.

(d) ELIGIBLE SUPPLEMENTAL SERVICES.—Grants under subsection (a) may be used to provide an eligible juvenile, the following services:

(1) HOSPITAL REFERRALS.—Referrals for necessary hospital services.

(2) HIV AND AIDS COUNSELING.—Counseling on the human immunodeficiency virus and on acquired immune deficiency syndrome.

(3) DOMESTIC VIOLENCE AND SEXUAL ABUSE COUNSELING.—Counseling on domestic violence and sexual abuse.

(4) PERIPARATION FOR REENTRY INTO SOCIETY.—Planning for and counseling to assist reentry into society, both before and after the juvenile, including public or nonprofit private entities in the community involved that provide services appropriate for the juvenile.

(e) MINIMUM QUALIFICATIONS FOR RECEIPT OF AWARD.—With respect to the principal agency of a State or Indian tribe that administers programs relating to substance abuse, the Director may award a grant to, or enter into a cooperative agreement or contract with, an applicant only if the agency or Indian tribe has certified to the Director that—

(1) the applicant has the capacity to carry out a program described in subsection (a);

(2) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

(3) the applicant has the capacity to carry out a program described in subsection (a);
‘(3) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved;’

‘(f) REQUIREMENTS FOR MATCHING FUNDS.—

‘(1) IN GENERAL.—With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a), a funding agreement for an award under subsection (a) is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

‘(A) for the first fiscal year for which the applicant receives payments under an award under subsection (a), is not less than $1 for each $9 of Federal funds provided in the award;

‘(B) for any second subsequent fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

‘(C) for any subsequent subsequent fiscal year, is not less than $1 for each $9 of Federal funds provided in the award.

‘(2) DETERMINATION OF AMOUNT CONTRIBUTED.—Non-Federal contributions required in paragraphs (1) and (2) shall be in cash or in-kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, services assisted or subsidized to any significant extent by the Federal Government, or services assisted or subsidized, may not be included in determining the amount of such non-Federal contributions.

‘(g) OUTREACH.—A funding agreement for an award under subsection (a) for an applicant is that the applicant will provide outreach services in the community involved to identify juveniles who are engaging in substance abuse and to encourage the juveniles to undergo treatment for such abuse.

‘(h) FUNDING PROGRAM.—A funding agreement for an award under subsection (a) for an applicant is that the program operated pursuant to such subsection will be operated at a location that is accessible to low income juveniles.

‘(i) CONTINUING EDUCATION.—A funding agreement for an award under subsection (a) is that the applicant involved will provide for continuing education in treatment services for the individuals who will provide treatment services to be operated by the applicant pursuant to such subsection.

‘(j) IMPOSITION OF CHARGES.—A funding agreement for an award under subsection (a) for an applicant is that, if a charge is imposed for the provision of authorized services to or on behalf of an eligible juvenile, such charge—

‘(1) will be made according to a schedule of charges that is made available to the public;

‘(2) will be adjusted to reflect the economic condition of the juvenile involved; and

‘(3) will not be imposed on any such juvenile whose family has an income of less than 185 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (12 U.S.C. 2742).

‘(k) REPORTS TO DIRECTOR.—A funding agreement for an award under subsection (a) is that the applicant involved will submit to the Director a report—

‘(1) describing the utilization and costs of services provided under the award;

‘(2) specifying the number of juveniles served, and the type and costs of services provided; and

‘(3) providing such other information as the Director determines to be appropriate.

‘(l) REQUIREMENT OF APPLICATION.—The Director may make an award under subsection (a) only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains such assurances and information as the Director determines to be necessary to carry out this section.

‘(m) PRIORITY.—In making grants under this subsection, the Director shall give priority to areas experiencing a high rate or rapid increase in drug abuse and addiction.

‘(n) EQUAL ALLOCATION OF AWARD.—In making awards under subsection (a), the Director shall ensure that the awards are equitably allocated among the principal geographic units of the United States, as well as among Indian tribes, subject to the availability of qualified applicants for the awards.

‘(o) DURATION OF AWARD.—

‘(1) IN GENERAL.—The period during which payments are made to an entity from an award under this section may not exceed 5 years.

‘(2) APPROVAL OF DIRECTOR.—The provision of payments described in paragraph (1) shall be subject to—

‘(A) annual approval by the Director of the payment, and

‘(B) the availability of appropriations for the fiscal year at issue to make the payments.

‘(3) NO LIMITATION.—This subsection may not be construed to establish a limitation on the number of awards that may be made to an entity under this section.

‘(p) EVALUATION.—A funding agreement under subsection (a) shall include a description of the evaluation of the program carried out pursuant to this section.

‘(q) REPORTS TO CONGRESS.—

‘(1) INITIAL REPORT.—Not later than October 1, 2001, the Director shall submit to the Committee on the Judiciary of the House of Representatives, and to the Committee on the Judiciary of the Senate, a report describing programs carried out pursuant to this section.

‘(2) PERIODIC REPORTS.—

‘(A) IN GENERAL.—Not less than biennially after the date described in paragraph (1), the Director shall prepare a report describing programs carried out pursuant to this section during that biennium, and shall submit the report to the Administrator for inclusion in the biennial report under section 501(k).

‘(B) SUMMARY.—Each report under this subsection shall include a summary of any evaluations conducted under subsection (m) during the period with respect to which the report is prepared.

‘(1) DEFINITIONS.—In this section:

‘(A) AUTHORIZED SERVICES.—The term ‘authorized services’ means treatment services and supplemen.tarial services authorized to be provided to juveniles.

‘(B) JUVENILE.—The term ‘juvenile’ means anyone 18 years of age or younger at the time that of admission to a program operated pursuant to subsection (a).

‘(C) ELIGIBLE JUVENILE.—The term ‘eligible juvenile’ means a juvenile who has been admitted to a program operated pursuant to subsection (a).

‘(D) FUNDING AGREEMENT UNDER SUBSECTION (A).—The term ‘funding agreement under subsection (a)’, with respect to an award under subsection (a), means that the applicant involved will submit to the Administrator for inclusion in the report described in subsection (p) a report describing programs carried out pursuant to subsection (a).

‘(E) SUPPLEMENTAL SERVICES.—The term ‘supplemental services’ means the services described in subsection (d).

‘(F) AUTHORIZATION OF APPROPRIATIONS.—In general. Appropriations for the establishment and implementation of programs that address the service needs of juveniles with substance abuse and treatment problems who come into contact with the justice system by requiring the following:

‘(1) collaboration across child serving systems, including juvenile justice agencies, relevant substance abuse and mental health treatment providers, and State or local educational agencies.

‘(2) Appropriate screening and assessment of juveniles.

‘(G) USE OF FUNDS.—A consortium described in subsection (a) that receives a grant under this section shall use the grants to establish for the establishment and implementation of programs that address the service needs of juveniles with substance abuse and treatment problems who come into contact with the justice system by requiring the following:

‘(1) Collaboration across child serving systems, including juvenile justice agencies, relevant substance abuse and mental health treatment providers, and State or local educational agencies.

‘(2) Appropriate screening and assessment of juveniles.
"(3) Individual treatment plans.

"(4) Significant involvement of juvenile judges where possible.

"(c) APPLICATION FOR COORDINATED JUVENILE SUBSTANCE ABUSE SERVICES.—(1) IN GENERAL.—A consortium described in subsection (a) desiring to receive a grant under this section shall submit an application containing such information as the Administrator may prescribe.

"(2) CONTENTS.—In addition to guidelines established by the Administrator, the application submitted under paragraph (1) shall provide—

"(A) certification that there has been appropriate consultation with all affected agencies and that there will be appropriate coordination with all affected agencies in the implementation of the program;

"(B) Evaluation of the program funded by the grant and describe the methodology that will be used in evaluating the program;

"(C) The services that the proposed program or activity will not supplant similar programs and activities currently available in the community; and

"(D) Any plans for obtaining necessary support and continuing the proposed program following the conclusion of Federal support.

"(3) FEDERAL SHARE.—The Federal share of a grant under this section shall not exceed 75 percent of the cost of the program.

"(d) REPORT.—Each recipient of a grant under this section shall submit to the Attorney General a description and an evaluation report regarding the effectiveness of programs established with the grant on the date specified by the Attorney General.

"(e) AUTHORIZATION OF APPROPRIATIONS.—(1) GRANTS OR COOPERATIVE AGREEMENTS.—The Director, in consultation with all affected agencies and the Attorney General, shall make grants to local entities involved in combating drug abuse and addiction.

"(2) REQUIREMENT TO ENSURE THAT RESEARCH AIDS PRACTITIONERS.—(A) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraphs (1), (2), and (3) there is authorized to be appropriated such sums as are necessary for fiscal years 2002 through 2004, for establishment of up to 12 new CTN Centers and for the development of the most effective methods of treatment and prevention of drug addiction, including behavioral, cognitive, and pharmaceutical treatments among juveniles and adults.

"(B) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated pursuant to the authorization of appropriations in subparagraph (A) for a fiscal year shall supplement and not supplant any other amounts appropriated in such fiscal year for research on drug abuse and addiction.

SEC. 2209. SUPPORT ON DRUG-TESTING TECHNOLOGIES.

(a) REQUIREMENT.—The National Institute on Standards for the regular evaluation of the program funded by the grant and describe the methodology that will be used in evaluating the program; and

"(1) IN GENERAL.—From amounts appropriated under this section to Federal, State, and local entities involved in combating drug abuse and addiction, the Administrator of the Substance Abuse and Mental Health Services Administration, shall—

"(i) ensure that the results of all current substance abuse research that is set aside for services (and other appropriate research with practical consequences) is widely disseminated to treatment and prevention practitioners, in an easily understandable format;

"(ii) ensure that such research results are disseminated in a manner that provides easily understandable implementa
tion of best practices based on the research; and

"(iii) make technical assistance available to the Center for Substance Abuse Prevention to assist alcohol and drug treatment practitioners to make permanent changes in treatment and prevention activities through the use of successful models.

"(b) REQUIREMENT TO ENSURE THAT RESEARCH AIDS PRACTITIONERS.—The Director, in conjunction with the Director of the National Institute on Alcohol Abuse and Alcoholism and the Administrator of the Substance Abuse and Mental Health Services Administration, shall—

"(1) ensure that the results of all current substance abuse research that is set aside for services (and other appropriate research with practical consequences) is widely disseminated to treatment and prevention practitioners, in an easily understandable format;

"(2) ensure that such research results are disseminated in a manner that provides easily understandable implementa
tion of best practices based on the research; and

"(3) make technical assistance available to the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention to assist alcohol and drug treatment and prevention practitioners, including general practitioners, to make permanent changes in treatment and prevention activities through the use of successful models.

"SEC. 2210. USE OF NATIONAL INSTITUTES OF HEALTH RESOURCES TO CONDUCT RESEARCH ON SUBSTANCE ABUSE RESEARCH.

(a) NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM.—Section 464L of the Public Health Service Act (42 U.S.C. 285n) is amended by adding at the end the following:

"(1) IN GENERAL.—From amounts appropriated under this section to the National Institute on Alcohol Abuse and Alcoholism and the Administrator of the Substance Abuse and Mental Health Services Administration, shall—

"(i) ensure that the results of all current substance abuse research that is set aside for services (and other appropriate research with practical consequences) is widely disseminated to treatment and prevention practitioners, in an easily understandable format;

"(ii) ensure that such research results are disseminated in a manner that provides easily understandable implementa
tion of best practices based on the research; and

"(iii) make technical assistance available to the Center for Substance Abuse Prevention to assist alcohol and drug treatment practitioners to make permanent changes in treatment and prevention activities through the use of successful models.

"(b) REQUIREMENT TO ENSURE THAT RESEARCH AIDS PRACTITIONERS.—The Director, in conjunction with the Director of the National Institute on Drug Abuse and the Administrator of the Substance Abuse and Mental Health Services Administration, shall—

"(1) ensure that the results of all current substance abuse research that is set aside for services (and other appropriate research with practical consequences) is widely disseminated to treatment and prevention practitioners, in an easily understandable format;

"(2) ensure that such research results are disseminated in a manner that provides easily understandable implementa
tion of best practices based on the research; and

"(3) make technical assistance available to the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention to assist alcohol and drug treatment practitioners to make permanent changes in treatment and prevention activities through the use of successful models.

"SEC. 2211. STUDY ON STRENGTHENING EFFORTS ON SUBSTANCE ABUSE RESEARCH AT THE NATIONAL INSTITUTES OF HEALTH.

(a) STUDY.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into a contract, under subsection (b), to conduct a study to determine if combining the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse and Alcoholism of the National Institutes of Health to form 1 National Institute on Addiction would—

"(1) strengthen the scientific research efforts on substance abuse at the National Institutes of Health; and

"(2) be more economically efficient.

(b) INSTITUTION OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—The Secretary shall request the Institute of Medicine of the National Academy of Sciences to enter into a contract under subsection (a) to conduct the study described in subsection (a).

"(1) CONTRACT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall enter into a contract under subsection (a) to conduct the study described in subsection (a).

"(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on the Judiciary of the Senate a report detailing the results of the study conducted under subsection (a); and

"(3) RECOMMENDATIONS.—There shall be made available from the Violent Crime Reduction Trust Fund for each of fiscal years 2002 through 2004, such sums as are necessary to carry out this section.

SEC. 2208. EXPANSION OF RESEARCH.

Section 461 of the Public Health Service Act (42 U.S.C. 285o) is amended by adding at the end the following:

"(a) NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM.—Section 464L of the Public Health Service Act (42 U.S.C. 285n) is amended—

"(1) by redesignating subsection (d) as subsection (e); and

"(2) by inserting after subsection (c) the following:

"(d) REQUIREMENT TO ENSURE THAT RESEARCH AIDS PRACTITIONERS.—The Director, in consultation with the Director of the National Institute on Drug Abuse and the Administrator of the Substance Abuse and Mental Health Services Administration, shall—

"(1) ensure that the results of all current substance abuse research that is set aside for services (and other appropriate research with practical consequences) is widely disseminated to treatment, prevention, and general practitioners in an easily understandable format;

"(2) ensure that such research results are disseminated in a manner that provides easily understandable implementa
tion of best practices based on the research; and

"(3) make technical assistance available to the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention to assist alcohol and drug treatment practitioners, including general practitioners, to make permanent changes in treatment and prevention activities through the use of successful models.

"SEC. 2301. ALTERNATIVE EDUCATION.

Part D of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6221 et seq.) is amended by adding at the end the following:

"Subpart 4—Alternative Education Demonstration Project Grants

SEC. 1441. PROGRAM AUTHORITY.

"(a) GRANTS.—(1) IN GENERAL.—From amounts appropriated under section 1443, the Secretary, in consultation with the Administrator, shall make grants to State educational agencies or local educational agencies for not less than 10 demonstration projects that enable the agencies to develop models for and carry out alternative education for at-risk youth.

"(2) CONSTRUCTION.—Nothing in this subpart shall be construed to affect the requirements of the Individuals with Disabilities Education Act.

"(b) DEMONSTRATION PROJECTS.—(1) PARTNERSHIPS.—Each agency receiving a grant under this subpart may enter into a partnership with a private sector entity to provide alternative educational services to at-risk youth.
"(2) REQUIREMENTS.—Each demonstration project assisted under this subpart shall—

(A) accept for alternative education at-risk or delinquent youth who are referred by a local educational agency to a court with a juvenile delinquency docket and who—

(i) have demonstrated a pattern of serious and persistent behavior problems in regular schools; or

(ii) are at risk of dropping out of school;

(iii) have been convicted of a criminal offense or adjudicated delinquent for an act of juvenile delinquency, and are under a court’s supervision; or

(iv) have demonstrated that continued enrollment in a regular classroom—

(I) poses a physical threat to other students; or

(II) inhibits an atmosphere conducive to learning; and

(B) provide for accelerated learning, in a safe, secure, and disciplined environment, including—

(i) basic curriculum focused on mastery of essential skills, including targeted instruction in basic skills required for secondary school graduation and employment; and

(ii) emphasis on—

(I) the roles of academic, social, and workplace skills; and

(II) behavior modification.

(c) APPLICABILITY.—Except as provided in subsection (a) of section 1423, the provisions of section 1401(c), 1402, and 1431, and subparts 1 and 2, shall not apply to this subpart.

(d) DEFINITION OF ADMINISTRATOR.—In this subpart, the term ‘Administrator’ means the Administrator of the Office of Juvenile Crime Control and Prevention of the Department of Justice.

SEC. 1442. APPLICATIONS; GRANTEE SELECTION.

(a) APPLICATIONS.—Each State educational agency and local educational agency seeking a grant under this subpart shall submit an application in such form, and containing such information, as the Secretary, in consultation with the Administrator, may reasonably require.

(b) SELECTION OF GRANTEES.—

(1) IN GENERAL.—The Secretary shall select State educational agencies and local educational agencies that demonstrate in the application submitted under subsection (a) that the State has a policy of equitably distributing resources among school districts in the State.

(c) QUALIFICATIONS.—To qualify for a grant under this subpart, a State educational agency or local educational agency shall—

(1) in the case of a State educational agency, have submitted a State plan under section 1414(a) that is approved by the Secretary;

(2) in the case of a local educational agency, have submitted an application under section 1423 that is approved by the State educational agency;

(3) explain the educational and juvenile justice needs of the community to be addressed by the demonstration project;

(4) provide a detailed plan to implement the demonstration project; and

(5) provide assurances and an explanation of the agency’s ability to continue the program funded by the demonstration project after the termination of Federal funding under this subpart.

(b) MATCHING REQUIREMENTS.—Each grant made under this subpart shall not constitute more than 35 percent of the cost of the demonstration project funded.

(c) SOURCES OF FUNDS.—Matching funds for grants under this subpart may be derived from amounts available under part B of title II, of the Juvenile Justice and Delinquency Prevention Act of 1974 (25 U.S.C. 5611 et seq.) to the State in which the demonstration project will be carried out, except that the total share of funds derived from Federal sources shall not exceed 35 percent of the cost of the demonstration project.

(d) PROGRAM EVALUATION.—

(1) IN GENERAL.—Each State educational agency or local educational agency that receives a grant under this subpart shall evaluate the demonstration project assisted under this subpart in the same manner as programs are evaluated under section 1431. In addition, the evaluation shall include—

(A) an evaluation of the effect of the alternative education project on order, discipline, and an effective learning environment in regular classrooms;

(B) an evaluation of the project’s effectiveness in improving the skills and abilities of at-risk students, including an analysis of the academic and social progress of such students; and

(C) an evaluation of the project’s effectiveness in reducing juvenile crime and delinquency, including—

(i) reductions in incidents of campus crime in relevant school districts, compared with school districts not included in the project; and

(ii) reductions in recidivism by at-risk students who have juvenile justice system involvement and are assigned to alternative education.

(2) EVALUATION BY THE SECRETARY.—The Secretary, in cooperation with the Administrator, shall comparatively evaluate each of the demonstration projects funded under this subpart, including an evaluation of the effectiveness of different types of alternative educational services, and shall report the findings of the evaluation to the Committee on Education and the Workforce of the House of Representatives and the Committees on the Judiciary, Health, Education, Labor and Pensions of the Senate not later than June 30, 2007.

SEC. 1443. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as are necessary for fiscal years 2002, 2003, and 2004."

SEC. 2302. TRANSFER OF SCHOOL DISCIPLINARY RECORDS.

Part D of title XIV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801 et seq.) is amended by adding at the end the following:

"(4) TRANSFER OF SCHOOL DISCIPLINARY RECORDS.—

(a) NONAPPLICATION OF PROVISIONS.—The provisions of this section shall not apply to any disciplinary records transferred from a private, parochial, or other nonpublic school, person, institution, or other entity, that provides education below the college level.

(b) PROGRAMS.—Not later than 2 years after the date of enactment of the Drug Abuse Education, Prevention, and Treatment Act of 2001, each State receiving funds under this section shall provide assurance to the Secretary that the State has a procedure in place to facilitate the transfer of disciplinary records by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is required to enroll, full-time or part-time, in the school."

CHAPTER 2—CHARACTER EDUCATION

Subchapter A—National Character Achievement Award

SEC. 2311. NATIONAL CHARACTER ACHIEVEMENT AWARD.

(a) PRESENTATION AUTHORIZED.—The President is authorized to award to individuals under the age of 18, the President pro tempore of the Senate and the Speaker of the House of Representatives and the Administrator of the Office of Juvenile Justice and Delinquency Prevention, a National Character Achievement Award, consisting of a medal of appropriate design, with ribbons and appurtenances, honorific inscription, and appropriate case for the award, and such other inscriptions as the President shall determine, as a model of good character.

(b) DESIGN AND STRIKING.—For the purposes of the award referred to in subsection (a), the Secretary of the Treasury shall design and strike a medal with suitable emblems, devices, and inscriptions, to be determined by such Secretary.

(c) ELIGIBILITY.—

(1) IN GENERAL.—The President pro tempore of the Senate and the Speaker of the House of Representatives and the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall, in consultation with the Attorney General, be responsible for awarding National Character Achievement Awards, under subsection (a).

(2) RECOMMENDATIONS BY SCHOOL PRINCIPALS.—At a minimum, the recommendations referred to in paragraph (1) shall consider the endorsement of the principal (or an equivalent official) of the school in which the individual under the age of 18 is enrolled.

Subchapter B—Preventing Juvenile Delinquency Through Character Education

SEC. 2321. PURPOSE.

The purpose of this subchapter is to support the work of community-based organizations, local educational agencies, and schools in providing children and youth with alternatives to delinquency through strong after school programs that—

(1) are organized around character education;

(2) reduce delinquency, school discipline problems, and truancy; and

(3) improve student achievement, overall school performance, and the students’ positive involvement in their community.

SEC. 2322. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out community-based programs under this subchapter such sums as are necessary for fiscal year 2002, and such sums as may be necessary for each of the 2 succeeding fiscal years.

(b) SOURCE OF FUNDING.—Amounts authorized to be appropriated pursuant to this section may be derived from the Violent Crime Reduction Trust Fund.

SEC. 2323. AFTER SCHOOL PROGRAMS.

(a) IN GENERAL.—The Secretary, in consultation with the Attorney General, is authorized to award grants to community-based organizations to enable the organizations to provide youth with alternative activities, in the after school or out of school hours, that include a strong character education component.

(b) ELIGIBLE COMMUNITY-BASED ORGANIZATIONS.—The Secretary shall only award a grant under this section to a community-based organization that has a demonstrated capacity to provide after school or out of school programs to youth, including youth-serving organizations, businesses, and other community groups.

(c) APPLICATIONS.—Each community-based organization desiring a grant under this section shall submit an application to the Secretary at such time and in such manner as
the Secretary may require. Each application shall include—

1. A description of the community to be served and the needs that will be met through that community;
2. A description of how the program will identify and recruit at-risk youth for participation in the program, and how the program will provide support for the participation of such youth;
3. A description of the activities to be assisted under the grant, including—
   a) how parents, students, and other members of the community will be involved in the design and implementation of the program;
   b) how character education will be incorporated into the program; and
   c) how the program will coordinate activities assisted under this section with activities of after-school and other community-based organizations;
4. A description of the goals of the program;
5. A description of how progress toward achieving such goals, and toward meeting the purposes of this subchapter, will be measured; and
6. An assurance that the community-based organization will provide the Attorney General with information regarding the program and the effectiveness of the program.

SEC. 2334. GENERAL PROVISIONS.

(a) DURATION.—Each grant under this subchapter shall be awarded for a period of not to exceed 5 years.

(b) PLANNING.—A community-based organization may use grant funds provided under this subchapter for not more than 1 year for the planning and design of the program to be assisted.

(c) SELECTION OF GRANTEES.—

1. CRITERIA.—The Secretary, in consultation with the Attorney General, shall select, through a peer review process, community-based organizations to receive grants under this subchapter on the basis of the quality of the applications submitted and taking into consideration such factors as—
   a) the quality of the activities to be assisted;
   b) the extent to which the program fosters positive youth development and encourages meaningful and rewarding lifestyles; and
   c) the likelihood the goals of the program will be realistically achieved;
   d) the experience of the applicant in providing similar services; and
   e) the coordination of the program with other community efforts.

2. DIVERSITY OF PROJECTS.—The Attorney General shall approve applications under this subchapter in a manner that ensures, to the extent practicable, that programs assisted under this subchapter serve different low-income and high-crime communities of the United States.

3. USE OF FUNDS.—Grant funds under this subchapter shall be used to support the work of community-based organizations in providing children of incarcerated parents or legal guardians with alternatives to delinquency through strong after school, or out of school programs that—
   a) are organized around counseling, training, and mentoring;
   b) reduce delinquency, school discipline problems, and truancy; and
   c) improve student achievement, overall school performance, and positive involvement in their community.

Subtitle D—Reestablishment of Drug Courts

SEC. 2401. REESTABLISHMENT OF DRUG COURTS.

(a) DRUG COURTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after part DD the following new part:

"PART EE—DRUG COURTS

SEC. 2851. GRANT AUTHORITY.

(a) IN GENERAL.—The Attorney General may make grants to States, State courts, local courts, units of local government, and Indian tribal governments, acting directly or through agreements with other public or private entities, for programs that involve—
   a) continuing judicial supervision over offenders with substance abuse problems who are not violent offenders; and
   b) the integrated administration of other sanctions and services, which shall include—
      A) mandatory periodic testing for the use of controlled substances or other addictive substances during supervised release or probation for each participant;
      B) substance abuse treatment for each participant;
      (C) diversion, probation, or other supervised release involving the possibility of
prosecution, confinement, or incarceration based on noncompliance with program requirements or failure to show satisfactory progress.

(2) Offender management, and aftercare services such as relapse prevention, health care, education, vocational training, job placement, housing placement, and child care services; or support services for each participant who requires such services;

(3) payment, in whole or part, by the offender of treatment costs, to the extent practicable, such as costs for urinalysis or counseling;

(4) payment, in whole or part, by the offender of restitution, to the extent practicable, to either a victim of the offender's offense or to a restitution or similar victim support fund.

(b) Limitation.—Economic sanctions imposed on an offender pursuant to this section shall not be at a level that would interfere with the offender's rehabilitation.

SEC. 2952. PROHIBITION OF PARTICIPATION BY VIOLENT OFFENDERS.

(a) In general.—The Attorney General shall—

(1) issue regulations or guidelines to ensure that the programs authorized in this part do not permit participation by violent offenders; and

(2) immediately suspend funding for any grant under this part, pending compliance, if the Attorney General finds that violent offenders are participating in any program funded under this part.

(b) Use of Components.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

(c) Evaluations.—In addition to any evaluations required by law, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

(d) Authorization of Appropriations. —Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3786) is amended—

(1) by inserting before the period at the end of the following, ‘‘or EE’’;

(2) by adding at the end the following new paragraph:

(EE) There are authorized to be appropriated for fiscal year 2002 such sums as are necessary and for fiscal years 2003 and 2004 such sums as may be necessary to carry out part EE.

(EE) The Attorney General shall reserve not less than 1 percent and not more than 4.5 percent of such sums, from time to time, as may be necessary to carry out part EE.

SEC. 2959. Technical assistance, training, and evaluation.

(a) Technical Assistance and Training.—The Attorney General may provide technical assistance and training in furtherance of the purposes of this part.

(b) Evaluations.—In addition to any evaluation requirements that may be prescribed by this section, the Attorney General may carry out or make arrangements for evaluations of programs that receive support under this part.

(c) Administration.—The technical assistance, training, and evaluations authorized by this section may be carried out directly by the Attorney General, in collaboration with the Secretary of Health and Human Services, or through grants, contracts, or other cooperative arrangements with other entities.

SEC. 2512. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years 2003 and 2004—

(a) the sums necessary to carry out the program; and

(b) such sums as may be necessary to carry out the program.
(b) PROJECT ELEMENTS.—The project authorized by subsection (a) shall include—

(1) a Reentry Review Team for each prisoner, consisting of representatives from the Bureau of Prisons, the United States Court Services and Offender Supervision Agency of the District of Columbia, and the relevant community corrections centers, who shall initially meet with the prisoner to develop a reentry plan tailored to the prisoner's needs and desires and who shall meet regularly thereafter to monitor the prisoner's progress toward reentry and coordinate access to appropriate reentry measures and resources;

(2) drug testing, as appropriate;

(3) graduated levels of supervision within the community corrections centers to promote community safety, provide incentives for prisoners to complete the reentry plan, including victim restitution, and provide a reasonable method for imposing immediate sanctions for a prisoner's minor or technical violation of the conditions of participation in the project;

(4) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

(5) to the extent practicable, the recruitment and utilization of local citizen volunteers, including volunteers from the faith-based and business communities, to serve as advisers and mentors to prisoners being released into the community;

(6) a description of the methodology and outcome measures that will be used to evaluate the program; and

(7) certification to victims on the status and nature of offenders' release, as appropriate.

(b) SELECTION OF OFFENDERS.—From funds made available to carry out this Act, the Director of the Administrative Office of the United States Courts shall appoint 1 or more probation officers from each judicial district to the Reentry Demonstration project. Such officers shall serve as reentry officers and shall serve on the Reentry Review Teams.

d) PROJECT DURATION.—The Community Corrections Center Reentry project shall begin not later than 9 months following the availability of funds to carry out the demonstration, and shall last 5 years. The Attorney General and the Director of the Administrative Office of the United States Courts may extend the period of not more than 6 months to enable participating prisoners to complete their involvement in the project.

(e) SELECTION OF PRISONERS.—The Director of the Administrative Office of the United States Courts in consultation with the Attorney General shall select an appropriate pool of prisoners from the Federal prison population eligible to be released to community correction centers in fiscal years 2003 and 2004 to participate in the Reentry project.

(f) COORDINATION OF PROJECTS.—If appropriate, Community Corrections Center Reentry project offenders who participated in the Federal High-Risk Offender Reentry Training Demonstration project established by section 615 may be included.

SEC. 2512. FEDERAL HIGH-RISK OFFENDER REENTRY TRAINING DEMONSTRATION PROJECT.

(a) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—From funds made available to carry out this Act, the Trustee of the United States Prisons and Offender Supervision Agency of the District of Columbia may, in consultation with the Director of the Administrative Office of the United States Courts, establish a Federal High-Risk Offender Reentry demonstration project. The project shall involve Federal offenses and supervised reentry offenders who have violated the terms of their release following a term of imprisonment and shall utilize a period of confinement in a community corrections facility and shall utilize intensive supervision, monitoring, and programming to promote such parolees' successful reentry to the community.

(b) PROJECT ELEMENTS.—The project authorized by subsection (a) shall include—

(1) participation by appropriate high risk parolees;

(2) use of community corrections facilities and home confinement;

(3) a Reentry Review Team that includes a victim witness professional for each parolee which shall meet with the parolee, by video conference or other means as appropriate, to develop a reentry plan that incorporates victim impact information and is tailored to the specific needs of the parolee and which will thereafter meet regularly to monitor the parolee's progress toward reentry and coordinate access to appropriate reentry measures and resources;

(4) regular drug testing, as appropriate;

(5) a system of graduated levels of supervision within the community corrections facilities to promote community safety, provide incentives for prisoners to complete their parole, and provide a reasonable method for imposing immediate sanctions for a prisoner's minor or technical violation of the conditions of participation in the project;

(6) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

(7) the use of monitoring technologies, as appropriate;

(8) to the extent practicable, the recruitment and utilization of local citizen volunteers, including volunteers from the faith-based communities, to serve as advisers and mentors to parolees being released into the community; and

(9) notification to victims on the status and nature of a parolee's release.

(c) MANDATORY CONDITION OF PAROLE.—For those offenders eligible to participate in the demonstration project, the United States Parole Commission shall impose additional mandatory conditions of parole such that the parolee is under the supervision of a parole officer designated by the community supervision officer, reside at a community corrections facility or participate in a program of home confinement, or otherwise participate in remote monitoring, and otherwise participate in the project.

(d) PROGRAM DURATION.—The District of Columbia Intensive Supervision, Tracking and Reentry Training Demonstration project shall begin not later than 6 months following the availability of funds to carry out this section, and shall last 3 years. The Trustee of the Court Services and Offender Supervision Agency of the District of Columbia may extend the project for a period of up to 6 months to enable participating parolees to complete their involvement in the project.

SEC. 2513. DISTRICT OF COLUMBIA INTENSIVE SUPERVISION, TRACKING, AND REENTRY TRAINING (DC iSTART) DEMONSTRATION PROJECT.

(a) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—From funds made available to carry out this Act, the Trustee of the United States Prisons and Offender Supervision Agency of the District of Columbia, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. No. 105-259, 112 Stat. 1790), may establish a Demonstration Project to provide for the development of the District of Columbia Intensive Supervision, Tracking, and Reentry Training Demonstration (DC iSTART) project. The project shall involve appropriate high risk parolees, and supervised reentry offenders who would otherwise be released into the community without a period of confinement in a community corrections center.

SEC. 2514. FEDERAL INTENSIVE SUPERVISION, TRACKING, AND REENTRY TRAINING (FED iSTART) PROJECT.

(a) AUTHORITY AND ESTABLISHMENT OF PROJECT.—Subject to the availability of appropriations to carry out this section, the Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, shall establish the Federal Intensive Supervision, Tracking and Reentry Training (FED iSTART) project. The project shall involve appropriate high risk parolees and supervised reentry offenders who would otherwise be released into the community without a period of confinement in a community corrections center.
SEC. 2515. FEDERAL ENHANCED IN-PRISON VOCATIONAL ASSESSMENT AND TRAINING DEMONSTRATION PROJECT.

(a) AUTHORITY AND ESTABLISHMENT OF DEMONSTRATION PROJECT.—From funds made available to carry out this section, the Attorney General shall establish the Federal Enhanced In-Prison Vocational Assessment and Training Demonstration project in selected institutions. The project shall provide in-prison assessments of prisoners' vocational needs and aptitudes, enhanced work skills development, enhanced release readiness programming, and other components as appropriate to prepare Federal prisoners for release and reentry into the community.

(b) PROGRAM DURATION.—The Enhanced In-Prison Vocational Assessment and Training Demonstration project shall begin not later than 9 months following the availability of funds to carry out this section, and shall last 3 years.

The Director of the Administrative Office of the United States Courts may extend the project for a period of up to 6 months to enable participating prisoners to complete their involvement in the project.

(c) SELECTION OF PRISONERS.—The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, shall select an appropriate pool of Federal prisoners who are scheduled to be released into the community within a period of 3 years following reentry. The pool of appropriate prisoners shall be selected from Federal District Court cases in fiscal years 2003 and 2004 to participate in the Federal Intensive Supervision, Tracking and Reentry Training project.

SEC. 2516. RESEARCH AND REPORTS TO CONGRESS.

(a) DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—Not later than 2 years after enactment of this Act, the Director of the Administrative Office of the United States Courts shall report to Congress on the progress of the reentry projects authorized by sections 2511, 2512, and 2514. Not later than 2 years after the end of the reentry projects authorized by sections 2511, 2512, and 2514, the Director of the Administrative Office of the United States Courts shall report to Congress on the effectiveness of the reentry projects authorized by sections 2511, 2512, and 2514 on post-release outcomes and recidivism. The report shall address post-release outcomes and recidivism for a period of 3 years following release from custody. The reports submitted pursuant to this section shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.

(b) ATTORNEY GENERAL.—Not later than 2 years after enactment of this Act, the Attorney General shall report to Congress on the effectiveness of the reentry projects authorized by section 2515 on post-release outcomes and recidivism. The report shall address post-release outcomes and recidivism for a period of 3 years following release from custody. The reports submitted pursuant to this section shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate.

(c) DC START.—Not later than 2 years after enactment of this Act, the Executive Director of the corporation or institute authorized by section 11281(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) shall report to Congress on the progress of the demonstration project authorized by section 2515. Not later than 1 year after the end of the demonstration project authorized by section 2515, the Executive Director of the corporation or institute authorized by section 11281(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) shall report to Congress on the post-release outcomes and recidivism for a period of 3 years following release from custody. The reports submitted pursuant to this section shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate. In the event that the corporation or institute authorized by section 11281(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Public Law 105–33; 111 Stat. 712) is not in operation 1 year after enactment of this Act, the Director of the National Institute of Justice shall prepare and submit the reports required by this section; and may do so annually thereafter.

SEC. 2517. DEFINITIONS.

In this chapter—

(1) APPROPRIATE HIGH RISK PAROLEES.—The term "appropriate high risk parolees" means parolees considered by prison authorities—

(A) to pose a medium to high risk of committing a criminal act upon reentering the community; and

(B) to lack the skills and family support network that facilitate successful reintegration into the community.

(2) APPROPRIATE PRISONER.—The term "appropriate prisoner" means a person who is considered by prison authorities—

(A) to pose a medium to high risk of committing a criminal act upon reentering the community; and

(B) to lack the skills and family support network that facilitate successful reintegration into the community.

SEC. 2518. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, to remain available until expended, the following amounts:

(1) To the Federal Bureau of Prisons—

(A) such sums as are necessary for fiscal year 2002;

(B) such sums as are necessary for fiscal year 2003; and

(C) such sums as are necessary for fiscal year 2004.

(2) To the Federal Judiciary—

(A) such sums as are necessary for fiscal year 2003;

(B) such sums as are necessary for fiscal year 2004;

(C) such sums as are necessary for fiscal year 2005;

(D) such sums as are necessary for fiscal year 2006;

(E) such sums as are necessary for fiscal year 2007;

(F) such sums as are necessary for fiscal year 2008;

(G) such sums as are necessary for fiscal year 2009;

(H) such sums as are necessary for fiscal year 2010;

(I) such sums as are necessary for fiscal year 2011;

(J) such sums as are necessary for fiscal year 2012;

(K) such sums as are necessary for fiscal year 2013;

(L) such sums as are necessary for fiscal year 2014.

SEC. 2519. AMENDMENTS TO THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended, is amended by inserting after part EE the following new part:

"PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY

SEC. 2976. ADULT OFFENDER STATE AND LOCAL REENTRY PARTNERSHIPS.

"(a) GRANT AUTHORIZATION.—The Attorney General shall make grants of up to $1,000,000 to States, Territories, and Indian tribes, in cooperation with nonprofit organizations, for the purpose of establishing adult offender reentry demonstration projects. Funds may be expended by the projects for the following purposes:

"(1) oversight/monitoring of released offenders;

"(2) substance abuse treatment and aftercare, mental and medical health treatment and aftercare, vocational and basic educational training, and other programming to promote effective reintegration into the community as needed;

"(3) convening community impact panels, victim impact panels or victim impact education classes;

"(4) establishing and implementing graduated sanctions and incentives.

"(b) SUBMISSION OF APPLICATION.—In addition to any other requirements that may be specified by the Attorney General, an application for a grant under this subpart shall—

"(1) describe a long-term strategy and detailed implementation plan for the jurisdiction's or grantee's reentry overall plan, including how the jurisdiction plans to pay for the program after the Federal funding ends;

"(2) identify the governmental and community agencies that will be coordinated by this project;

"(3) certify that there has been appropriate consultation with all affected agencies and that the reentry plan will be implemented with all affected agencies in the implementation of the program, including existing community corrections and parole; and

"(4) describe the methodology and outcome measures that will be used in evaluating the program.

"(c) APPLICANTS.—The applicants as designated under 2601(a)—

"(1) shall prepare the application as required under subsection 2601(b); and

"(2) shall administer grant funds in accordance with the guidelines procedures, and procedures promulgated by the Attorney General, as necessary to carry out the purposes of this part.

"(d) MATCHING FUNDS.—The Federal share of a grant received under this title may not exceed 75 percent of the costs of the project funded under this part; and

"(e) FEDERAL REQUIREMENTS.—The Attorney General may extend the carry out this section, and shall last 3 years.

SEC. 2521. FEDERAL ENHANCED IN-PRISON VOCATIONAL ASSESSMENT AND TRAINING DEMONSTRATION PROJECT.
‘‘(e) REPORTS.—Each entity that receives a grant under this part shall submit to the Attorney General, for each year in which funds from a grant received under this part are expended, a description and an evaluation report at such time and in such manner as the Attorney General may reasonably require that contains—

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application funded under this part; and

(2) such other information as the Attorney General may require.

‘‘(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary in fiscal year 2002; and such sums as are necessary for each of the fiscal years 2003 and 2004.

(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year—

(A) not more than 2 percent or less than 1 percent may be used by the Attorney General for salaries and administrative expenses; and

(B) not more than 3 percent or less than 2 percent may be used for technical assistance and training.

SEC. 297. JUVENILE OFFENDER STATE AND LOCAL REENTRY GRANTS.

‘‘(a) GRANT AUTHORIZATION.—The Attorney General shall make grants of up to $250,000 to States in partnership with local units of governments or nonprofit organizations, for the purpose of establishing juvenile offender reentry programs. Funds may be expended by the projects for the following purposes:

(1) providing returning juvenile offenders with drug and alcohol testing and treatment and mental and medical health assessment and services;

(2) convening victim impact panels, restorative justice panels, or victim impact educational classes for juvenile offenders; and

(3) oversight/monitoring of released juvenile offenders; and

(4) providing for the planning of reentry services when the youth is initially incarcerated and coordinating the delivery of community-based services, such as education, family involvement and support, and other services as needed.

‘‘(b) SUBMISSION OF APPLICATION.—In addition to any other requirements that may be specified by the Attorney General, an application submitted under this subsection shall—

(1) describe a long-term strategy and detailed implementation plan, including how the jurisdiction plans to pay for the program after the Federal funding ends;

(2) identify the governmental and community agencies that will be coordinated by this project;

(3) certify that there has been appropriate consultation with all affected agencies and there will be appropriate coordination with all affected agencies, including existing community-based services and an evaluation plan, in the implementation of the program;

(4) describe the methodology and outcome measures that will be used in evaluating the program;

‘‘(c) APPLICANTS.—The applicants as designated under 2509(a)—

(1) shall prepare the application as required under subsection 2903(b); and

(2) shall administer grant funds in accordance with the guidelines, regulations, and procedures promulgated by the Attorney General, as necessary to carry out the purposes of this part.

‘‘(d) MATCHING FUNDS.—The Federal share of a grant made under this title shall not exceed 75 percent of the costs of the project funded under this title unless the Attorney General waives, wholly or in part, the requirements of this section.

‘‘(e) REPORTS.—Each entity that receives a grant under this part shall submit to the Attorney General, for each year in which funds from a grant received under this part are expended, a description and an evaluation report at such time and in such manner as the Attorney General may reasonably require that contains:

(1) a summary of the activities carried out under the grant and an assessment of whether such activities are meeting the needs identified in the application funded under this part; and

(2) such other information as the Attorney General may require.

‘‘(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section such sums as are necessary in fiscal year 2002, and such sums as are necessary for each of the fiscal years 2003 and 2004.

(2) LIMITATIONS.—Of the amount made available to carry out this section in any fiscal year—

(A) not more than 2 percent or less than 1 percent may be used by the Attorney General for salaries and administrative expenses; and

(B) not more than 3 percent or less than 2 percent may be used for technical assistance and training.

SEC. 2978. STATE REENTRY PROGRAM RESEARCH, DEVELOPMENT, AND EVALUATION.

‘‘(a) GRANT AUTHORIZATION.—The Attorney General shall make grants to carry out research on a range of issues pertinent to reentry programs, the development and testing of new reentry components and approaches, selected evaluation of projects authorized in the preceding section, and dissemination of information to the field.

‘‘(b) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to carry out this section such sums as are necessary in fiscal year 2002, and such sums as are necessary to carry out this section in fiscal years 2003 and 2004.

SEC. 2979. TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by inserting at the end the following:

‘‘PART FF—OFFENDER REENTRY AND COMMUNITY SAFETY

Sec. 2976. Adult Offender State and Local Reentry Programs.

Sec. 2977. Juvenile Offender State and Local Reentry Programs.

Sec. 2978. State Reentry Program Research, Development, and Evaluation.’’.

CHAPTER 3—CONTINUATION OF ASSISTANCE AND BENEFITS

SEC. 2531. AMENDMENTS TO THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY REUNION ACT OF 1996.

Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (21 U.S.C. 862a) is amended—

(1) in subsection (d), by adding at the end the following:

‘‘(3) INAPPLICABILITY TO CERTAIN INDIVIDUALS.—Subsection (a) shall not apply to an individual who is operated by a public, nonprofit, or private entity that meets all applicable State licensure or certification requirements; and

‘‘(4) DURATION OF GRANTS.—No organization shall award grants to leading nongovernmental organizations with an expertise in aiding children of substance abusing parents or experience with community antidrug coalitions to help professionals participate in such coalitions and identify and help youth affected by familial substance abuse.

‘‘(c) DURATION OF GRANTS.—No organization shall receive a grant under subsection (c) for more than 5 consecutive years.

‘‘(d) APPLICATION.—Any organization desiring to receive a grant under this title shall prepare and submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require for the evaluation of the project involved, including both process and outcome evaluation, and the
submission of the evaluation at the end of the project period.

‘‘(e) Use of Funds.—Grants awarded under subsection (c) shall be used to—

(1) develop competencies with various professional groups that the professionals can use in identifying and referring children affected by substance abuse;

(2) widely disseminate the competencies to professionals and professional organizations through publications and journals that are widely read and respected;

(3) develop training modules around the competencies; and

(4) develop training modules for community coalition leaders to enable such leaders to encourage such training modules from identified groups at the local level in community-wide prevention and intervention efforts.

(f) Definition.—In this section, the term ‘professional’ includes a physician, student assistance professional, social worker, youth and family social service agency counselor, Head Start teacher, school counselor, juvenile justice worker, child care provider, or a member of any other professional group in which such professional group provide services to or interact with children, youth, or families.

(g) Authorization of Appropriations.—

There are authorized to be appropriated to carry out this subtitle—

(1) such sums as are necessary for each of fiscal years 2003 and 2004.

Subtitle H—Adolescent Therapeutic Community Treatment Programs

SEC. 2901. PROGRAM AUTHORIZED.

The Secretary shall award competitive grants to providers who administer treatment programs to establish adolescent residential substance abuse treatment programs that provide services for individuals who are between the ages of 14 and 21.

SEC. 2902. PREFERENCE.

In awarding grants under this subtitle, the Secretary shall consider the geographic location of such treatment providers, and preference to such treatment providers that are geographically located in such a manner as to provide services to addicts from metropolitan areas and small towns.

SEC. 2903. DURATION OF GRANTS.

For awards made under this subtitle, the period during which payments are made may not exceed 3 years.

SEC. 2904. RESTRICTIONS.

A treatment provider receiving a grant under this subtitle shall not use any amount of the grant for land acquisition or a construction project.

SEC. 2905. APPLICATION.

A treatment provider that desires a grant under this subtitle shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

SEC. 2906. USE OF GRANTS.

A treatment provider that receives a grant under this subtitle shall use those funds to provide substance abuse services for adolescents, including—

(1) a thorough psychosocial assessment;

(2) individual treatment planning;

(3) a strong education component integral to the treatment plan;

(4) life skills training;

(5) individual and group counseling;

(6) family services;

(7) community work responsibilities; and

(8) community-based aftercare, providing 6 months of treatment following discharge from a residential facility.

SEC. 2907. THERAPEUTIC COMMUNITY.

The Therapeutic Community model shall be used as a basis for all adolescent residential substance abuse treatment programs established under this subtitle, which shall be characterized by—

(1) the self-help dynamic, requiring youth to participate actively in their own treatment;

(2) the role of mutual support and the therapeutic importance of the peer therapy group;

(3) a strong focus on family involvement and family strengthening;

(4) a clearly articulated value system emphasizing individual responsibility and responsibility for the community; and

(5) an emphasis on development of positive social skills.

SEC. 2908. REPORT BY PROVIDER.

Not later than 1 year after receiving a grant under this subtitle, and annually thereafter, a treatment provider shall prepare and submit to the Secretary a report describing the services provided pursuant to this subtitle.

SEC. 2909. REPORT BY SECRETARY.

(a) In General.—Not later than 3 months after receiving all reports by providers under section 2908, and annually thereafter, the Secretary shall prepare and submit a report containing information described in subsection (b) to—

(1) the Committee on Health, Education, Labor, and Pensions of the Senate;

(2) the Committee on Appropriations of the Senate;

(3) the United States Senate Caucus on International Narcotics Control;

(4) the Committee on Commerce of the House of Representatives;

(5) the Committee on Appropriations of the House of Representatives; and

(6) the Committee on Government Reform of the House of Representatives.

(b) CONTENT.—The report described in subsection (a) shall—

(1) outline the services provided by providers pursuant to this section;

(2) evaluate the effectiveness of such services;

(3) identify the geographic distribution of all treatment centers provided pursuant to this section, and evaluate the accessibility of such centers for addicts from rural areas and small towns;

(4) make recommendations to improve the programs carried out pursuant to this section.

SEC. 2910. DEFINITIONS.

In this subtitle—

(1) ADOLESCENT RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM.—The term ‘‘adolescent residential substance abuse treatment program’’ means a program that provides a regimen of individual and group activities, lasting ideally not less than 12 months, in a community-based residential facility that provides comprehensive services tailored to meet the needs of adolescents and designed to return youth to their families in such a manner that youth may become capable of enjoying and supporting positive, productive, drug-free lives.

(2) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Health and Human Services.

(3) THERAPEUTIC COMMUNITY.—The term ‘‘Therapeutic Community’’ means a highly structured residential treatment facility that—

(A) employs a treatment methodology;

(B) relies on self-help methods and group processes, a view of drug abuse as a disorder affecting the whole person, and a comprehensive approach to recovery;

(C) maintains a strong educational component; and

(D) carries out activities that are designed to help youths address alcohol or other drug abuse issues and learn to act in their own best interests, as well as in the best interests of their peers and families.

SEC. 2911. AUTHORIZATION OF APPROPRIATIONS.

(a) Subject to appropriation, there are authorized to be appropriated to carry out this subtitle—

(1) such sums as are necessary for fiscal years 2003 and 2004;

(b) such sums as may be necessary for fiscal year 2003;

(c) $300,000,000 for the Committee on Government Reform of the House of Representatives;

(d) such sums as are necessary for fiscal year 2003; and

(e) S UPPLEMENT AND NOT SUPPLANT.—

Grants made under this subtitle shall be used to supplement, and not supplant, non-Federal funds that would otherwise be available for activities funded under this subtitle.

Subtitle I—Other Matters

SEC. 2951. AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 305(c)(2)(1) of the Controlled Substances Act is amended by striking ‘‘the date of enactment’’ and all that follows through ‘‘such drugs’’, and inserting ‘‘on the date of approval by the Food and Drug Administration of a drug in schedule III, IV, or V, a State may not preclude a practitioner from dispensing or prescribing such drug, or causing such drug to be dispensed or prescribed’’.

SEC. 2952. STUDY OF METHAMPHETAMINE TREATMENT.

Section 3033 of the Methamphetamine Anti-Proliferation Act of 2000 (114 Stat. 1236) is amended by striking ‘‘the Institute of Medicine of the National Academy of Sciences’’ and inserting ‘‘the National Institute on Drug Abuse’’.

TITLE III—NATIONAL COMPREHENSIVE CRIME-FREE COMMUNITIES ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the ‘‘National Comprehensive Crime-Free Communities Act’’.

SEC. 3002. PROGRAM ADMINISTRATION.

(a) ATTORNEY GENERAL RESPONSIBILITIES.—

In carrying out this title, the Attorney General shall—

(1) make and monitor grants to grant recipients;

(2) provide, including through organizations such as the National Crime Prevention Council, technical assistance and training, and data collection, and other information on state-of-the-art research-grounded practices that the Attorney General determines to be effective in preventing and reducing crime, violence, and drug abuse;

(3) provide for the evaluation of this title and assess the effectiveness of comprehensive planning in the prevention of crime, violence, and drug abuse;

(4) provide for a comprehensive communications strategy to inform the public and State and local governments of programs authorized by this title and their purpose and intent;

(5) establish a National Crime-Free Communities Commission to advise, consult, and make recommendations to the Attorney General concerning activities carried out under this Act;

(6) establish the National Center for Justice Planning in a national organization representing State criminal justice executives that will—

(A) provide technical assistance and training to State criminal justice agencies in implementing policies and programs to facilitate community-based strategic planning processes;

(B) establish a collection of best practices for statewide community-based criminal justice planning and; and

(C) consult with appropriate organizations, including the National Drug Control Policy Council, in providing necessary training to States.
(b) Authorization of Appropriations.—
There are authorized to be appropriated $5,000,000 for the fiscal years 2002 through 2006, including $4,500,000 to assist States and communities in providing training, technical assistance, and setting benchmarks, and $500,000 to establish and operate the National Center for Justice Planning.

(c) Program Implementation.—Up to 3 percent of program funds appropriated for Community Grants and State Capacity Building grants may be used by the Attorney General to administer this program.

SEC. 3003. FOCUS.
Programs carried out by States and local communities under this title shall include a special focus on neighborhoods and schools disproportionately affected by crime, violence, and drug abuse.

SEC. 3004. DEFINITIONS.
In this title, the term ‘crime prevention plan’ means a strategy that has measurable long-term goals and short-term objectives that—

(1) addresses the problems of crime, including terrorism, violence, and substance abuse for a jurisdiction, developed through an interactive and collaborative process that includes representatives of law enforcement and the local chief executive’s office as well as representatives of such groups as other agencies of local government (including social service providers), nonprofit organizations, business leaders, religious leaders, and representatives of community and neighborhood groups;

(2) establishes interim and final benchmark measures for each prevention objective and strategy; and

(3) includes the monitoring and assessment mechanism for implementation of the plan.

SEC. 3005. COMMUNITY GRANTS.

(a) Grants Authorized.—

(1) IN GENERAL.—The Attorney General shall award grants to at least 100 communities or an organization organized under section 501(c)(3) of the Internal Revenue Code of 1986 that is the designee of a community, including 1 in each State, in an amount not to exceed $250,000 per year for the planning, evaluation, and implementation of a program designed to prevent and reduce crime, violence, and substance abuse.

(2) LIMITATION.—Of the amount of a grant awarded under this section in any given year, no more than $125,000 may be used for the planning or evaluation component of the program.

(b) Program Implementation Component.—

(1) IN GENERAL.—A community grant under this section may be used by a community to support specific programs or projects that are consistent with the local Crime Prevention Plan.

(2) AVAILABILITY.—A grant shall be awarded under this paragraph to a community that has submitted a specific Crime Prevention Plan and program outline.

(c) Matching Requirement.—The Federal share of a grant under this paragraph shall not exceed—

(A) 80 percent in the first year;
(B) 60 percent in the second year; and
(C) 40 percent in the third year;

(d) Permissive Use.—A State may use up to 5 percent of the grant to assist grant recipients in collecting statewide data related to the costs of crime, violence, and substance abuse for purposes of supporting its Crime Prevention Plan.

SEC. 3006. STATEWIDE STRATEGIC PREVENTION GRANTS.

(a) Grants Authorized.—The Attorney General shall award grants to each State criminal justice agency, Byrne agency, or other agency as designated by the Governor of that State and approved by the Attorney General, in an amount not to exceed $400,000 per year to develop State capacity to assist local communities in the prevention and reduction of crime, violence, and substance abuse.

(b) Use of Funds.—

(1) IN GENERAL.—A State capacity building grant shall be used to develop a statewide strategic plan as defined in subsection (c) to prevent and reduce crime, violence, and substance abuse.

(2) MATCHING REQUIREMENT.—A State shall provide training and technical assistance to communities and promote innovation in the development of policies, technologies, and programs to prevent and reduce crime.

(3) DATA COLLECTION.—A State may use up to 5 percent of the grant to assist grant recipients in collecting statewide data related to the costs of crime, violence, and substance abuse for purposes of supporting the statewide strategic plan.

(d) Accountability.—The Attorney General shall give additional consideration in the grant review process to an applicant with an officially designated Weed and Seed site for an application submitted to the Attorney General for all matching requirements under this section based on demonstrated financial hardship.

(e) Authorization of Appropriations.—There are authorized to be appropriated $25,000,000 to carry out this section for the fiscal years 2002 through 2006.

SEC. 3007. STATEWIDE STRATEGIC PREVENTION GRANTS.

(a) Grants Authorized.—The Attorney General shall award grants to the State Crime Free Communities Commission, including such groups as Federal, State, and local criminal justice personnel, law enforcement, schools, youth organizations, religious organizations, businesses, and health care professionals, parents, State, local, or tribal governmental agencies, and other organizations; and

(b) Program Implementation Component.—

(1) IN GENERAL.—A community with an officially designated Weed and Seed site may be provided a waiver by the Attorney General for all matching requirements under this section.

(2) WAIVERS FOR MATCHING REQUIREMENT.—

(A) involvement of relevant State agencies or local criminal justice personnel; (B) training and technical assistance, including through such groups as the National Crime Prevention Council; (C) community progress toward reducing crime, violence, and substance abuse.

(f) Authorization of Appropriations.—There are authorized to be appropriated $20,000,000 to carry out this section for the fiscal years 2002 through 2006.

SEC. 3008. STATEWIDE STRATEGIC PREVENTION GRANTS.

(a) Grants Authorized.—The Attorney General shall award grants to the State’s Crime Free Communities Commission, to assist local communities in developing Crime Prevention Plans that reflect statewide strategic goals and objectives, and performance targets and measures.

(b) Reports.—The Attorney General shall provide a report on its statewide strategic plan to the Attorney General, including information about—

(A) involvement of relevant State-level agencies to assist communities in the development and implementation of their Crime Prevention Plans; (B) support for local applications for Community Grants; and (C) community progress toward reducing crime, violence, and substance abuse.

ARTICLE II—SAFEGUARDING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

SEC. 4001. INCREASING THE PENALTY FOR USING PHYSICAL FORCE TO TAMPER WITH WITNESSES, VICTIMS, OR INFORMANTS.

(a) IN GENERAL.—Section 1512 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ‘‘as provided in paragraph (2)’’ and inserting ‘‘as provided in paragraph (3);’’

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following:

‘‘(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

‘‘(A) influence, delay, or prevent the testimony of any person in an official proceeding;

‘‘(B) cause or induce any person to—

‘‘(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

‘‘(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

‘‘(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

‘‘(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

‘‘(C) hinder, delay, or prevent the communication to a law enforcement officer or the judge of the United States of information regarding a violation of a cause of a violation of a Federal offense or a violation of conditions of probation, supervised release,
(b) DEFENSES; OBJECTIONS.—Nothing in this section shall preclude the District Court from considering any defense or objection, other than statute of limitations, to the prosecution. The counts reinstated under subsection (a).

(b) TECHNICAL AND CONFORMING AMENDMENT.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following new item:

"§ 3296. Counts dismissed pursuant to a plea agreement."

SEC. 4004. ADMISSIONS FROM CERTAIN DISMISSALS. Section 3831(a) of the United States Code, is amended by inserting ", or any part thereof" after "as to any one or more counts".

SEC. 4005. CLARIFICATION OF LENGTH OF SUPERVISED RELEASE TERMS IN CON- TROLLED SUBSTANCE CASES. (a) DRUG ABUSE PENALTIES.—Subparagraphs (A), (B), (C), and (D) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) are amended by striking "Any sentence" and inserting "Notwithstanding section 3583 of title 18, any sen-
tence".

(b) PENALTIES FOR DRUG IMPORT AND EXPORT.—Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) in paragraphs (1), (2), and (3), by striking "Any sentence" and inserting "Notwithstanding section 3583 of title 18, any sentence";

(2) in paragraph (4), by inserting "Notwithstanding section 3583 of title 18, before "in addition to such term";

SEC. 4006. AUTHORITY OF COURT TO IMPOSE A SENTENCE OF PROBATION OR SUPERVISED RELEASE WHEN REDUCING A SENTENCE OF IMPRISONMENT IN CERTAIN CASES. Section 3582(c)(1)(A) of title 18, United States Code, is amended by striking "and (a)(6)" and inserting "and (a)(6), and (a)(7)".

SEC. 4007. CLARIFICATION THAT MAKING RE- STITUTION IS A PROPER CONDITION OF SUPERVISED RELEASE. Subsections (c) and (e) of section 3583 of title 18, United States Code, are amended by striking "and (a)(6) and inserting "(a)(6), and (a)(7)"

TITLE V—CRIMINAL LAW TECHNICAL AMENDMENTS ACT OF 2001

SEC. 5001. SHORT TITLE. This title may be cited as the "Criminal Law Technical Amendments Act of 2001".

SEC. 5002. TECHNICAL AMENDMENTS RELATING TO CRIMINAL LAW AND PROCEDURE. (a) MISSING AND INCORRECT WORDS.—(1) CORRECTING GARBLED SENTENCE.—Section 510(e) of title 18, United States Code, is amended by striking "fine of under this title" and inserting "fine under this title".

(2) INCOMPLETE SENTENCES.—Section 981(d) of title 18, United States Code, is amended by striking "proceeds from the sale of this section" and inserting "proceeds from the sale of this section under this section".

(3) CORRECTION OF INCORRECT WORD.—Sections 1425 through 1427, 1541 through 1544 and 1546(a) of title 18, United States Code, are each amended by striking "to facility" and inserting "to facilitate".

(4) CORRECTING ERRONEOUS AMENDATORY LANGUAGE ON EXECUTED AMENDMENT.—Effective on the date of the enactment of Public Law 103–322, section 6000a(a)(13) of such public law is amended by striking "$1,000,000 or imprisonment" and inserting "$1,000,000 and imprisonment".

(5) CORRECTION OF REFERENCE TO SHORT TITLE OF LAW.—That section 2332a(a) of title 18, United States Code, which relates to financial transactions is amended by inserting "of 1979" after "Export Administration Act".

(6) ELIMINATION OF TYPO.—Section 1902(b) of title 18, United States Code, is amended by striking "term or years" and inserting "term of years".

(7) SPELLING CORRECTION.—Section 2339A(a) of title 18, United States Code, is amended by striking "or an escape" and inserting "of an escape".

SEC. 5003.—Section 3558(e) of title 18, United States Code, is amended by inserting "a" before "minimum".

(8) MISSPELLING IN SECTION 29.—Section 2903 of title 18, United States Code, is amended by striking "group’s" and inserting "group’s".

(9) CONFORMING CHANGE AND INSERTING MISSPELLED WORD IN SECTION 29.—The paragraph in section 709 of title 18, United States Code, that begins with "A person who" is amended—

(A) by striking "A person who" and inserting "Whoever"; and

(B) by inserting "or" after the semicolon at the end.

(10) ERROR IN LANGUAGE BEING STRICKEN.—Effective on the date of its enactment, section 7202(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132) is amended—

(A) in subparagraphs (C) and (E), by striking "section" and inserting "the first place it appears"; and

(B) in subparagraph (F), by striking "relat-
ing to" the first place it appears.

(11) MARIGN ERROR.—Section 1030(c)(2) of title 18, United States Code, is amended so that the margins of subparagraph (B) and each of its clauses, are moved 2 ems to the left.

(12) CORRECTING CAPITALIZATION IN LANGUAGE BEING STRICKEN.—Effective on the date of its enactment, section 607(g)(2) of the Eco-
nomic Espionage Act of 1996 is amended by striking ""territory"" and inserting ""Terri-
ory".

(13) CORRECTING PARAGRAPHING.—The mate-
rial added to section 521(a) of title 18, United States Code, by section 607(q) of the Eco-
nomic Espionage Act of 1996 is amended to make a paragraph indented 2 ems from the left margin.

(14) SUBSECTION PLACEMENT CORRECTION.— Section 1513 of title 18, United States Code, is amended by transferring subsection (d) so that it appears following subsection (c).

(15) CORRECTION TO ALLOW FOR INSERTION OF NEW SUBPARAGRAPH AND CORRECTION OF ERROR IN INDENTATION.—Section 1966(c)(7) of title 18, United States Code, is amended—

(A) in subparagraph (B)(ii), by moving the margin 2 ems to the right;

(B) by striking "or" at the end of para-

(D); and

(C) by striking the period at the end of subpara-

(E) and inserting ": or";

and

(D) in subparagraph (F)—

(i) by striking "Any" and inserting "any";

and

(ii) by striking the period at the end and inserting a semicolon.

(6) CORRECTION OF CONFUSING SUBDIVISION DESIGNATION.—Section 1716 of title 18, United States Code, is amended—

(A) in the first undesignated paragraph, by inserting "](j)(1) before "Whoever";

(B) in the second undesignated paragraph—

(i) by striking "not more than $10,000" and inserting "under this title"; and

(ii) by inserting "(2)" at the beginning of that paragraph;

(C) by inserting "(3) at the beginning of the third undesignated paragraph; and

(D) by redesignating subsection (j) as sub-
section (k).
(7) PUNCTUATION CORRECTION IN SECTION 1991.—Section 1991(b)(1) of title 18, United States Code, is amended by striking “sub-
section (a)(1),” and inserting “subsection (a)(1).”

(8) PUNCTUATION CORRECTION IN SECTION 2311.—Section 2311 of title 18, United States Code, is amended by striking the period after “caregiver” in the second place that term appears and inserting a semicolon.

(9) SYNTAX CORRECTION.—Section 115(b)(2) of title 18, United States Code, is amended by striking “attempted kidnapping, or con-
spiracy to kidnap a person” and inserting “or attempted kidnapping of, or a conspiracy to kidnap a person.”

(10) CORRECTING CAPITALIZATION IN SECTION 292.—Section 292 of title 18, United States Code, is amended by striking “Court” and inserting “Court.”

(11) PUNCTUATION CORRECTIONS IN SECTION 2322.—Section 2322 of title 18, United States Code, is amended—
(A) in subsection (c)(1)(A)(i), by striking “(b),” and inserting “(b)”;
and
(B) in subsection (e), by adding a semicolon at the end of paragraph (8).

(12) CORRECTION OF CONNECTORS AND PUNCTUATION IN SECTION 2580.—Section 2580 of title 18, United States Code, is amended—
(A) by inserting “and” at the end of subsection (2), and
(B) by striking the period at the end of subsection (e)(4) and inserting a semicolon.

(13) CORRECTION OF PUNCTUATION IN SECTION 2582.—Section 2582(1) of title 18, United States Code, is amended by striking “,” and insert-
ing “.”

(14) CORRECTION OF PUNCTUATION IN SECTION 3140.—Section 3140(a)(1) of title 18, United States Code, is amended—
(A) in subparagraph (B), by striking “, or” and inserting “;”;
and
(B) in subparagraph (C), by striking the per-
iod and inserting a semicolon.

(15) CORRECTION OF PUNCTUATION IN SECTION 3162.—Section 3162(c)(2)(B) of title 18, United States Code, is amended by striking “,” and insert-
ing “.”

(16) CORRECTION OF INDENTATION IN CONTROLLED SUBSTANCES ACT.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)(2)) is amended by moving the margin of subsection (c) 2 ems to the left.

(c) ELIMINATION OF REDUNDANCIES.—

(1) ELIMINATION OF DUPLICATE AMEND-
MENTS.—Effective the date of its enact-
ment, section 3503 of title 18, United States Code, is amended by striking “subsection (d)(5)”.

(2) ELIMINATION OF DUPLICATE AMEND-
MENTS.—Effective the date of its enact-
ment, section 2510(10) of title 18, United States Code, is amended by striking “the first undesignated paragraph;” and

(3) ELIMINATION OF DUPLICATE AMEND-
MENTS.—Effective the date of its enact-
ment, section 2401(a)(10) of title 18, United States Code, is amended by striking “subsection (d) of 601(b), subsection (d) of 601(b), subsection (r) of 605, and paragraph (2) of section 605, of the Economic Espionage Act of 1996 are repealed.

(2) ELIMINATION OF EXTRA COMMA.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—
(A) by striking “Code,”; “,” and inserting “;”;
and
(B) by striking “services.”;

(3) REPEAL OF SECTION GRANTING DUPLI-
CATIVE AUTHORITY.—

(A) Section 3503 of title 18, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 233 of title 18, United States Code, is amended by striking the item relating to section 3503.

(4) ELIMINATION OF OUTMODED REFERENCE TO PAROLE.—Section 925(b) of title 18, United States Code, is amended by striking the last sentence.

(d) CORRECTION OF OUTDATED FINE AMOUNTS.—

(1) IN TITLE 18, UNITED STATES CODE.—

(A) In section 492, section 492 of title 18, United States Code, is amended by striking “not more than $100” and inserting “under this title.”

(B) In section 665, section 665(c) of title 18, United States Code, is amended by striking “a fine of not more than $5,000” and insert-
ing “under this title.”

(C) In sections 1923, 2075, 2113(b), and 2226.—

(i) Section 1924(a) of title 18, United States Code, is amended by striking “not more than $1,000,” and inserting “under this title.”

(ii) Sections 2075 and 2113(b) of title 18, United States Code, are each amended by striking “not more than $1,000,” and insert-
ing “under this title.”

(iii) Section 2236 of title 18, United States Code, is amended by inserting “under this title” after “warrant, shall be fined,” and by striking “not more than $1,000.”

(D) In sections 732 and 752(a) of title 18, United States Code, each amended by striking “not more than $5,000” and inserting “under this title.”

(E) In section 924(e)(1).—Section 924(e)(1) of title 18, United States Code, is amended by striking “not more than $25,000” and insert-
ing “under this title.”

(2) IN THE CONTROLLED SUBSTANCES ACT.—

(A) In section 402.—Section 402(d) of the Controlled Substances Act (21 U.S.C. 842(d)) is amended—

(i) in paragraph (1), by striking “and shall be fined not more than $10,000,” and inserting “or fined under title 18, United States Code, or both”; and

(ii) in paragraph (2), by striking “and shall be fined not more than $20,000,” and inserting “or fined under title 18, United States Code, or both.”

(B) In section 402.—Section 402(c)(2) of the Controlled Substances Act (21 U.S.C. 842(c)) is amended—

(i) in subparagraph (A), by striking “of not more than $25,000” and inserting “under title 18, United States Code, or both.”

(ii) in subparagraph (B), by striking “of not more than $50,000,” and inserting “under title 18, United States Code.”

(C) In section 403.—Section 403(d) of the Controlled Substances Act (21 U.S.C. 843(d)) is amended—

(i) by striking “of not more than $30,000” each place that term appears and inserting “under title 18, United States Code”; and

(ii) by striking “of not more than $60,000” each place that term appears and inserting “under title 18, United States Code.”

(d) CROSS REFERENCE CORRECTIONS.—

(1) Section 369.—Section 369 of title 18, United States Code, is amended by striking “services”.

(2) Section 924(e)(1).—Section 924(e)(1) of title 18, United States Code, is amended by striking “services”.

(3) CORRECTING ERRONEOUS CROSS REF-
ERENCE IN CONTROLLED SUBSTANCES ACT.—

(A) In the Controlled Substances Act (21 U.S.C. 881(a)(10)) is amended by striking “2122 of the Mail Order Drug Par-
aphernalia Control Act” and inserting “222”.

(B) CORRECTION TO REFLECT CROSS REF-
ERENCE CHANGE MADE BY OTHER LAW.—Ef-
fective on the date of its enactment, section 115(a)(8)(B) of Public Law 108-119 is amended—

(A) in clause (i) the first place it appears and inserting “employees”;

and

(B) by striking “or” at the end of the third undesignated paragraph;

(3) ELIMINATION OF OUTMODED PROVISIONS.—

(A) In section 182 of title 18, United States Code, is amended by striking “The Secretary” and inserting “Secretary”;

and

(B) by striking subsection (b).
(c) Section 1821 of such title is amended by striking “‘the Canal Zone’.
(d) Section 3183 of such title is amended by striking ‘‘or the Panama Canal Zone.’’.
(e) Each title is amended by striking ‘‘United States District Court for the Canal Zone and the’’.

SEC. 5005. AMENDMENTS RESULTING FROM PUBL. LAW 107-56.
(a) MARGIN CORRECTIONS.—
(1) Section 2516(1) of title 18, United States Code, is amended by moving the left margin for subsection (g) 2 ems to the right.
(2) Section 2703(c)(1) of title 18, United States Code, is amended by moving the left margin of subparagraph (B) 2 ems to the left.
(3) Section 2516(1) of title 18, United States Code, is amended by moving the left margin of subparagraph (B) 2 ems to the left.
(b) CORRECTION OF WRONGLY Worded CLERICAL AMENDMENT.—Effective on the date of its enactment, section 223(c)(2) of Public Law 107-56 is amended to read as follows:
“(2) The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended by adding at the end the following new item:
‘‘2121. Civil actions against the United States.’’.
(c) CORRECTION OF ERRONEOUS PLACEMENT OF AMEMNEMENT LANGUAGE.—Effective on the date of its enactment, section 225 of Public Law 107-56 is amended—
(1) by striking “‘after subsection (g)’” and inserting “‘after subsection (h)’”; and
(2) by redesignating the subsection added to section 105 of section 108 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) as subsection (i).
(d) PUNCTUATION CORRECTIONS.—
(1) Section 1996(c)(b)(B) of title 18, United States Code, is amended by striking the period and inserting a semicolon.
(2) Effective on the date of its enactment, section 803(a) of Public Law 107-56 is amended by striking “channel” and inserting “period”.

SEC. 3006. MARGIN OF SUBPARAGRAPHS.—
(1) Section 2516(1) of title 18, United States Code, is amended by striking the close quotation mark and period, and inserting “for competitive priority under paragraph (2), the Administrator shall give priority to communities that have taken measures to combat drug abuse, including passing ordinances restricting rave clubs, increasing law enforcement on ecstasy, and seizing lands under nuisance laws to make new restrictions on an establishment’s use.”

SEC. 7001. PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANTS.
(a) STATE APPLICATIONS.—Section 508(a)(13) of title 28, United States Code, as a new section 175b of title 18, United States Code, is amended by striking the close quotation mark and period and inserting “for competitive priority under paragraph (2), the Administrator shall give priority to communities that have taken measures to combat drug abuse, including passing ordinances restricting rave clubs, increasing law enforcement on ecstasy, and seizing lands under nuisance laws to make new restrictions on an establishment’s use.”

(b) FORENSIC SCIENCES IMPROVEMENT GRANTS.—Part I of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797f) et seq.) is amended—
(1) in section 2001, by inserting after “States” the following: “and units of local government”; and
(2) in section 2002—
(A) in the matter before paragraph (1), by inserting “‘or unit of local government’”; and
(B) in paragraph (1), to read as follows:

‘‘(1) A certificate of a State or unit of local government has been awarded a grant by the United States government under this part, the Director shall certify to the Attorney General that the grant will be used to carry out that plan;’’;
(C) in paragraph (2), by inserting “or appropriate certifying bodies” before the semicolon; and
(D) in paragraph (3), by inserting “for a State or local plan” after “program”;

(2) Effective on the date of its enactment, section 2003(a)(2), by striking “to States and units of local government” and inserting “for competitive awards to States and units of local government.”

(c) Effective on the date of its enactment, the Attorney General shall consider the average annual number of part I violent crimes reported by each State to the Federal Bureau of Investigation for the 3 most recent calendar years for which data is available and consider the existing resources and current needs of the potential grant recipient.”;

(4) Effective on the date of its enactment, section 2004(a)(1), by striking “‘A State’” and inserting “‘A State or unit of local government’”;

(5) Effective on the date of its enactment, section 2005(a)(2), by striking “to States and units of local government” and inserting “for competitive awards to States and units of local government.”

SEC. 7002. AUTHORIZATION OF APPROPRIATIONS.
There are authorized to be appropriated for each fiscal year 2002 through 2007—
(1) $30,000,000 for the Center for Domestic Preparedness of the Department of Justice in Anniston, Alabama;
(2) $7,000,000, or such sums as may be necessary, for the Texas Engineering Extension Service of the University of Texas at Austin;
(3) $7,000,000, or such sums as may be necessary, for the Energetic Materials Research and Test Center of the New Mexico Institute of Mining and Technology;
(4) $7,000,000, or such sums as may be necessary, for the National Center of Forensic Science at Louisiana State University; and
(5) $7,000,000, or such sums as may be necessary, for the National Exercise, Test, and Training Center of the Department of Energy, located at the Nevada Test site.

TITLE VIII—ECSTASY PREVENTION ACT OF 2001
SEC. 8001. SHORT TITLE.
This title may be cited as the “Ecstasy Prevention Act of 2001.”

SEC. 8002. GRANTS FOR ECSTASY ABUSE PREVENTION.
Section 506(c)(1) of title V of the Public Health Service Act is amended by adding at the end the following:

“(3) EFFECTIVE PROGRAMS.—

“(A) IN GENERAL.—In addition to the priority under paragraph (2), the Administrator shall give priority to communities that have taken measures to combat drug abuse, including passing ordinances restricting rave clubs, increasing law enforcement on ecstasy, and seizing lands under nuisance laws to make new restrictions on an establishment’s use.”

(b) STATE PRIORITY.—A priority grant may be made to a State under this paragraph on a pass-through basis to an eligible community.”.

SEC. 8003. COMBATING ECSTASY AND OTHER CLUB DRUGS IN HIGH INTENSITY DRUG TRAFFICKING AREAS.
(a) PROGRAM.—

(1) IN GENERAL.—The Director of the Office of National Drug Control Policy shall include, in the Appropriations Act for fiscal year 2002, a grant forensic science capabilities to combat the trafficking of MDMA in areas designated by the Director as high intensity drug trafficking areas.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section such sums as are necessary for fiscal years 2002 through 2005.

(2) NO SUPPLANTING.—Any Federal funds received under this section shall be used to supplement, not supplant, non-Federal funds that would otherwise be used to carry out activities funded under this section.

(c) APPORTIONMENT OF FUNDS.—The Director shall apportion amounts appropriated for a fiscal year pursuant to the authorization of appropriations in subsection (b) for activities under subsection (a) among and within areas designated by the Director and based on the threat assessments submitted by individual high intensity drug trafficking areas.

SEC. 8004. NATIONAL YOUTH ANTIDRUG MEDIA CAMPAIGN.
(a) IN GENERAL.—In conducting the national media campaign under section 102 of the Drug-Free Schools and Communities Act of 1996, the Director of the Office of National Drug Control Policy shall ensure that such campaign addresses the reduction and prevention of the use of MDMA and other emerging drugs among young people in the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—

There is authorized to be appropriated to carry out this section such sums as are necessary for fiscal years 2002 through 2005.

SEC. 8005. MDMA DRUG TEST.
There are authorized to be appropriated to the Office of National Drug Control Policy...
such sums as are necessary to commission a drug test for MDMA which would meet the standards for the Federal Workplace.

SEC. 8006. NATIONAL INSTITUTE ON DRUG ABUSE REVIEW

(a) RESEARCH.—The Director of the National Institute on Drug Abuse (referred to in this section as the ‘‘Director’’) shall conduct research—

(1) that evaluates the effects that MDMA use can have on an individual’s health, such as—

(A) physiological effects such as changes in ability to regulate one’s body temperature, stimulation of the cardiovascular system, muscle tension, teeth clenching, nausea, blurred vision, rapid eye movement, tremors, and other such conditions, some of which can result in heart failure or heat stroke;

(B) psychological effects such as mood and mind altering and panic attacks which may come from altering various neurotransmitter levels such as serotonin in the brain;

(C) short-term effects like confusion, depression, sleep problems, severe anxiety, paranoia, hallucinations, and amnesia; and

(D) long-term effects on the brain with regard to memory and other cognitive functions, and other medical consequences; and

(2) documenting those research findings and conclusions with respect to MDMA that are scientifically valid and identify the medical consequences on an individual’s health.

(b) FINAL REPORT.—Not later than January 1, 2003, the Director shall submit a report to the Congress.

(c) REPORT PUBLIC.—The report required by this section shall be made public.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 8007. INTERAGENCY ECSTASY/CхURC Д RUGS TASK FORCE

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Director of the Office of National Drug Control Policy shall establish a Task Force on Ecstasy/MDMA and Emerging Club Drugs (referred to in this section as the ‘‘task force’’) which shall—

(A) design, implement, and evaluate the education, prevention, and treatment practices and strategies of the Federal Government with respect to Ecstasy, MDMA, and emerging club drugs; and

(B) specifically study the club drug problem and report its findings to Congress.

(2) MEMBERSHIP.—The task force shall—

(A) be under the jurisdiction of the Director of the Office of National Drug Control Policy, who shall designate a chairperson; and

(B) include as members law enforcement, substance abuse prevention, judicial, and public health professionals as well as representatives from Federal, State, and local agencies.

(b) RESPONSIBILITIES.—The responsibilities of the task force shall be—

(1) to evaluate the current practices and strategies of the Federal Government in education, prevention, and treatment for Ecstasy, MDMA, and other emerging club drugs and recommend appropriate and beneficial models for education, prevention, and treatment;

(2) to identify appropriate government components and resources to implement task force recommendations; and

(3) to make recommendations to the President and Congress to implement proposed improvements in accordance with the National Drug Control Strategy and its budget allocations.

(c) MEETINGS.—The task force shall meet at least once every 6 months.

(d) TERMINATION.—The task force shall terminate 3 years after the date of enactment of this Act.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, December 20, 2001, at 11:30 a.m., in executive session to consider a civilian nomination and pending military nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. HARKIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, December 20, 2001, at 9:30 a.m., on the nomination of John Magaw to be Undersecretary of Transportation Security (OST).

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. WELLSSTONE. Madam President, I ask unanimous consent that Ellen Gerrity, of my staff, be allowed floor privileges for the duration of today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. I ask unanimous consent that Tiffany Smith, a fellow in my office, be permitted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

MAKING FURTHER CONTINUING APPROPRIATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to H.J. Res. 79, the continuing resolution, which is at the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 79) making further continuing appropriations for the fiscal year 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. Mr. President, I ask unanimous consent that the joint resolution be read a third time, passed, and the motion to reconsider be laid upon the table, without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (H.J. Res. 80) was read the third time and passed.

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized.

TAX EXTENDERS

Mr. BAUCUS. Mr. President, in a few moments I am going to ask that the Senate take up and pass the tax extenders legislation. It is unfortunate that the Congress, along with the President, were unable to agree on a stimulus to the American economy that would provide not only a boost to the American economy, but also assistance to those who have lost employment compensation benefits as a consequence of the decline in the economy accelerated by the events of September 11, as well as those who have lost health insurance as a consequence of losing their jobs.

It is almost axiomatic that the economy is in tough shape. I do not expect with a high degree of certainty that the Congress is going to come back to where we would like to be very quickly.

There are some small points which I think we should keep in mind. One is that auto sales broke records with zero percent financing, and the auto companies get most of their income from financing. So they were not making any money these past couple of months, which means reports coming out next quarter and even this quarter will not be high.

The same applies to retail sales. It is the Christmas season. We know stores across the country, in order to encourage more sales, are giving tremendous discounts, which clearly discounts that company’s income.

We are going to have to face a stimulus package and should this next year. I hope we do it in a much more accommodating manner than we have in the last several weeks.

I am not going to get into the blame game. I am not going to say who
caused this collapse. I have lots of ideas. That is history. What happened happened. It is now time to go forward. I urge my colleagues, after appropriate rest and a break over the holidays, when they are rested up, to come back with a fresh spirit and renewed dedication and perseverance to working together and, most important, listening to the other side.

Too often we tend to talk, and we do not listen enough. If we were to listen a little more, even for a nanosecond, I think we would be more progressive. I urge my colleagues to listen to different points of view next year.

Nevertheless, I think we should salvage whatever we can, and part of that is what is called the tax extenders. These include matters that are very important for the economy and for people who are relying on them. One is the work opportunity tax credit which helps people find jobs.

The Joint Committee on Tax estimates $500,000 to $755,000 will be hired with this credit next year. It expires this year. All provisions I mentioned expire this year, and I think it is important to keep those in existence so next year people can rely upon them.

Another is extending the qualified zone academy bond that authorizes $400 billion in bonds to States in the calendar year 2002. That is to renovate schools and purchase equipment. That expires this year and will terminate unless this legislation I mentioned passes.

A key point, and I urge my colleagues to listen to this, it is a matter of confidence and certainty. These are provisions upon which so many people in our country depend. Over the years, they have been on again, off again. It is like a yo-yo.

It is no way to do business. People need certainty, a little more than they have today in these uncertain times, a little more ability to predict the future. If we could pass this legislation tonight, extending the extenders, that would enable people with more certainty to know they can count on an existing law.

This is not new law. This is an extension of existing law. It is not right for us to be not continuing that legislation because, otherwise, we will wake up next year, January 1 or 2, and these are not in effect. There are many other of them that are very good and, again, it creates that uncertainty.

One, for example, is AMT for individuals. That is the alternative minimum tax credit. That is an extender. According to the Joint Committee on Tax, 900,000 Americans will be subject to the AMT without this relief, as one of the extenders we have.

Four hundred thousand of those will be taxpayers with incomes between $50,000 and $75,000. Those are really middle-income Americans. If we do not extend this extender, then those people will be subject to the AMT tax.

In addition, this package includes an extension of a GSP, that is a general-

ized preference for trade. That is a trade provision that is in the law today. The Andean Trade Preference Act extends that. It is in the law today, in addition to trade adjustment assistance.

I strongly urge my colleagues to think of Americans and pass this request.

I ask unanimous consent that the Senate proceed to immediate consideration of Title I, H.R. 8, that is the Baucus substitute amendment at the desk be agreed to; the bill as amended be read a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Reserving the right to object, I concur with many of the statements my friend from Montana made; it is very important for us to work together more than we have done in the last few months. The unanimous consent request, if I am reading it correctly, says the Senate wants to substitute the extenders for H.R. 8, which is the revenue package that passed April 6. Is that correct?

Mr. BAUCUS. That is correct.

Mr. NICKLES. That package would be passed for it. In other words, this was a bill that would basically, over a 10-year period of time, eliminate the death tax, I believe, and the Senate wants to strike all that language and put in a 2-year extender bill; is that correct?

Mr. BAUCUS. This is 1 year. There is no intention to repeal any of the tax provisions that passed earlier this year.

Mr. NICKLES. I am reading this as a substitute for the House bill. I believe it is a substitute for the House bill. If the Senator modifies this and makes it in addition to the House bill, at least this Senator would not object. But if it is striking the House bill, I feel constrained to object.

If the Senator is willing to move it, in addition to the House bill, I will not object at this time.

Mr. BAUCUS. I will respond to my colleague that my intention is to take up the bill that is already on the calendar.

Mr. NICKLES. I know.

Mr. BAUCUS. And strike out the substance of it: take it up and pass it back with these provisions.

I might answer my friend, this is the procedure we have to follow in order to pass these extenders.

Mr. NICKLES. Further reserving the right to object, again I will object if it is striking the House bill. The House passed a bill with a good vote. I do not remember exactly what it was. If it is in addition to the House bill, I would not object.

I ask my colleague—and I think I hear the Senator saying he is not going to—is it not the intent of the Senator not to pass the House-passed bill? I was hoping that was a deal.

I might mention we might have to notify a few other Senators before we do this by unanimous consent.

Mr. BAUCUS. The Presiding Officer might like for us to do that.

Mr. BAUCUS. Given all the objections that approach will take, I was asking the Senator to consider the approach I am suggesting.

Mr. NICKLES. Further reserving the right to object, if the Senator is not going to agree to pass the House-passed language that passed in April with the extenders language, then I ask the Senator to modify his request and let us take up the stimulus package that did have the extenders, that did have many other provisions that would have helped the unemployed, that did have some things that would help stimulate the economy, that did have some things that would help New York. In addition to what we have already done today. So I ask my colleague to modify his request, let us take up the stimulus package, the H.R. 3529, which was received from the House.

I ask unanimous consent that the request be modified so that at first the Senate would proceed to consideration of H.R. 3529, which is the stimulus package received by the House; the bill be read a third time and passed, with no intervening action or debate.

I would add, before the Chair rules, the bill has extender language that my colleague from Montana is requesting and therefore it would accommodate his request.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. BAUCUS. Mr. President, I believe the Senate made a unanimous consent request that would change my unanimous consent request. I understand it. I ask the Senator if he will modify his request to substitute the stimulus bill that passed the Senate Finance Committee instead of the bill that passed the House.

Mr. NICKLES. I cannot agree to that. I do not know if we are playing one-upmanship. I would like to pass the bill that passed the House. So I will not agree to that.

Mr. BAUCUS. Mr. President, it is clear what is happening.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. NICKLES. I object.

Mr. LANDRIEU. Ms. LANDRIEU. Mr. President, there are many important issues on the
agenda and the one that was being discussed is one of the most important, but not the only. There is other business that needs to get done before we leave, which is an issue that is of great concern and an issue I wanted to bring to the attention of the Senate.

Before I get into that subject area, which relates to families and children and adoption, I want to thank the leadership. I thank Senator KENNEDY and Senator Frist, the main sponsors of the bioterrorism legislation, for agreeing in a colloquy submitted on behalf of myself and Senator McCONNELL from Kentucky to add a provision that will help all hospitals to call on to assist victims of those attacks or if the hospitals are harmed themselves. I very much appreciate it because it seemed to be an oversight in the legislation.

As that bill moves to conference, I particularly thank them for their sensitivities to provide funding for all hospitals in the event that that situation were to occur. Of course, we are all hopeful it does not and are working very hard to make sure it does not, but I thank them for agreeing.


Ms. LANDRIEU. Mr. President, I know the Senator from Ohio and others are waiting to speak on other matters before we leave, but last night there was a troubling exposure done on a very unfortunate circumstance, and that circumstance involves 12 American families who are stuck in Cambodia because they are unable to obtain visas for their newly adopted children. They are unable to get those visas to come back to the United States safely with these children to celebrate what would have been a joyous homecoming on these holidays.

We are all getting ready to join our families and loved ones in our home States for Christmas and for the holidays. It is not just parents being reunited with children and children with parents, but grandparents, aunts, uncles, and cousins. This holiday season, as we have all said, is going to be even that much more special because of the challenges before our Nation and the events of September 11 and subsequent events that make us realize how important our families are to us and our loved ones.

We are mindful as we leave today, happy with some of the successes we have had, of the pain and suffering that will be felt during this holiday season by 3,000 families and many more who were directly affected, who will not have a loved one present for the holidays.

For the record, there is nothing I can offer at this moment—no piece of legislation, no fix that I can offer at this moment—but it is my intention to work with all the Senators and to work with the INS, to work with the State Department over the course of the next several days and weeks and months, if necessary, to make sure these American families can get the visas to take their children safely and come to the United States.

According to the INS and according to the story and the details I know, there is concern that there is fraud and abuse in Cambodia and therefore it is why the visas were not issued. I acknowledge that, unfortunately, in the whole area of adoption, both domestic and international, there is some fraud and abuse. We need to do everything we can to make sure that fraud and abuse is stamped out. This Senate, this House, and this Congress, with the help of President Clinton as well as President Bush and both State Departments in the last administration and this administration, are working diligently on that.

We have passed a Hague treaty, an international treaty aimed specifically at making the system of adoption more transparent, eliminating the middleman, reducing time, and encouraging people to adopt children from all over the world because there are so many children who need a home and so many families who want to adopt children to their families, to build and strengthen their families through adoption.

Denying American families who pay their taxes, good community citizens, people who are doing everything they think is right, and then denying the visas is, I suggest, not the right approach. I am hoping our INS, with our new Commissioner, Mr. Ziglar, who we all know very well and who I have spoken to directly about this issue, as well as the State Department and Senator Powell and others, will look into this matter and come to an understanding and agreement to allow these children to come with their families.

These children are 6 months to 31 months old. I have learned if children are not adopted in Cambodia by the age of 6, under the Cambodian rules and regulations, children are not able to be adopted. So there is an urgency. There are time issues here. It is very important to try to work through this situation to help these families who are trying to bring children home from New York, Maine, Virginia, Oklahoma, Washington, and Arizona; none from Louisiana.

As the chair of the adoption caucus, I bring this to the attention of the Senate. I will be working as much as I can over the next weeks and months to make sure this issue is resolved. There are procedures that can be used to focus on eliminating abuse and corruption but holding up families who have gone through the process, sometimes explicitly because of specific allegations of fraud in these individual cases, is beyond where I think we need to go.

In conclusion, we need to promote adoption, helping the system to be transparent and encouraging people by saying, it is not too long, it is not too tough, it is not too difficult, and it is worth it to bring some of these children to our country and to provide permanency to so many who have so little to hope for.

Mr. President, I ask unanimous consent to have these details printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:


The Consular Officials in Cambodia reviewed each child’s documents PRIOR to the child being legally adopted under Cambodian law. The documents were again reviewed by Consular Officials prior to the parents being notified that all was in order and scheduling of their interviews. So the U.S. State Department had two opportunities to identify problems prior to the parents traveling to Cambodia to bring home their child. These children are now officially adopted by American citizens. To deny these children visas for no specific, concrete reason, is to make one of these children’s holidays very difficult again.

INS should revoke the Notice of Intent to Deny Letters it issued in the recent Cambodian cases for the following reasons.

1. INS did not conduct a case-by-case investigation.

INS has a policy to adjudicate cases on a case-by-case basis. This policy is predicated on the premise that each case has unique facts, documents and circumstances. In reviewing the seven (7) Notice of Intent to Deny Letters, the matters are examined alike. The cases do not even reflect correct information about the children and their respective ages. Specifically, the letters focus on children that are infants. However, in review of the children is issue, a significant number of children are not infants. One child is 31 months old; one child is 25 months old; one child is 23 months old; one child is 20 months old; one child is 10 months old; seven children are approximately 6 months old; and DOB May 8th 2001 and abandoned May 14 (Munson).

It is important to note that all of the children have been in the Asian Orphanage Association for at least six (6) months. These children have been processed through the Cambodian judicial system and have been adopted by American families in accordance with the laws of Cambodia.

2. The investigation not conducted: INS only investigated cases that were facilitated by a Cambodian man, Serey Puth—it did not investigate orphans from other orphanages or children who came through other facilitators; INS interviewed secondary sources when persons holding primary roles were unavailable; faulty translations; and erroneous information (See the Notice of Intent to Deny).

(a) The only children that were targeted in this investigation were children that has been processed through a Cambodian facilitator, Serey Puth. Children who were placed through other orphanages and other facilitators were not investigated.

(b) Generally, INS protocol is to conduct extensive investigations. Statements are taken under oath by competent investigators and translators. Using secondary sources is not acceptable. This did not occur in these cases.
INS only interviewed three persons. Mrs. Phorn Phon, the wife of a village chief for Chaneng Mang village, Mr. Yo a member of the staff of the Asian Orphanage Association and a villager on motorcycle.

It would have been more appropriate to interview the chief instead of the chief’s wife. It is not sound reasoning to expect the wife of a village chief to know everything that the chief knows.

It would have been more direct and informative to interview Serey Puth, the owner and director of the Asian Orphanage Association rather than Mr. Yo a staff member of AOA. Mr. Yo has the responsibility of listing children in the orphanage’s registry, making sure the premises are clean and in good repair. He is not privy to the circumstances of the particular cases. He would not know when and where children were born.

Additionally, Serey Puth, the director and owner of the AOA orphanage was available and willing to meet with the INS officials. Although he had just moved the location of his office, it would not have been difficult to locate him.

It would have been more credible to interview persons in authority than to interview someone who drove by the chief’s dwelling on a motorcycle and claimed he was the deputy chief of a village nearby.

(c) There is a serious problem with the comprehension and/or translations. Here are three examples of erroneous interpretations by the translator.

(1) The Notice of Intent to Deny letter contains the following pertinent statement by Mr. Yo: “Mr. Yo was then asked if he thought that it was reasonable to accept the answers that he had given and he said he did not."

Please note that this statement is taken directly from the Notice of Intent to Deny. The only explanation for such a dialogue is that Mr. Yo did not understand the investigator’s question or Mr. Yo has some serious competency problems.

(ii) When the INS investigator asked Mr. Yo where Serey Puth was, Mr. Yo responded that Serey Puth, the orphanage director and owner, was out in the country as in the countryside. However, the translator interpreted his answer to be that Serey Puth was out of the country. Serey Puth never left the country during the nine day INS investigation.

(iii) The Chief’s wife was asked if any children were abandoned in the village and she stated that there were not. That is true, children from her village had not been abandoned. However, children from other whereabouts had been abandoned to the village.

Review of these examples illustrates how words not properly translated can lead to very unfavorable conclusions.

(i) The Intent to Deny states that a raid was conducted of the Asian Orphanage Association premises. This is false. The Cambodian officials conducted a raid of a medical center, not AOA. Some of the children from the orphanage were being treated at the medical center.

Additionally, the Intent to Deny states that “accusations of baby trafficking have been leveled against the director.” This too is false! Evidence from the Cambodian newspapers confirm the allegations made herein.

3. Cambodian government authorities are satisfied that their law has been fully complied with.

MOSALVY, a Cambodian governmental entity (Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation) informed the American prospective adoptive parents that they had been approved to adopt specific Cambodian children. Additionally, MOSALVY issued a Certificate of Adoption for each of the children in issue. Had there been any irregularities regarding these children, it would seem that the Cambodian government would have been aware of the problems. Furthermore, if the Cambodian government believes that the Asian Orphanage Association did not comply with Cambodian law, then MOSALVY has the ability to revoke the Certificates of Adoption.

In addition, under the old Cambodian Law, if it was not known where a child was born, the place of birth was picked randomly. In the last year, the law has been changed. Currently, when an abandoned child is found, his place of birth is where he was found. However, at the time that the children were born and registered with vital records, the orphanage director complied with the law of that time—he picked a place of birth.

INS sent Jean M. Christiansen from the INS District Office in Bangkok to investigate the cases. While in Cambodia for nine days, her staff conducted an investigation. Under her pen, INS issued Notices of Intent to Deny to the American families. INS should revoke its Notices of Intent to Deny.

Ms. LANDRIEU. I thank the Senator from Oklahoma. One or two or more of these families are from his home State. He has been such an advocate of adoption and such a tremendous leader in this area. I know he would understand. We will keep the Senate posted and work with the officials from the executive department to see if it is resolved.

My wish to the families is that we could give them Christmas in the United States and get it resolved in the next few days. Perhaps that is possible. If not, we will revisit the issue when we come back in January.

The PRESIDING OFFICER (Mr. REED). The Senator from Oklahoma.

Mr. NICKLES. I congratulate and compliment my friend and colleague from Louisiana for her leadership in adoption, for the statement she just made. Adoption is an issue we have worked on in a bipartisan way and we will continue to work in a bipartisan way. There are lots of families who are impacted both in the United States and worldwide. My colleague from Louisiana has done a very good job, and I am happy to work with her.

The story last night is heart-breaking. Many of our staff members have been working on these issues for a long time. I compliment her for it.

TERRORIST VICTIMS’ COURTROOM ACCESS ACT

Mr. NICKLES. I also compliment Senator ALLEN for his leadership and passage of a bill a few moments ago that will allow closed-circuit TV viewing for the trial of the alleged terrorists. I compliment Senator ALLEN because I know he has a lot of constituents in Virginia and there are a lot of constituents in New York, New Jersey, and California who have a real interest in seeing that justice is done. By passing the authorization bill allowing for closed-circuit TV, he will do that. I compliment Senator ALLEN for making that happen.
UNFINISHED SENATE BUSINESS

Mr. NICKLES. Mr. President, we are getting close to wrapping up this session. We did a lot of good things this year and some things we didn’t get done. One thing we did not get done was passage of the stimulus package. That is unfortunate. It became too partisan; it didn’t need to be. Recession is not partisan. We have a lot of people out of work who need help. A lot of companies want to grow. We could have done that.

Senator BURSTEIN worked hard with the Bush administration. There was a lot of movement on this side of the aisle to help pass the stimulus package. It didn’t happen. I regret that very much. We could have helped the economy, and we could have helped a lot of unemployed people.

Senator BAUCUS mentioned earlier that he hopes when people come back they are less partisan and more intent on getting some positive results for the American people. That needs to happen. I hope we do not hear: Well, we cannot bring something out unless it passes two-thirds on our side. That does not belong in the Senate. The Senate is a deliberative body, and we should have the opportunity to pass things, and pass them by majority vote. Try to get something done, try to make a positive contribution toward helping the economy, not a strictly Democratic or Republican package, but a package that helps the economy.

The Senate has passed good legislation last night. Not perfect. Maybe we can improve upon it and help our economy and help the unemployed.

As we wind down, there are several nominations that are pending, that should be confirmed. It is not fair to this administration. It is not fair to some of these individuals who have been languishing, waiting to be confirmed with no action. There are five district court nominees, five circuit court nominees. We have confirmed 27; if we do 5 more, that will be 32. During President Clinton’s first year, we confirmed 27 of 47. President Bush nominated 60. We have confirmed 27, not quite half. We confirmed over half for President Clinton, and if you look at what we did for the first President Bush or what we did for Ronald Reagan, we confirmed 91 percent of Ronald Reagan’s judges and a much higher percentage for President Bush. We should confirm more than we have today. There are five on the calendar. There is no reason not to confirm these individuals. We all know they will be confirmed. Why not let them go ahead and assume their duties?

We have a judge from Alabama, a judge from Colorado, a judge from Nevada, a judge from Texas, a judge from Georgia. We have judges from Democratic States and Republican States. Let’s not hold these five individuals hostage. We can pass them tonight and I urge my colleagues to help do that.

We also have four U.S. attorneys, from Alabama, New York, Arkansas, and one from New Jersey. They need to be confirmed. They should be confirmed.

We have a couple of marshals who are pending. There is no reason why they should not be confirmed—actually just one marshal pending. The chairman of the American Bar Association is the chairman of the Foreign Claims Settlement Commission. Let’s confirm these individuals. Let’s do it tonight. Somebody says: Why are you doing it tonight? We confirmed more judges, more U.S. attorneys—all those are always done by voice vote. We have Janet Hale to be Assistant Secretary of Health and Human Services. Secretary Thompson is entitled to have his Assistant Secretary for Health and Human Services be confirmed. So I urge my colleagues to vote on that nomination or to approve that nomination.

We also have a couple of other positions. We have James Lockhart III to be Deputy Commissioner of Social Security. The administration would like him to have that position.

In the Department of Energy, we have Michael Smith, actually one of my constituents. He happens to be secretary of energy of the State of Oklahoma. He has been nominated to be Assistant Secretary of Energy dealing with fossil fuels. Secretary Abraham is completing his first year and he doesn’t have his Assistant Secretary dealing with fossil fuels. We are now importing about 58 percent of our energy needs. If we have an Assistant Secretary dealing with fossil fuels.

One of the first bills we are going to be wrestling with next year is an energy bill. We have a commitment from the majority leader that we are going to take up energy early next year. That is great. You would think the administration would be entitled to have their Assistant Secretary to help the negotiations, to help prod Congress to act. Setting aside the filibuster, we should confirm his nomination. He was reported out of the Energy Committee unanimously, as I believe Beverly Cook was, from Idaho, to be Assistant Secretary of Energy dealing with environment, safety, and health.

Also Margaret S.Y. Chu, of New Mexico, to be Director of the Office of Civilian Radioactive Waste Management, Department of Energy.

There is no reason why we cannot do most of these nominations. Most of these nominees passed by unanimous votes in the committees. Why can’t we confirm these individuals?

I urge Senator DASCHLE and Senator REID and others to help.

There are a couple of others who are very important. The Department of State, John Hanford. John Hanford is an individual with whom many of us worked in the Senate for years. He worked for Senator LUGAR. He helped myself and others when we ended up voting on the National Religious Freedom Act. Senator LIEBERMAN was a principal sponsor of that, and Senator SPECTER. The administration nominated John Hanford III, of Virginia, to be Ambassador at Large for International Religious Freedom. When you think of the battles we have going on all across the world with religious freedom, and some of it is in Afghanistan, and some is in Iran, and some in Sudan where you have individuals who are held captive, imprisoned, enslaved because of their religion, wouldn’t it make sense for us to get our Ambassador at Large for International Religious Freedom confirmed so he can go to work and help protect and promote religious harmony and freedom throughout the world? Hopefully, his nomination will be confirmed tonight.

We have several other people in the Department of State who were confirmed by the Foreign Relations Committee unanimously who should be confirmed tonight. Many of these were just reported by the committee, by Senator LUGAR. I am still holding that. I am looking at John Ong, who is to be Ambassador to Norway and John Price to be Ambassador Extraordinary to the Republic of Mauritius; Arthur Dennard, of Maryland, to be Assistant Secretary of State for Population, Refugees, and Migration.

Some of these, again, were just reported out. I thank my colleagues. We should be able to get those through as well. We don’t want to mention Gaddi Vasquez, of California, to be Director of the Peace Corps.

I mention these. These are not all. I did not mention Gene Scalia. I would urge my colleagues—Gene Scalia has been on the calendar. He was nominated in. I believe, April, one of the earliest nominees of this administration, to be Solicitor of the Department of Labor. Secretary Chao is entitled to have a Solicitor. One of the most important positions in the Department of Labor is Solicitor. He has to make all kinds of rulings. It is very important that she have her Solicitor. I urge my colleagues, let’s have a vote. If we cannot have it today, let’s have it in January; let’s have a vote. If we cannot have it today, I will vote in January; let’s have a vote.

Somebody said we may have to file cloture. I can think of several people, including the previous Solicitor of Labor, to whom many on this side might have had a philosophic objection, but we did not require cloture. You should not require cloture on most nominees. You should not require cloture hardly ever on nominees unless they are really out of the Main Street. We had a vote on Justice Ginsburg and I opposed that nomination very significantly, but it was an up-or-down vote. I think people are entitled to have a difference of opinion and have a debate. I think we have a difference, let’s discuss it. This is the Senate. But to not allow somebody to have a vote and hold their careers in limbo for an unlimited period of time, it is not fair to them, and I don’t think it makes the Senate look very good. If it pisses off Pakistan or some other.

Again, I urge our colleagues to move forward on Gene Scalia, to move forward on some of these other nominees,
This afternoon I met with about 50 steelworkers from Cleveland, OH, from LTV steel. That company is in bankruptcy. Their jobs are gone and they are displaced. They are petrified because they do not know how they are going to be able to pay their medical costs. Their company had a health plan, but COBRA is no longer an option because the company is out of business. They are worried about how they are going to provide health care for their families. They will get their unemployment benefits, but they are really concerned about how to pay for their health care coverage.

I pointed out to them that the stimulus package the Centrist Coalition put together would subsidize their health care to the tune of 60 percent. They were pleased to learn that. They were hopeful that someone would help them. They could get insurance for their families to get them over this very difficult period. I can tell you: You are frightened.

I think so often when we talk about stimulus packages, we get caught up in the dollar amounts and we don’t talk about real people. That is what this is about. For example, the rebate programs in both stimulus packages would provide help to some 38 million low-income workers who didn’t qualify for rebate checks the last time around. Those rebates would mean $13.5 billion would go into the pockets of those individuals with their problems. And I am sure it would help stimulate the economy because they would likely spend that money.

Some describe the reduction in marginal rates as an awful thing because of the fact that we would reduce the marginal rate from 27½ down to 25 percent. I would like to point out that we are talking about single people who make between $28,000 and $68,000, and married couples who make between $47,000 and $133,000. In other words, if someone has a pre-existing condition in this country, some 36 million people, who would have benefitted if we had gone forward with these rate reductions. Between the 38 million beneficiaries of the rebate checks, and the $38 million who would benefit from the reduction in marginal rates, a total of 74 million Americans would have been able to take advantage of this package.

The thing I would really like to concentrate on is the part of this package that deals with health care. When we got started debating the stimulus package, the House passed a package that had something like $3 billion for health care. Likewise, the President’s package had also had $3 billion. Our centrist package had $15.5 billion. The Democratic Finance Committee proposal was $16.7 billion. At the end of the day, the Centrist Coalition and White House compromise package had $21 billion in it for displaced workers’ health benefits. They helped states for national emergency grants, including $4 billion to the States for Medicaid funding.

Now I would like to talk about what we do for displaced workers.

First of all, we include an extension of 13 weeks of unemployment benefits—benefits that would be available to those who became unemployed between March 15, 2001, and December 31 at the end of next year. An estimated 3 million unemployed workers would qualify for benefits averaging about $230 a week. Those extended benefits would be 100-percent federally funded at a cost of about $10 billion to the Federal Government, so States wouldn’t have to pick up the tab.

The bill would allow states to accelerate the transfer of $9 billion from State unemployment trust funds so they could distribute that money earlier than now possible. That transfer of money, which already belongs to the states, would help State treasuries, which are in dire straits today. This proposed advance would provide the States with the flexibility to pay administrative costs, provide additional benefits for part-time workers, adopt alternative base periods, and avoid raising their unemployment taxes during the current recessionary times.

Next, let us look at health care benefits.

The Centrist Coalition and White House compromise proposal includes $19 billion in health care assistance for displaced workers.

It provides a refundable, advanceable tax credit to all displaced workers, who are eligible for unemployment insurance, for the purchase of health insurance—not just individuals who are eligible for COBRA coverage.

Individuals with access to health insurance through a spouse wouldn’t be eligible and couldn’t get the credit.

However, the credit is available to unemployed people who do not have access to coverage through COBRA, since their employers did not provide health insurance or they went out of business. Under this bill, these individuals would have been able to get a 60-percent subsidy of their health insurance costs without any cap on the dollar amount of subsidy.

The proposal also includes reforms to ensure that people have access to health insurance coverage in the individual market. If a person has 12 months of employer-sponsored coverage, rather than 18 months as under the current law, health insurers are required to issue a policy and not impose any preexisting condition exclusion. In other words, if someone has a pre-existing exclusion for which they would ordinarily be disqualified from getting health insurance, this reform requires that they be able to obtain health insurance.

The Centrist and White House proposal also includes $4 billion in enhanced national emergency grants for the States which Governors could use to help all workers—not just those eligible for the tax credit. They could use this to pay for health insurance in both public and private plans. In other
words, we would be paying $4 billion out to the States so they can reach out and help people in their respective States who are not covered by some of the particular provisions in the stimulus package.

Last of all, at least, the centrist package provides a $1.6 billion, one-time grant to assist states with their Medicaid programs.

I worked with the National Governors Association and the Bush administration to get them to understand that the state governments are not like the Federal Government. States are in deep budgetary trouble because they have to balance their budgets every year. The money isn’t there for them to take care of the many needs they face. This $1.6 billion grant would have gone out to the States to help them provide Medicaid for the neediest of our brothers and sisters. In many States they are going to have to cut Medicaid payments because they simply don’t have the money since their State treasuries are in such deep financial trouble.

I hope my colleagues understand that this is not some kind of a game. We are talking about real human beings.

The morning at a press conference, one of the reporters said to me: I understand the problem with this stimulus bill is that the majority leader has a problem with the philosophy of it. I said that this bill responds to most of the concerns that have been raised by my colleagues from the other side of the aisle.

Think about it. When was the last time Congress gave serious consideration to providing health care to unemployed workers? I don’t ever recall such consideration before. But this time, we have been able to get a Republican administration and a Republican House of Representatives to consider providing health insurance to unemployed workers. That was a breakthrough in terms of dealing with the unemployed and displaced workers in this country.

I happen to believe that if this proposal had come from the other side of the aisle and not from the centrist coalition and the White House, many of my colleagues on the other side of the aisle would have been very much in favor of this proposal.

I am hoping, as we all go home and look into the eyes of the people who will come and see us because they have lost their jobs, and are panicked about health care for themselves and their families, that we start to understand we have an obligation to touch their lives. And to do this, the first thing we need to do is we come back to this chamber is pass a stimulus package that addressed the needs of unemployed men and women. We need to restore people’s faith in their economy and restore people’s faith that we do care about them.

The thing that really bothers me about our failure to pass a stimulus package, is that so many people antici-

pated we would do so. They really did. They were counting on us, as did the financial markets. I think from a psychological point of view, we have really done a disservice to the American people, particularly at a time when we are all going home to celebrate Christmas and the holidays.

What a lousy Christmas present we are giving to the people of America. Shame on us. I hope when we come back in January that we will make it up to them. They need our help.

I yield the floor.

I suggest the absence of a quorum. The PRESIDING OFFICER will call the roll.

The assistant legislative clerk proceeded to call the roll. Mr. DASCHLE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE HOUSE ECONOMIC STIMULUS PACKAGE

Mr. DASCHLE. Mr. President, when people become doctors they take the Hippocratic oath which, among other things, instructs them to “First, do no harm.”

Maybe our Nation’s leaders in Washington need to take a similar oath if they intend to operate on the economy. Sadly, our Republican Party are steadfast in their insistence that we enact legislation that would harm our economy. Their plan takes more than $200 billion out of Social Security and uses it mostly for tax breaks for wealthy individuals and profitable corporations. It will do little to stimulate the economy, and even less for the millions of newly unemployed Americans. Their plan will not make the recession better, but it will make the deficit worse. This impasse is completely avoidable.

Immediately after September 11, it became clear that the attacks dealt our economy—which already was slowing—a devastating blow. We all agreed—Democrats and Republicans, House and Senate—that America needed an economic recovery plan. And Congress had a responsibility to pass such a plan.

We asked the best financial thinkers in the country, economic leaders, such as Chairman Greenspan and Secretary Rubin: What should such a package contain?

Their advice led to the development of a set of bipartisan principles for an economic recovery plan. Those principles were endorsed by the chairmen and ranking members of the Budget Committees in both the House and the Senate.

Rather than work together to develop a plan based on those principles, House leaders chose to withdraw from bipartisan negotiations and pass their own highly partisan economic plan.

The experts we consulted told us that the problem with the economy right now is that corporations have too much capacity and that consumers have too little cash. That is it in a nutshell: Corporations have too much capacity; consumers have too little cash. So we developed a plan to address those problems.

The plan we put together included tax cuts for businesses that invest and create jobs in the near future. It had tax breaks for people who were left out of the first round and unemployment and health benefits for workers who have lost their jobs in this recession and as a result of the September 11 attacks.

Our plan did what economists say needs to be done—no more, no less. And it met the bipartisan standards agreed to by the budget leaders in both Houses.

Presently this morning the House passed a different plan. Their plan spends the tax cuts Congress passed last summer—months before the terrorist attacks. Their tax cuts give most of the benefits to the wealthiest individuals and they will be for not just next year, but the year after that, and the year after that, and the year after that. That is the first part of their plan.

The second part of the House Republican plan is to take the biggest corporations in America and give them billions of dollars in new tax breaks. Some profitable corporations would get permission not to pay taxes at all. Under their plan, companies such as Enron would get hundreds of millions of taxpayer’s money. Republicans are not proposing to do that for police officers, for firefighters, for postal workers. They are not proposing it for hard-working families. Maybe it would help if they did, but they are not.

They are proposing it for the biggest corporations in America, with no strings attached. The corporations do not need to create a single job to get this gift. They can lay off workers and still not have to pay a dime in taxes under the Republican plan. That kind of plan does not help the economy, and it does not help workers.

Since September 11, nearly a million American workers have lost their jobs. Eight and a half million Americans are now out of work.

Often, the biggest worry when Americans lose their jobs is how to pay for their health care. The average cost of keeping health care coverage is half of the average monthly unemployment check, half of a family’s total monthly income. That is why only 20 percent of workers who are eligible for COBRA coverage purchase it. Most simply cannot afford it.

The plan passed by the House provides an inadequate tax credit for individuals to buy health care, and it leaves many of them at the whim of the private insurance market.

Under their plan, health insurance will remain out of reach for millions of
laid-off workers. The credit would require a parent to spend, on average, a quarter of their unemployment check for COBRA coverage. For most individuals not eligible for COBRA, the price tag would be even higher.

One million displaced workers—part-time workers and recent hires—do not even qualify for assistance under the plan.

Survivors of victims of September 11 do not qualify for assistance under their plan. Employees, whose hours have been reduced and who have lost their health care as a result, do not qualify for their plan.

Their individual tax credit discriminates against older and sicker workers. An insurer can refuse to cover a sick worker, can charge exorbitant prices based on age and health, and can refuse to provide coverage for such basic needs as pregnancy, prescription drugs, or mental health.

All the worst practices of the insurance industry would be fair game in their plan. What is worse, it would actually discourage laid-off workers from taking a new job. Under the plan passed by the House, the moment an individual goes back into the workforce, they lose their eligibility for the insurance premium tax credit.

Say a recently laid-off worker has a sick spouse; if he wants to go back to work, he can’t because his new job may not offer health insurance for his wife. He would have to choose between finding himself from unemployment and losing health care his wife needs.

That is their plan for health care. It gives workers insufficient help, and it discourages responsibility in the process.

On jobless benefits, Republicans say their plan extends jobless benefits for all laid-off workers. But it doesn’t.

More than half of America’s laid-off workers held part-time jobs over recent hires, but the House plan leaves them out.

A week ago, the whole world paused to remember the victims of September 11, but the House-passed plan forgets the economic victims of those attacks, and that is wrong.

Three days after September 11, we passed a $15 billion airline bailout package. Democrats tried to include help for laid-off workers in that plan. We were not able to do that in the unemployment system, but the House plan leaves them out.

We took them at their word. We included jobless and health benefits for laid-off workers in our economic recovery plan. But instead of joining us, Republicans voted to kill our proposal. They said that helping workers is not an emergency. We have waited. We have compromised.

At Republican insistence, we dropped the measures to strengthen America’s homeland security from our plan, even though we believe such measures are essential to protect our safety and our economy. We said: We are willing to support larger tax cuts to let businesses write off more of their investment costs.

We also made a significant concession on the best approach is to provide laid-off workers with a direct subsidy to help pay for COBRA premiums. But in the name of compromise, we said we would be willing to move toward the Republican approach again and again. We are willing to adopt an employer tax credit as long as it will work and as long as it will pay 75 percent of health care costs. We even said we will discuss additional tax cuts, such as the Domenici payroll tax holiday, the charitable choice legislation, and a Republican proposal to help workers. We made concession after concession after concession to get an agreement both sides could support and the President could sign.

We have been willing to compromise on every part of this plan. The only issue we couldn’t compromise on was our fundamental principle: We could not support a plan that does not adequately protect workers or help our economy.

By insisting once again on a bloated package of tax cuts that lack real help for workers, the bill that passed in the House indicates that perhaps Republicans were never serious about achieving a negotiated compromise in the first place.

Instead of political theatrics, instead of writing another bill with no chance of passing the Senate, instead of finger pointing and casting blame, we need to focus on what is necessary: an economic recovery plan. We need to pass a bill that helps the economy, helps workers, and meets the standards that we all agreed to at the beginning of this process. At the very least, we need a bill that first does no harm.

We may have missed our opportunity to get it done this year. If that is the case, it is regrettable. But we will again try. We will do all that we can to get it done early next year, as we should.

Mr. KENNEDY. Mr. President, it has been over three months since the terrorist atrocities of September 11. Since that day, the Nation’s workers have been among the Nation’s most respected heroes. They have come together in the face of new challenges, risking their lives in the rescue and recovery efforts, and in too many cases, losing their lives. Our hearts are heavy with those losses.

Our Nation’s workers have come together, and the American people strongly support our efforts to give them the support and assistance they deserve. But our Republican colleagues in Congress have stalled our efforts to help these heroic workers. Senator DASCHEL proposed an effective and balanced plan to stimulate the faltering economy. It had a majority of support in the Senate. To provisions had the support of the nation’s most preeminent economists, including nine Nobel prize laureates. But our Republican colleagues refused to even debate it. They said it wasn’t an “emergency.”

Listen to what the economists say. They say the House Republican proposal “will do little to assist a near term recovery and is likely to undermine growth in the economy.” But also listen to what our values say, that we cannot abandon our fellow citizens in their time of need. If there is any lesson from the tragedy of September 11, it is this: that we are one American community, and the backbone of that community comes from average Americans. Billions of members of that community are hurting today because they lost their jobs. Yet, our Republican friends repeatedly say no to the very actions that would help these families and strengthen our economy at the same time.

Democrats tried to negotiate in good faith, but Republicans have been unwilling to support any recovery package unless it contains tens of billions of dollars for new tax breaks for the wealthiest individuals and corporations that will jeopardize the nation’s long-term fiscal health and threaten Social Security and Medicare. We cannot let Republicans hold laid-off workers hostage to these irresponsible and costly tax breaks.

Republicans have also refused to agree to a proposal to provide real health insurance to the victims of this terrorist attack and the current economic downturn. Instead, they offer only inadequate plans that leave behind the survivors of September 11 and many other of our most vulnerable workers.

The Democratic economic recovery proposal puts money in the hands of the people who will spend it immediately.

We strengthen unemployment insurance, and guarantee affordable health care to laid-off workers on the front lines of the economic battle. These workers deserve no less.

Every day that we fail to pass a stimulus package, we fail to help more laid-off workers. The unemployment rate is now 5.7 percent, a 33 percent increase since the recession began. Over 8 million Americans will start the year out of work, through no fault of their own. Millions of Americans are left with no paycheck and no golden parachute. We cannot accept a plan that fails these workers.

Health premiums can cost nearly $600 a month for a family—most of an unemployment check. That is why only...
about one in five laid-off workers today continue their coverage, even if they are eligible. Our plan covers 75 percent of the health care premium for those who are eligible to continue their coverage, but can’t afford the cost.

Some are not eligible for any continuing health plan. Our plan also allows states to cover these vulnerable workers. Taken together, our plan ensures that men and women who lose their jobs don’t have to worry about losing their health insurance as well.

Our plan also provides fiscal relief to the States, which face serious budget shortfalls, yet must meet yearly balanced budget requirements. We increase Medicaid payments, so that States don’t have to cut back on coverage, just as more workers need help.

The head of the Republican Governors’ Association, Governor John Engler, said without this plan, a stimulus package is “robbing Peter to pay Paul, because States will have to cut critical services.”

The current recession is already 9 months old, and the two million workers who have run out of unemployment insurance benefits should not have to continue to wait for our help.

Our plan also makes part-time and low-wage workers eligible for unemployment benefits. In 1975, on average, 75 percent of unemployed workers received unemployment benefits. Last year, the figure was only 38 percent. Expanding coverage to include part-time and low-wage workers will benefit many more than 600,000 more of those who have been laid-off, and it will also provide additional economic stimulus.

In addition, our plan supplements the current meager level of unemployment benefit payments, but do not replace enough lost wages to keep workers out of poverty.

In 2000, the national average unemployment benefit only replaced 33 percent of workers’ lost income, a steep drop from the 46 percent of workers’ lost wages to keep workers out of poverty.

During an economic crisis, unemployed workers have few opportunities to reverse a declining workforce. They depend on unemployment benefits to live. Adding $150 a month to unemployment benefits will stimulate the economy and help these laid-off workers support their families while they look for a new job.

While Democrats have been negotiating an economic recovery package in good faith, the House Republicans pulled the rug out from under those negotiations. They walked away from the negotiating table, made harsh personal attacks on our Democratic leader, and brought a separate Republican bill, largely a repackaging of the previous bill—back to the House floor.

The latest GOP plan is not an effort to stimulate the economy or help workers. It is a Republican game of political hot potato, to avoid blame. They do not deserve credit for a misguided plan that does nothing for the economy and nothing for workers.

The latest Republican bill fails the economy. It fails the states, which are struggling to balance their budgets. It fails the millions of workers who have been laid off through no fault of their own and are struggling to keep a roof over their families’ heads and food on their tables.

What it will do is blow a deep hole in our economy, estimated at $250 billion, adding to deficits already expected next year. All of it will have to come from the Social Security Trust Fund.

Our Republican colleagues are more concerned about helping wealthy corporations and individuals than about stimulating the economy or assisting laid-off workers. The new House Republican bill will provide new tax reductions for wealthy individuals. Only the top quarter of American families will receive any benefit from these rate reductions and only the top 4.4 percent will receive the full benefit.

The Republican bill contains a 30 percent bonus depreciation over the next 3 years, even though nobody believes the recession will last 3 years. With no incentive for immediate action, companies will not invest, now when the economy is weak. Instead, they will get windfalls in later years.

At the same time, states will suffer revenue losses for the full 3 years of this proposal, on top of the $35 to $50 billion budget deficits they are already facing.

The Republican bill drains money from States, but it provides little fiscal relief. Since states must balance their budgets even in recessions, the Republican plans will force still-larger budget cuts.

Perhaps the best and purest form of economic stimulus is to increase unemployment benefits for families, because they are sure to spend it quickly.

Yet, the unemployment insurance provisions in the bill passed by the House do not accomplish nearly enough. The bill leaves out hundreds of thousands of low-wage and part-time workers who have paid into the unemployment fund, but are not eligible for benefits under the present system.

The Republican plan fails to raise the meager level of benefits, which currently replace half or less of an individual’s lost wages. A few weeks ago, the chairman of the Ways and Means Committee proposed temporarily suspending income taxes on UI benefits as a way of raising these meager benefits. That step would be slower and less immediate than a bonus increase, but at least it acknowledged that we need to raise benefit levels. However, even that tax suspension has been dropped from the latest Republican bill. Instead, that bill provides funding for unemployment insurance that will most likely be used for employer tax cuts, and to boost trust fund reserves instead of worker benefits.

The Republican health proposals are also an empty promise to millions of Americans. Their plan leaves out hundreds of thousands of unemployed workers. It excludes the survivors of the September 11 attack. It excludes low-wage and part-time workers. Even for those who are eligible, it provides an inadequate subsidy that most workers can’t afford to use.

The Republican plan leaves deserving Americans who are not eligible for COBRA to the flawed individual insurance market which provides hundreds of dollars for inadequate benefits. Their plan does not prevent HMOs and insurers from discriminating against sick and older workers, or from charging unlimited premiums.

In these difficult economic times, it is wrong to ignore the needs of working families. It is wrong to repeatedly help our Nation’s most prosperous firms, while ignoring the needs of millions of workers.

It is wrong to tell workers, who have been laid off that they don’t deserve unemployment benefits. It is wrong to tell hard-working men and women that the price they must pay for the terrorist attack is to go without the health care they need and deserve. It is wrong to offer only an empty promise with unlimited premiums. It is wrong to enact a stimulus plan that says yes to the greedy and no to the needy.

It is time to end the senseless and shortsighted tax cuts for millions of families who have lost jobs and health insurance in this economic downturn. It is time for Congress and the President to listen to the voices of working families, instead of powerful special interests.

Over the past 3 months, Congress has acted to help affected industries receive the assistance that they need. Businesses have also received stimulus aid such as the Reserve which has cut interest rates 11 times. But business clearly has excess capacity today. Providing more benefits to business is not what will help this country recover most effectively.

The economic recovery will now be the best and quickest helping unemployed workers pay for their groceries, their mortgage and their health costs. We owe it to all the Americans who have lost their jobs to provide the support they need and deserve, and to provide it now.
Mr. ALLARD. Mr. President, at the beginning of this year we passed a series of tax cuts. This was a strong action in favor of hardworking Americans. With the recent slowdown in the economy, we must again act, and act quickly, to provide the American people with the assistance they deserve.

Several economic stimulus packages have been proposed. The House has recently passed a stimulus package that I feel will give the economy a much needed boost and provide dislocated workers with the temporary assistance they require. I, as well as many of my colleagues, have some reservations about certain items contained in this package. But for the sake of the economy and the American worker we must take decisive action now. Overall, this stimulus package is a positive and much-needed step in the right direction.

We must provide aid to dislocated workers. In times of a slow economy, many Americans are either forced from their jobs through no fault of their own. It is of the utmost importance that we provide the support these hardworking Americans deserve. This package provides around 20 billion dollars in aid to dislocated workers, which includes a measure that will provide a 13 week extension to unemployment benefits, supporting American individuals and families in their time of financial hardship. This also provides support to Medicaid. This assistance is a temporary and much-needed step to help those whose families and way of life are currently threatened by the recent economic downturn.

When we have taken care of these dislocated workers, we must look forward to what lies beyond the realm of short-term relief. History has shown us time and time again that overall economic growth is one of long term planning. Here we have the opportunity to provide the economy with a short and long term boost via a 10 year investment stimulus package. This would provide almost $160 billion worth of support, through the year 2011, to small businesses. This package calls for increased tax credits for individuals, $60 billion of tax relief in Fiscal Year 2002 and $112 billion over the next 10 years. This package will provide health care tax credits so that displaced workers and their families do not go without medical coverage. Furthermore, this package provides increases in investment opportunities and net operating loss flexibility for small businesses.

This package, aptly named Economic Stimulus Aid to Dislocated Workers, is a good start. In the future, we will need to return to these issues. We will need to provide more incentives for long term economic growth and development. But our immediate action on this package is crucial. We must act now, we must pass this stimulus bill before Christmas, because this is what the American people need and deserve. I have commented on the issues of the passage of the education school reform bill; a bill that leaves no child behind. We must now ensure that American families, workers, and the temporarily unemployed are not left behind. The President proposed an economic security package in October. Now I stand before you in December and tell you that the American people can wait no longer. We must support our economy and our unemployed workers now. I humbly ask my fellow Senators: Put aside your differences and vote in unison for the economy, for hardworking displaced Americans, and for the American family.

Mr. KERRY. Mr. President, at a time when so many Americans are out of work, with out Nation at war and with, appropriately, calls for national unity, I regret to say I have to come to the floor to address what I feel is the ultimate breakdown on unity. Rather than delivering a responsible stimulus package, the Senate, as closely divided as this one, has instead called a bill “bipartisan.” It's a use of national emotion to do unacceptable special interest favors for a favored political constituency. That, regrettably, is what the Republican stimulus bill is all about, although they will tell you it is for workers. But they do nothing to expand unemployment insurance to the many thousands of laid-off workers who are not currently eligible for benefits, and their ideas for health care simply will not work. And so we find ourselves divided—not because TOM DASCHLE is an obstructionist, but because a decades-old partisan agenda which was on its backloaded, retroactive corporate tax giveaway through Congress while ignoring workers? Well, that must be because TOM DASCHLE is a partisan leader than acknowledge that your stimulus bill is unacceptable because it won't stimulate the economy. Better to attack TOM DASCHLE than admit that the package should be temporary,
help those most vulnerable, impact the economy quickly, be broad-based, and include out-year offsets. The Republican leader of the Ways and Means Committee in the House abandoned those bipartisan negotiations in order to put through his own partial package by one vote. It is his truculence, and the insistence of the Republicans that we reduce the corporate Alternative Minimum Tax and cut individucal tax rates even more than we did in January, directly to the situation we find ourselves in today.

Mr. President, 700,000 Americans lost their jobs in October and November alone. The unemployment rate is not at 5.7 percent. If there is one number we should listen to, we have an economy in negative growth, and we are on the verge of returning to an era of deficits after finally putting our fiscal house in order. We should not be passing large, permanent tax cuts unless they don't loan that the cuts will have a stimulative impact. The tax cuts proposed by most Republicans would not have that effect, since most of the costs occur after 2002. Not a stimulus bill—it is a $200 billion tax cut disguised as a stimulus bill. I still hope that the Senate can work to develop a bipartisan agreement, and I commend my leader for his continued efforts. We owe it to working Americans everywhere to pass a responsible bill. We know that a real stimulus bill should contain some tax relief for businesses, provided that it will help spur new investment or address temporary cashflow concerns. We know that we need to temporarily tax relief to those families who are likely to spend the money, thus helping generate some additional demand. We know that we need to help unemployed workers make ends meet, and that workers who have lost their health insurance as a result of the ripple effects from the terrorist attacks of September 11th.

And we know that we need to temporarily mimic the impact of the current downturn on the states, by increasing the federal Medicaid matching rate, or FMAP. Let's see clear: Laid-off workers cannot contribute to economic recovery. The answer is not to sit back and wait for economic benefits to trickle down to workers already thrown off the job. Instead we must invest in health care, unemployment insurance, and worker retraining to help put money in their pockets and bring dislocated workers back into the economic mainstream of this country. We need to do that even if we can't agree on how to boost the economy through tax cuts. That's why I introduced the Putting Americans First Act, to take these projections out of the stimulus debate and provide a guarantee of immediate relief for those who have been hurt by the economic recession. The legislation would empower the states to expand unemployment compensation and provide health insurance coverage and help to states in which welfare caseloads are sharply increasing.

Common sense and common decency tells us now is not the time for a corporate grab-bag of tax cuts, or for revisiting a debate about future marginal tax rates—particularly when these rate cuts would do nothing for more than three-fourths of employers. It is incumbent upon us to act in the best interests of our country as a whole, not in the interests of a select few. All Americans want to see this economy get moving again, and no Americans deserves to be left behind. It is a new chapter in our history where we hold back health insurance and unemployment benefits in tough times because Democrats won't agree to further permanent tax cuts.

Let's put things straight and meet the objectives of the American people and not the objectives of an ideological minority, and let's stop demonizing those who disagree with us. We owe the people of the United States a right to express what they have been given at one of the most important times in our Nation's history, and it's time the Congress delivered.

Mr. HUTCHINSON, Mr. President, there is no question that we are now in the midst of a recession. Even before the terrorist attacks 3 months ago, economic growth had slowed dramatically and unemployment was rising. Since September 11, the number of payroll jobs has declined by an average of over 3,000 per month. Unemployment has increased by an average of 392,000 per month, and consumer confidence is at its lowest level in 7 years.

In response to their pessimistic mood and uncertainty about the future, consumers stayed away from shopping centers and retail sales fell by 2.4 percent in September, the largest one-month drop since 1987. In Arkansas, more than three-fourths of employers indicate they have no plans to expand in the next 6 months, whether by adding jobs, making capital investments, or seeking new business opportunities. On October 5, the President publicly urged Congress to send him an economic stimulus package that consumer spending, promotes business investment, and helps dislocated workers.

The House of Representatives has now twice passed economic stimulus legislation. I ask you, Mr. President, how many more Americans have to lose their jobs? How many more businesses have to file for bankruptcy? How many more families do we have to see turned away from their own doctors? How many small businesses or new employees will not be able to get a line of credit and lose their medical insurance run out before we put petty politics aside and do something to help those that so badly need our help.

I have received hundreds of letters, e-mails, faxes, and phone calls from people all over my home State of Arkansas, as I'm sure have all of my colleagues, from people who need our help and need it now. Take for example an e-mail I recently received from a constituent in West Memphis who wrote:

I am one of the 450,000 Americans who were laid off before the September 11th attack, and I am going to need extended unemployment benefits.

My plant in Forrest City is in the process of closing. My last day was July 27. Since then I have spent several hours a day trying to find another job. Things are tough right now. Plus, I have another problem—I am a few years away from retirement. I'm too young to retire but too old to get another job. I know that age discrimination is against the law (wink, wink), but the truth is that not even the government will hire a sixty-year-old.

In a couple of months, my $300 a week unemployment will run out. When that happens, I will have to dip into my retirement funds there's anyway—I want to pay the bills. An extension of benefits will help some, and would be appreciated. What I want more than government help, however, is a job.

If your staff knows of agencies, websites, etc., which specialize in senior jobseekers' need, I would appreciate knowing about them. I have a lifetime of knowledge and experience to offer a company, and I have kept up with the latest philosophies of manufacturing, as well. There are just more people than jobs right now.

This is NOT how and when I expected to retire!

Best Wishes—Mike

Some simply write and say: "Please, I urge you help get an economic recovery bill passed now!"

While each person has their own individual story to tell about the effects this recession is having on them, they are all saying the same thing: We need help now! We don't have time for petty politics. People's lives and livelihoods are at stake.

One of, quite possible, the only good things to come out of the horrific terrorist attacks that occurred on September 11th is that we saw, even if for a limited time, real bipartisanship occur here on Capitol Hill. Well guess what . . . the American people saw bipartisanship in action and now expect it, and deserve it, every day. Bipartisanship was once a word only spoken by those in political office. It is now being used by nearly every person that contacts me. We need to listen to these people and do what they sent us here to do. We need to work together today, not a month from now, and send to the President an economic stimulus package before we go home for the year.

A constituent of mine recently wrote me and said: "Please quit bickering and pass an economic stimulus package. Senators, it seems that the ball is in your court. Thank you, and God Bless America." I think he summed it up rather nicely.

Mr. President, the ball is in our court, and we need to do something with it. We need a bigger economic stimulus package today.

Mr. ROCKEFELLER, Mr. President, I rise today to express my serious disappointment that we could not reach agreement on a stimulus package that would both help America's workers and the unemployed. An investment to strengthen our economy. I intend to keep fighting for real help for the workers who have lost their jobs.
and need health care coverage until they get the assistance they need.

I think an economic recovery package is still important work to do. Had my Republican counterparts been willing to stay at the negotiating table and keep talking, I would not have left my post until we had an agreement. As a conference on this unique Leadership Conference, I am especially disappointed that our work was abandoned by the Republican Leadership.

Unfortunately, the House Leadership chose to walk out on the tough work of negotiation and move a partisan bill that includes numerous, multityear tax cuts for corporations and for the wealthiest Americans. The House bill would do little to actually stimulate our economy and would not provide real health care coverage for workers in need of meaningful assistance to retain their health insurance.

Moreover, from what I can learn of the bill that passed just hours ago, it will have significant costs after 2002, as much as $67 billion. That means substantial deficit spending to finance corporate tax relief and additional tax cuts for the top 25 percent of all taxpayers. Nearly 80 percent of West Virginia taxpayers would not get a dime from the tax rate changes proposed by the House Republicans, and to add insult to injury, their payroll taxes would pay for the corporate tax breaks.

I cannot support raiding billions of dollars from programs most essential. Our economy and Medicare Security and Medicare Trust Funds.

Nearly a million people have lost their jobs in recent months as a result of the economic downturn that was exacerbated by the September 11 terrorist attacks on our Nation. Those families deserve the help that the Senate Finance Committee package provided, substantial help to pay for health insurance that they can count on and a temporary extension and improvement of the unemploy- ment coverage, which includes improved benefits and makes part-time and low wage workers eligible. Unemployed Americans deserve access to affordable health care and to unemployment benefits as they seek new employment.

I deeply regret that the House Leadership conference could not, or I should say, would not, accept the Senate’s worker package that provides immediate, but temporary health care coverage for workers on extended and improved unemployment insurance. The House approach on health care was inadequate and unworkable. It failed to include needed benefits to the insurance market to make insurance affordable, or to ensure that a decent benefit package was available.

I am deeply frustrated that the Republican conference insisted on leaving workers at the mercy of the insurance industry. Under the House bill, workers would have had to, on their own, seek affordable coverage on the current, failed individual market, armed with limited resources and zero leverage. Older and sicker workers would have been left entirely out of luck with that kind of approach. I am frustrated that House Leaders insisted on promoting their corporate tax cuts programs that could have been used to provide reliable health care coverage to workers who need it.

I believe our economy would benefit from additional stimulus in the form of 1-year business incentives and additional individual tax cuts for those taxpayers who were left out and did not benefit from the rebate checks last summer.

I believe we could have come together on a package that would have helped workers even as it provided business tax cuts like bonus depreciation and expensing for small businesses. We could have helped many businesses who are having a hard time in this economy by extending the carryback period for net operating losses, NOLs. I firmly believe we could have reached accommodation on the issue of AMT relief, if only the House Leadership had been willing to accept real health care and unemployment coverage as part of the package.

We chose to move forward with a plan that consists primarily of tax cuts, not help for the workers who have been promised for months, promised by both the President and Congress, that we would attend to their needs after the tragedy of September 11. Instead, the House bill’s cost over both 5 and 10 years is over 90 percent tax cuts. Less than half of those tax cuts would come in 2002 because it is a back-loaded plan, not the temporary stimulus measure Congress and the President had mutually agreed was the goal of a stimulus package. Common sense tells us that tax cuts in 2003 don’t stimulate the economy during our current downturn. There is strong evidence that the House’s proposed tax cuts to higher income individuals would not stimulate the economy in the out years, either, because wealthier individuals tend to save rather than spend.

Finally, the House bill does not sufficiently address the desperate financial conditions of the States, or the fact that some of the business tax provisions in the bill will actually mean the States lose billions in revenue. The losses people who estimate the House bill does not even offset those costs. States are facing a collective, roughly $50 billion deficit, and experts believe the House bill will cost States. Estimates are that Maryland alone would lose over $25 million in State revenues because of policies embedded in the House Republican package. That means West Virginia and other States would be more likely to cut health care to the poor and other low income programs just when the economy makes the programs most essential.

In sum, workers did not get the help they need or deserve from the House Republicans’ bill. They did not get the consideration they deserve from the House Republican Leadership. And some useful business tax incentives, that combined with additional assistance for the unemployed, could have effectively stimulated our economy, won’t pass this year.

I believe we could have put our partisan and ideological differences aside to speed relief to workers and our ailing economy. I will not give up until we help the people who are waiting to get their fair share of Federal assistance, just as other sectors of our economy have been provided with Federal aid in this unusual time.

Today, in an effort to at least provide a short-term extension of unemployment benefits to workers on the verge of running out of assistance and facing the holidays, the Senate Majority Leader asked unanimous consent to take up and pass a 13-week extension of existing unemployment benefits. He asked for a one-time, 13-week extension of existing benefits, no benefit enhancements, no extension of eligibility, just a straight, short-term extension.

The Senate Republican Leader objected to that request, despite the fact that we have frequently extended these unemployment benefits in the past. That tells you something about why the stimulus conference did not produce legislation. American workers are still waiting for the help they need.

2001 IN REVIEW: A SENATE MOSTLY EQUAL TO THESE HISTORIC TIMES

Mr. DASCHLE. Mr. President, we are all tired. This has been a long day in what has been a long week and a long session. But before we go our separate ways for the holidays, I want to thank my colleagues for the support and kindness they have shown during my short time as majority leader.

I thank our staffs, the many hardworking men and women who enable us to do our jobs—from the Capitol Police to the Official Reporters who transcribe our debates, the people in the cloakroom, the people who serve our meals, the doorkeepers, the pages, and so many others. The public may not know their names, but we know the Senate could not function without them.

On a very personal note, I want to say a special word of thanks to my own staff. In the last 3 months, they have experienced the horrors of September 11 as we all did, but they have undergone an additional challenge few of us ever have, or will, face.

Two months ago my staff, along with members of Senator FINGOLD’s staff, and law enforcement officers, were exposed to lethal levels of anthrax when a letter containing that deadly bacteria was opened in my office. I am proud to report that they are all healthy today, and I am proud to say that they have continued to work throughout all of this time.
They are victims of terrorism. Yet they have spent the last 2 months dedicated to the effort to protect the rest of America from a truly similar fate. Their courage and their grace is truly heroic and a source of inspiration to me.

They are extraordinary people who have endured extraordinary circumstances. I could not be more proud of them.

We started this year appropriately in unusual ways. For 17 days between the day this Congress was sworn in and the day President Bush was sworn in, Democrats held the majority in the Senate. I joked back then that I intended to savor every one of my 17 days as majority leader. As it turns out, those days were just a preamble. For nearly 6 months now, I have again had the rare privilege of serving as majority leader of this Senate. While I can’t say I have enjoyed every day of these last 6 months—our country has experienced too much sadness for that to be true—I am honored to have had the chance to work with all.

I am proud of much of what we have been able to achieve together.

We made history this year, not just once, but over and over again. It was a year ago this month that the Supreme Court issued its ruling—the first time in history that the Supreme Court had intervened to settle a Presidential election. We started this Congress last January as the first 50-50 Senate in our Nation’s history. Some observers predicted we would never be able to agree on a plan to divide power fairly and efficiently, but we did.

Then in late May, Senator Jeffords made his historic and extraordinary decision to leave his party and become the Senate’s only officially Independent Member. Never before had majority control of the Senate changed on the basis of one Senator’s decision. Again, we made history, and we made it work.

Then came the horrific morning of September 11. Even now, more than 3 months later, it is hard to imagine the magnitude of that loss. If you read one name every minute, it would take more than 3 days to read the list of all those who died on September 11.

A little more than a month later, the anthrax letter was opened in my office. The Hart Building became the site of the largest anthrax spill anywhere, ever, and the largest biological weapons attack in our Nation’s history.

More than once during these 6 months I have found myself thinking about the words of America’s second President, John Adams.

In 1774, John Adams wrote in his diary of his concerns over the quality of the members of the Continental Congress. “We have not men for these times,” he worried. “We are deficient in genius, in education, in travel, in fortitude and learning.”

That is how our Founders saw themselves: deficient in almost every way. Yet they went on to create the world’s greatest experiment, now the world’s oldest democracy.

I suspect we have all wondered, at least once or twice since September 11, whether the men and women of this Senate are equal to these times. It would be hubris not to wonder.

As this year ends, we can take some pride knowing that we were largely equal to our times.

In the days following the attacks, we demonstrated greater unity than I have ever experienced in my time in Congress. We worked with each other, and with the President, for the good of the Nation.

We gave the President the authority to use force to defeat terrorism.

We gave law enforcement new tools and authority to pursue terrorists.

We passed billions of dollars in emergency aid to help the communities and families and business devastated by the attacks of September 11th rebuild and recover.

We also passed legislation to keep the airlines flying—and to make airports safer.

Those measures will help our nation recover from the terrorist attacks, and help prevent future attacks.

We also passed other important measures.

Earlier this week, we sent the President a new, bipartisan bill to strengthen America’s public schools. The new No Child Left Behind Act marks the first major overhaul of our Nation’s education system in more than 35 years.

It is a blueprint for real educational progress that includes good ideas from both parties. More importantly, it reflects the experiences and the needs of America’s schoolchildren, parents, teachers, employers and many others who care deeply about America’s schools.

We can all take some pride in having been a part of those bipartisan successes.

At the same time, we must acknowledge, there have been occasions on which we were not equal to our times. There have been too many instances when partisanship has prevented us from doing what needs to be done. That is deeply regrettable.

We should have passed a genuine economic recovery plan to lift up America’s economy and help laid-off workers. In the first weeks after the terrorist attacks, we worked together to craft such a plan. Even after Republican leaders walked away from that bipartisan effort, we continued to try to reach out to them.

We compromised repeatedly on the details of our proposal—all to no avail. In the end, we could not accept a plan that takes $211 billion out of Social Security and gives most of it, in the form of tax cuts, to the wealthiest individuals and corporations in this country. And our colleagues would accept no less.

We should have passed a farm bill this year.

We talk a lot about families that have fallen on hard times in the last year, especially those who are economic victims of September 11. And we should be concerned about these families.

But what about America’s farm and ranch families? The recession didn’t start two quarters ago for them. They have been battling near-Depression conditions in the farm economy for years now.

Prices for many commodities are lower today than any time since the Government started keeping records, back in 1910.

If you don’t know who these families are, come to South Dakota. You’ll see: they are some of the hardest-working people in this country. And they need our help.

We didn’t pass a terrorism insurance bill.

We didn’t finish work on the Patients’ Bill of Rights. It is stuck in a conference committee—along with campaign finance reform.

We didn’t increase the minimum wage.

We didn’t pass real election reform to protect the right of every American to vote and have that vote counted.

As we leave for the holidays, I want to say to my colleagues, and to the American people: We recognize that these are critically important issues. They will not go away. When this Senate returns next year, these are among the items that will top our agenda.

Senator Stabenow spoke earlier today about an idea some of her constituents proposed to her. They suggested America create “living memorials” to the victims of September 11. These “living memorials” would take the form of community service projects. Through them, the love and courage of the people who died on September 11 will continue to live on.

It is a beautiful and fitting way to remember the victims. I encourage all of my colleagues to support it.

But there is perhaps an even more fitting way for us to remember the victims of September 11. We must recapture the spirit of bipartisanship that allowed us to accomplish so much together in the first weeks and months after the attacks.

The rescue workers did their job.

The firefighters continue to do their job.

We must put aside the partisanship and do our job.

Again, I thank my colleagues for what we were able to do together this year. And I wish them, and the American people, a peaceful holiday season. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I ask that I be allowed to speak for about 20 minutes.

The PRESIDING OFFICER (Mr. CORZINE). Without objection, it is so ordered.
ENERGY

Mr. MURKOWSKI. Mr. President, I very much appreciate the remarks of the majority leader. He indicated that we should have passed a farm bill. We should have passed an energy bill as well, Mr. President. Unfortunately, the majority leader did not mention that.

I think to once again discuss the priorities that were laid before this body by our President—trade promotion, stimulus, energy legislation.

As so as we look at where we are in the Senate today, clearly, we have not been fitting to the priorities that were laid by our President before this body.

When this Congress began, I introduced a comprehensive bipartisan energy measure with the senior Senator from Louisiana, Mr. BREAUX. Later, the ranking member of the Energy Committee, Senator BINGAMAN, along with Senator DASCHLE, introduced legislation that touched on many issues that were covered in our bill. That was March.

Shortly thereafter, Senator DASCHLE indicated that those problems, and more, demonstrate the overwhelming need for a new and comprehensive energy policy. America is faced with a grave energy policy that will get worse if we do not act. Prior to the Memorial Day recess, the Committee on Energy and Natural Resources, rather than proceeding to a markup, either on my bipartisan measure or the new chairman’s more limited bill, suddenly began to hold hearings. In one case, we held a markup within a week of the Memorial Day recess.

The majority leader still indicated a willingness to proceed even if it did not have the same sense of urgency. So on July 31, the majority leader stated:

The Democratic caucus is very supportive of finding ways with which to pursue additional energy production. I think production has to be part of any comprehensive energy policy.

This was encouraging since the only bipartisan bill that I had introduced included significant domestic production. In retrospect, we all should have known that when the majority leader got around to finalizing energy legislation, as he did several weeks ago, the only production that he would be supporting would be, evidently, foreign production from Iran and elsewhere in the OPEC nations, and the only stimulus that was created would be in Canada, as he indicated support for a pipeline, not specifying the route and as a consequence, obviously favoring the alternative in Canada, which is very much opposed by my colleagues, Senator STEVENS, Representative YOUNG, and the Governor of the State of Alaska.

My point is, in their legislation they left the route selection neutral, and this is the one favored by the Canadians. The only jobs and economic stimulus created would be in Canada, as he indicated support for a pipeline, not specifying the route and as a consequence, obviously favoring an alternative in Canada, which is very much opposed by my colleagues, Senator STEVENS, Representative YOUNG, and the Governor of the State of Alaska.

We have been around here 21 years, Mr. President. I have never heard of that particular initiative by a majority leader of shutting a committee down.

On September 9, without consultation or advance notice, the members of the Committee on Energy and Natural Resources were told they were irrelevant and would not be allowed to consider any legislation for the remainder of the session.

I read from a press release from the chairman of the committee, Senator BINGAMAN:

At the request of the majority leader, Senator DASCHLE, the Senate Energy and Natural Resources Committee, which I chair, today suspended any further markup on energy legislation for this session of Congress.

I remind my colleagues, there is no provision in the Senate rules for the majority leader to abolish the work of a standing committee by edict. That is what happened. The rules of the Senate require each committee to meet at least once a month before the Senate and while the Senate is in session to address the business of the committee.

The Committee on Energy and Natural Resources has not met in business session since August 2. The business of the committee is, among other things, energy. I wonder the reason for the reluctance of the majority leader. Was he fearful the Energy Committee might report bipartisan legislation, for certainly no amendment from this Senator or any other Republican could be reported without some support from the Democratic side. The majority leader controls the committee by a 12-to-11 ratio. I can only guess perhaps the majority leader would have been better off requiring the committee to approve any amendments perhaps by two-thirds of the Democratic members, as it seems to have set on other issues.

It has now been 4½ months since the Committee on Energy and Natural Resources has held a business meeting, and we are no closer to consideration of comprehensive legislation than we were when the majority leader assumed control of the Senate.

The majority leader has indicated and has finally introduced a warmed-
over version of the legislation that he cosponsored almost 9 months ago. The majority leader has again perhaps indicated that he intends to move energy legislation if there is time. Clearly, there is no more time. This is it. We are out of time.

On the other hand, he has indicated a willingness when we return to take up energy sometime in January or February. Now we heard we are going to go back to an Agriculture bill. We have asked the majority leader to give us an indication of his willingness to take a bill and give us an up-or-down vote on it, but the indications are we are going to have to have 60 votes.

It is extraordinary that this body in times of national security and the tremendous activity associated with the Mideast, the OPEC nations, Israel, Afghanistan, Iraq, as we look to those areas for our security interests, would have to have a dictate, but 51 votes on the issue will not do it. We are going to need 60 votes.

We are going to get those 60 votes if that is what it takes, but I do not know of another time when the national energy security of the Nation was at risk requiring more than 50 votes. A simple majority is evidently will not do.

Let me make it clear to the majority leader—and I have the greatest respect for him—I am prepared to come back and spend day after day, night after night debating an energy policy in this Senate and get the job done. This is a priority of our President, a priority of our Nation, a priority of our veterans, and a priority of our labor groups.

A few weeks ago both the President and Vice President called for the Senate to end this partisan charade and address energy legislation.

The President said in a radio address not so long ago:

Last spring, I sent to Congress a comprehensive energy plan that encourages conservation and energy independence. The House has acted. The Senate has not.

The President of the United States is correct. Rather than a spirited debate on comprehensive energy legislation, reported from the Energy Committee, developed in an open process, the majority leader has sagged the reforms of the 1970s to craft partisan legislation behind closed doors with only selected special interests allowed to participate.

There is a process to get advice from members of the Energy Committee, and that is in a business meeting. When the majority leader says his legislation represents input from the Energy Committee, he is not being accurate. Make no mistake, the Energy Committee has had no input on this legislation that has been introduced by the majority leader. I accept that the bulk of the bill was drafted by our committee, but the chairman is not the committee, and it is clear neither he nor the majority leader can take my trust the makeup of the committee to address it in a bipartisan manner and vote it out.

The reforms of the 1970s were designed precisely to curb the dictatorial powers of committee chairmen, as our distinguished President pro tempore noted in his history of the Senate.

The Vice President hit the nail on the head in his discussion with Tim Russert on “Meet the Press” when he said:

But there is a disagreement with respect to Senator Daschle on energy. The House of Representatives passed an energy bill last summer. The Senate has not acted. Tom pulled it out of the Energy Committee so they are not considering in committee an energy bill.

The House has passed a stimulus package. The Senate has yet to act. The House just passed trade promotion authority. The Senate has yet to act. In the energy area, it is extrac-ordinarily important that we move for energy security, energy independence. We are never going to get all the way over to energy independence. We should have an energy bill.

I assume the majority leader will continue to find items he thinks are more important than our national energy security. We have seen it: Rail- road grade crossing milk to consumers through dairy comp-acts. As I indicated, next year we are going to address this issue and we will seek votes on the issue. I do not believe, on behalf of our constituents, we should duch these difficult decisions. I know the majority leader shares those views as well.

Some time ago, this body voted to initiate sanctions on Iran and some other nations in the Mideast that are supplying oil. We were not satisfied with their record of human rights. We were not satisfied with their record of full disclosure relative to the development of weapons of mass destruction. I proposed an amendment to include Iraq. At the time during the debate, the majority leader committed to me he would at some time give me an up-or-down vote.

I have communicated with the majority leader and asked him for the up-or-down vote on a response. I hope I will receive a response very soon because I think it is important to recognize the situation with regard to Iraq. We know Saddam Hussein is developing weapons of mass destruction. We have evidence of that, even though the U.N. inspector in that country for some time. We know he smuggled the oil.

Many Americans perhaps do not recognize we are importing nearly a million barrels of oil a day from Saddam Hussein and shipping it in a no-fly zone over that country. We are putting the lives of many of our young men and women at risk.

What is he attempting to do? He is attempting to shoot down our aircraft. He has almost succeeded, but it almost seems as though we take his oil, put it in our aircraft, enforce the no-fly zone, which is like an air wall blockade. How does he do with our money? He pays the Republican Arsenal, develops a weapons capability, a biological capa- bility, and aims it at our ally Israel. It is beyond me why this Nation and our foreign policy should rely on Saddam Hussein and Iraq for our energy needs when we can have the complete energy independence.

Finally, I think it is interesting to reflect on where we are in the econ-omic stimulus. We could not reach a conclusion. Yet our economy is in re-cession. We need a stimulus. It would help get us back on the right track.

The discussions have focused on this for some time. We have talked about “immediate.” We have talked about “temporary.” We have talked about the creation of jobs, increasing consumer spending or otherwise enhancing domestic product. I think we make a big mistake if we only focus on those stimulus ideas that are of a temporary nature. We should also focus on stim- ulus elements that will ensure the long-term economic growth of our country. Otherwise, we will have to come to the Senate at the end of each economic cycle and perhaps have this debate over again.

One such permanent stimulus would be the establishment of a national energy strategy that ensures energy prices that remain constant, affordable, reliable sources of energy which play an important role in fostering eco- nomic growth and development.

We have seen high prices. We have seen sectors of our economy. We have seen the situation in California. We have seen increasing costs. We have seen the development in the OPEC countries of a cartel where, when they want the price to go up, they decrease the supply.

High energy prices reduce consumer disposable income, reduce spending, and inhibit economic growth. Our friend Martin Feldstein, the former Chairman of the Council on Economic Advisers, noted since the end of World War II economic downturns have coincided with energy price increases. This most recent economic downturn is no exception. We have seen a rapid increase in consumer prices during the first half of this year, followed by similar increases in natural gas and elec-tricity.

The result of data from the Bureau of Economic Statistics shows that while the GDP grew at 5.7 percent in the second quarter of 2001, the most recent data showed the GDP has declined by 1.1 percent for the third quarter. So I think we acknowledge we are in a re-cession.

This is consistent with findings of the National Bureau of Economic Research that, on an average, for every 10 percent increase in oil prices, economic output falls by 2.5 percent, real wages
drop by 1 percent, and increases in oil prices reduce the number of hours worked and increase unemployment.

We recall what has happened over a period of time, and as a consequence of that we could generalize that high prices for energy and natural gas cause significant impacts on those sectors of our economy that do not depend on oil. America and the world move on oil. We have other sources of energy for electricity. We have seen impacts across the board. Energy spending by American families increased by nearly 30 percent in 2000. Heating bills tripled for many Americans, particularly in the Northeast. Small businesses had a great increase in costs associated with energy. We have seen this. Thousands of jobs were lost. These high energy prices were the result of one unavoidable fact: Our energy supplies failed to meet our growing energy demands.

For 10 years following the passage of the Energy Policy Act of 1992, U.S. demand for energy increased over 17 percent, while total energy production increased only 2.3 percent. By the end of last year, we had simply run out of fuel for the sputtering American economy. That has changed as a consequence of the tragedy of September 11, but it will not stay that way. OPEC will initiate the cartel to again decrease supplies.

We have seen what happened to our economy as a consequence of energy price increases. We know a national energy policy that balances supply and demand could reduce threats and future recessions. Alan Greenspan noted demand could reduce threats and fuel security.

ECONOMIC SECURITY

One of the most important objectives for those policies should be assured availability of energy.

As a consequence, the U.S. relies on foreign imported oil with more than one-half of its petroleum needs. Much of this comes from the Middle East, Saudi Arabia, Iraq, and Kuwait.

Consider the consequences of the oil embargo in 1973. At the time, tensions ran high in the Middle East. Then we were involved in the war on terrorism. It makes sense to consider our energy security in the context of an economic stimulus package. We have not done that. It makes sense to ensure our economic security by ensuring the availability of affordable energy supplies.

One aspect we have not considered in this equation is the contribution of ANWR. Talking about stimulus, there is hardly any single item we could have come up with that would have been a more significant and genuine stimulus package than opening ANWR in my State of Alaska.

What would it have done? It would have created $3.3 billion in Federal bonuses, money that would have come in from the Federal Treasury as a consequence of leasing off Federal land. This would have been paid for by competitive bidding by the oil companies. It was a jobs issue. It would have created 250,000 new jobs in this country.

The contribution of the steel industry is extremely significant as well. We have a package not even considered in the debate because we could not have a debate. We did not have an energy bill. It would have created 250,000 new jobs and $3.3 billion in new Federal bid bonuses, and it is not a real penny by the taxpayer. That is the kind of stimulus we need in this country.

As we look at the end of the year, we have to recognize the obligation that we have to come back and do a better job. We need an energy bill. We need it quickly. We need a stimulus in this country. We could and should consider a genuine stimulus that results in jobs that do not cost the taxpayer money, and as a consequence spurs the economy.

I hope as we address our New Year’s resolutions we can recognize the House has done its job in energy legislation. We did not do our job in the Senate. I am very disappointed. I am sure the President and the American public shares that disappointment.

We have not been honest with the American people because we have a crisis in energy. Our national security is at risk. We are risking the lives of men and women in the Middle East over this energy crisis. We should address it here and relieve that dependence. I wish all a happy and joyous holiday season, and I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I wish to ask the distinguished Senator from Alabama, Mr. Sessions, how long he will be speaking. The reason I ask, I know he speaks very fast. He has to leave within an- other 20 minutes, from what I understand.

How much time does the Senator desire?

Mr. SESSIONS. Twelve minutes would be sufficient.

Mr. BYRD. Let me deliver my speech. I ask unanimous consent, am I correct that the Presiding Officer needs to leave the Presiding Chair no later than 7:45, or is it 7:30?

The PRESIDING OFFICER. At 7:50. Mr. BYRD. I ask unanimous consent the distinguished Senator from Alabama may proceed for not to exceed 12 minutes and I will do something not often done around here: I do it quite often. I wait and wait and wait, realizing I can get recognition almost any time I want, but I am usually willing to accommodate another Senator, even if that Senator is on the Republican side. Not many will accommodate me in that fashion, but I am glad to accommodate them.

I ask consent that the Senator from Alabama have not to exceed, say, 10 minutes, after which I be recognized, and that mine be the last speech of the day. I don’t mind relieving the Senator in the Chair, so I will ask that the Senator from Alabama go ahead of me.

Mr. SESSIONS. I am delighted to follow the Senator from West Virginia.

Mr. BYRD. I want to make my speech about Christmas in the main. We refer to this as a holiday. It is not a holiday to me. This is Christmas, which is something different. It marks the greatest event that ever occurred in the history of man. It split the centuries in two. There is B.C. and there is A.D. It was a tremendous event. I believe in Christ. I am a Christian—not a worthy one—but a Christian. I respect those who are of a different religion. I respect those who believe that Christ was a historic figure but not the Messiah, but a prophet. That is all right. They have a right to believe that.

Both would agree that it was a tremendous event. This is something beyond just being a holiday. When someone wishes me happy holidays, I say: “Happy Christmas.”

I want to make a statement about Christmas, so I ask unanimous consent the Senator from Alabama proceed for 10 minutes and I follow him. I ask the question of the minority, while I am on the floor, is there an intention on that side of the aisle to seek unanimous consent by Senator Brownback? If there is still the intention to high light that request, I want to be here to object to it; if there is not, I may go on my way happy.

I make that consent and I will see to it that the Chair gets relief.

The PRESIDING OFFICER. Without objection, it is so ordered.

ECONOMIC STIMULUS

Mr. SESSIONS. I thank the distinguished Senator from West Virginia. I thank him for his fidelity to his faith and for his fidelity to this Senate and the courtesies and rules that need to be followed to make sure we live up to the high ideals on which this Nation was founded. He, more than anyone I know, has taught us the history, and the importance, of what we are about. His courtesy to me, a first-term Senator, is typical of his many courtesies.

I simply say how deeply disappointed I have been that we will be leaving this body before Christmas without having passed a stimulus package. Experts have said a good stimulus package, $75 to $90 billion, would preserve 300,000 jobs in this country. That is a lot of jobs. Those people, if they are working, will be happier. Those families will be happier. The homes will be happier. They will pay State and local sales taxes and other taxes. They will pay Federal taxes. It will help us run our government.

But if they lose their jobs, there will be a sadness and an unease in their hearts. They will pay State and local taxes and other taxes. They will pay Federal taxes. It will help us run our government.

One of the most important objectives for those policies should be assured availability of energy.
It is a big deal if we can affect the economy. I do not think there is any doubt. I have been convinced for a long time in the projections that we could achieve a 1-percent or a half-percent increase in the gross domestic product by passing the stimulus package. That is important. I believe we should pass a bill.

No less than 2 weeks ago I became deeply concerned that we might actually leave this body without a bill being passed. The first I did not think that was possible. We brought up a bill and disagreed, the House had passed a bill, and some here didn’t like it but negotiators were working together. The Finance Committee chairman and ranking member, the majority leader, the Democratic leader and the Republican leader, they were all working and talking and surely a bill would pass, I thought. They would work out their differences.

Frankly, I never believed exactly what was in that bill, if it met a few simple principles, would make a lot of difference. Probably, another $100 billion, another $75 billion into the economy we would have made an impact. There was no doubt in my mind if a middle-class family would have gotten a 2-percent reduction in the amount of money withheld from their taxes they would have more money and they would spend it.

Because of my concern, I offered my own bill. In fact, we were here one night until midnight. I sat around with some colleagues and refined my ideas and four of us introduced a stimulus package. It was simple. It did not have a lot of complexity to it. Frankly, I did not think anybody could find anything wrong with any of it or would object to a bit of it. I said: We offered this bill; let’s just vote on that.

It had a number of provisions in it that I thought were worthwhile. My favorite contribution, what I believe in and would like to see accomplished and really needs to be accomplished as part of this package, or it may be more difficult to pass, is the advanced payment of the earned-income tax credit.

The Presiding Officer understands these finance issues a lot better than I, but I can understand a little bit about low-income working Americans. They are at a point with the earned-income tax credit where the Federal Government gives them a tax credit. It is $51 billion a year. It amounts to, for an average family with one child, a $2,000 per-year tax credit. They can get it when they work or on their tax refund a year after they work. Since the earned-income tax credit was designed to encourage work, there has been a strong feeling it ought to go on the wage that they earn.

What has happened, however, is that we have never accomplished that. Only 5 percent of the workers take advantage of the opportunity to get their earned-income tax credit on their paycheck. If it were given to them 100 percent, that would be a $1-an-hour pay raise with no deductions from it. But we have never been able to figure out how to do it.

They finally passed, a day or so ago, an amendment that would allow that to happen: only 5 percent take advantage of it; 95 percent get their credit the next year. So it is good public policy, in my view, that they get their credit early. I believe in this time of stimulus, if we would make the pump in $15 billion or $20 billion extra on low-income people’s paychecks, many of whom may be out of work for a while, get another job, lose work and find another job, they would have more money to take care of their families with and it would not cost the budget of the country, the Treasury of the country, any money in the long run. It would shift about $15 billion or more into this fiscal year but that money would be from the next fiscal year, and we would have $15 billion left to spend next year. It is good public policy and a superb stimulus that moves money forward and saves money next year.

We would have put in another item.

We proposed reducing the median income for those who would be entitled to the child tax credit is a plan that would infuse about $6 billion or $8 billion into the economy for families with children. Those were some of the provisions we put in that plan. It could have passed. I don’t believe anybody would have been upset by that, nor business provisions in it that would upset anybody. It did have some depreciation advancement.

I say we ought to have done something. That bill, other bills, the bill we offered this bill: it the next year. It or would object to a bit of it. I said: Frankly, I did not think anybody would have $15 billion left to spend next year. It is good public policy and a superb stimulus that moves money forward and saves money next year. We would have put in another item.

We extended the unemployment benefits, as most of the proposals have, for an additional 13 weeks. We provided increased health benefits. We provided a $5 billion fund for national emergency grants for States to help people who have been displaced or lost their job. And we advanced the plans for 1 year for the child tax credit. This child tax credit is a plan that would infuse about $6 billion or $8 billion into the economy for families with children.

Those were some of the provisions we put in that plan. It could have passed. I don’t believe anybody would have been upset by that, nor business provisions in it that would upset anybody. It did have some depreciation advancement.

I say we ought to have done something. That bill, other bills, the bill that almost reached conclusion, the bipartisan approach that passed the House last night, was sent over here, and we did not get a vote. So I am very disappointed.

I believe the leadership of this Senate made mistakes. We were not even allowed to vote on it or debate it. Everybody said we needed a stimulus package, but we never even got to bring the bill up for a vote. We had a number of Democratic Senators and certainly a large number of Democratic House Members who supported this bipartisan bill, and we could have passed it, but we did not and it is a great disappointment to me.

I was pleased the Senator from Alaska discussed the energy bill that did not pass this time, under the very same factors. I was in Mobile Monday of this week. On two different occasions a real estate person and a very fine doctor came to me and said: JEFF, I think you have to do something about the energy situation. We are too dependent on Middle Eastern oil. They have the ability to disrupt our economy and to affect our foreign policy and damage us in ways that we ought to defend against. You need to do something to reduce our dependence on Middle Eastern oil. That is something I believe in very strongly.

The bill the Senator from Alaska, Mr. MURKOWSKI, has so eloquently argued for has conservation, reduced use of energy, as well as increased production. Both of those steps together will help reduce our dependence on foreign oil. It will help reduce the amount of American wealth that goes out of our country to purchase this substance that we would be better if we could purchase at home and keep that wealth at home.

I believe we have had a number of opportunities to do better. I wanted a strong $20 billion passed desperately. The President has made clear that we do not have a fight over money on the farm bill. We are prepared to honor the $75 billion set-aside in our budget over 10 years for farm programs. But there are some problems and serious disagreements about some of the policy that was in that bill.

We could not get debate on it. Every amendment was rejected virtually on a party line vote, so we ended up not passing an Agriculture bill. We will have to come back and work on that because we need an Agriculture bill. We do not need to go into the summer without an Agriculture bill. So I am sure we will be back on that early next year. But it could have been done this time.

So I will just say there were some great things accomplished this year: the education bill, a bipartisan effort that passed. The tax reduction was a historic empowerment of individual workers. Americans, voters for the individual against the State and the power the State has to extract what they earn from them and spend as the State wishes. But it would empower them to utilize the wealth they have earned in the way they choose. If we had not done that, I am confident our economy would be struggling even more today.

I see the distinguished Senator from West Virginia is ready to speak, and I am interested in hearing his remarks. I thank the Chair. I thank the Senator from West Virginia for his time. I wanted to express these remarks before we recessed today.

I yield the floor.

THE PRESIDING OFFICER. The Senator from West Virginia.

THE PRESIDING OFFICER OF THE SENATE

Mr. BYRD. Mr. President, first, I thank our Presiding Officer, the Senator from New Jersey. He always has a clean desk. What does that mean?
means he is paying attention to what is going on in the Senate. He is not at the desk reading a magazine or a piece of paper, a newspaper. He is alert. I watched him. This is the way he always presides. That is the way Presiding Officers ought to conduct themselves when gracing that desk in this, the greatest legislative, parliamentary, deliberative body in the world.

He does it with a great dignity and style. I thank him. He sits there many evenings at this hour when most Senators have gone on their separate ways. I thank him.

I thank the other Members of the new class—I say it in that fashion—who have worked at that desk. Those are some of them—I will not call their names at the moment—who make me proud of the Senate. The fact is, the way they preside is a model for legislative bodies everywhere to watch. Too often as we sit in that chair, we forget that millions of people are watching the Senate. They are watching the Chair.

I have been a member of the State legislature in West Virginia and the West Virginia House of Delegates. Those people in the State legislatures watch the Presiding Officer of this body.

This is the premier upper house in the world. They should see the premier act of presiding on the part of the Senator who sits at that desk. Teachers, college professors, students, political columnists, writers, and editorialists watch. We ought to remember that when we are sitting in that chair.

I congratulate the Presiding Officer. I congratulate Senator Corzine. I thank him.

GLORIA GILLESPIE

Mr. BYRD. Mr. President, as we head toward Christmas and the close of this session of Congress, this turbulent and tragic first year of the new millennium, I want to pause to remember a young woman who passed away this summer. Gloria Margaret Gillespie was a friend of mine.

Many Members of the Senate and staff will remember Gloria, for she worked in the Senate hair salon for 29 years. She cut my hair. Probably for the first time that my hair was ever cut at that salon she cut—26 years or 29 years ago. She worked there for 29 years.

She loved her work, and she loved her friends and she loved life. Gloria had a cheerful, loyal, uplifting spirit. And her time on this Earth was far, far too brief. She was only 54 years of age when she passed away in Berea, KY, this past July—54.

Five years ago, Gloria began a battle with cancer. She had smoking-related lung cancer. But instead of withdrawing, she used her illness as a forum to warn others about the dangers of smoking.

Gloria did not win her battle with cancer, but to the end, even in the face of great pain, she remained a fighter and a friend to all—someone who loved the Senate and someone who loved life. Gloria Gillespie knew that each day is a gift. Each day is a gift. She cherished each waking moment. She found great joy in living life. From her childhood, Gloria possessed a deep and abiding faith in God. That strong faith made her courageous and deeply appreciative of the sheer wonder of the world that God created.

Her unflagging optimism was contagious. She never impeded laughter. She brought a special kind of joy to all of her endeavors. She made the load a little lighter for all who knew her.

Gloria is survived by her parents, C.H. and Mary Frances Gillespie of Berea, KY, one niece, Lisa Gillespie, and one nephew, David Gillespie. Along with all the members of her family and her legions of friends, I shall miss Gloria. But I shall think of her during this Christmas season, and I shall never, never, never forget her.

MARIAN BERTRAM

Mr. BYRD. Mr. President, I rise to remember a long-time Senate employee who passed away on October 15 of this year. Marian Bertram dedicated 27 years of her life to public service and to the United States Senate. She began her work at the Democratic Policy Committee in 1971, eventually serving as the chief clerk of that committee. She retired from the Senate in October of 1998.

Marian Bertram served four Democratic Leaders, beginning with Mike Mansfield and continuing on through my own tenure as Democratic Leader, George Mitchell’s, and Senator Daschle’s leader terms.

She gained a deep understanding of the Senate’s intricacies during those years and researched and wrote the Democratic Policy Committee’s Legislative Bulletin. She also shouldered the challenging task of producing voting records and vote analyses for Democratic Members.

Marian was an able and very dedicated Senate employee and through it all she was unfailing good humored and professional.

My sympathy goes out to her many friends in the Washington area who were shocked and saddened by her untimely death this fall. We shall remember her kindness and with thanks for the many years she gave so unselfishly to this institution.

SENATORS AND SENATE LEADERS

Mr. BYRD. Mr. President, let me say just a word or so before I make my final speech of this year. I thank all Senators on both sides of the aisle for the work they do on behalf of this great Nation. They work here at a sacrifice. We are paid well, but there are many here who could earn much more money in other fields. There are many who come here after earning much more money in other fields but who want to give something to the Nation, who want to serve. Here is the place—in this Chamber—where Senators, since 1859, have served the Nation.

So I salute all Senators. I salute the leaders of the Senate—our Democratic and Republican leaders of the majority and the minority.

I have been a majority leader. I have been a minority leader. I have been a whip. I know my problems with which they are confronted every day. I know the demands that are made upon them by their colleagues. I know of the expectations that surround this Chamber and the expectations of our leaders. They spend a lot of time protecting our interests and working on behalf of our interests. They spend many hours here when the rest of us are probably sleeping. They carry to their beds problems that we don’t know about. Many demands are made on these leaders.

I sit here and I hear criticism of our majority leader. He is the majority leader and was chosen by his colleagues for this job. He sets the schedule. He does the program.

So not only do I salute him for the great work that he does on behalf of the Nation every day, but I also have empathy with him. I know he must go home troubled at night—troubled because he could not fulfill the expectations of this Senator, or that Senator, troubled because he is sometimes unjustly criticized. I had all of these things happen to me.

So I thank Tom Daschle. He can’t be everything to everybody. He has to do what he has to do. He has to do what he thinks is best. He has to promote the interests of the Senate. He has to promote the interests of getting on with the work.

So does our majority whip. These are two fine Senators. There isn’t a Senator here who doesn’t think that he could do that job right there better—that majority leader’s job. Democratic Leaders, beginning with Mike Mansfield and continuing on through my own tenure as Democratic Leader, George Mitchell’s, and Senator Daschle’s leader terms.

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Somebody appreciates you. You may not realize it, but somebody is watching you. Somebody appreciates what you are doing. The people at the desk up there, somebody appreciates you.

So I just want to express that appreciation.

**THE REAL STORY OF CHRISTMAS**

Mr. BYRD. Now, Mr. President, we are just a few days from Christmas, a few days from the morning when millions of children tumble out of their warm beds, awaken their parents, rush to the family room, and look, with gleeful delight, at the bows, the boxes, and the bundles under the tree.

This is one of my favorite times of the year—a time of joy, a time of love, a time of family gatherings and warm memories.

I remember the Christmas presents waiting for me when I was a boy back there in the Great Depression in the hills of southern West Virginia. There was no electric light in the house—no electricity, no running water, but there was an orange or a drawing book or a set of pencils or a set of water colors, or a geography book that I had been wanting.

My family did not have great material wealth, but we always had a wealth of love. The two old people who raised me, they are in Heaven tonight. They were great. We did not have fancy toys in those days. We celebrated the season for its true meaning: the birth of the Christ Child.

Now, I respect every man's or woman's religion. I respect their religion. If it is Moslem, I respect their religion. I can listen to the prayers of any churchman or any layman. I can respect them all because who am I? I am unworthy of God’s blessings. I can respect them.

My wife Erma and I have passed those lessons on to our children, our grandchildren, and our great-grandchildren.

In recent years, however, that meaning has been drowned out by a society that is focused more on the perfect gift or the latest gadget or the hottest-selling toy. Our attention is on store sales and Santa Claus rather than on the true meaning of Christmas.

Now, I am a Christian. I believe in Christ. I am not very wealthy, but I believe that anyone who does not. I respect anyone who believes that He was, that He lived, He was a historic figure, He was a prophet. They may not believe He is the Messiah—I do—but it does not lessen my respect for others.

I will listen to them at any time. But I think all of us have to agree that this was a great event that happened that split the centuries in two, and the years that were before Christ are numbered, the years that are after Christ numbered differently. This was some, some do not quite understand. We believe or do not believe, it is still recognized by all that there was a man named Jesus Christ.

And so no matter what our religion, I think we ought to understand this was more than just an ordinary happening, more than just an ordinary man.

At its core, the season has not changed. Christmas will always be, to me, about more than just finding no shelter but a manger, and also about a newborn child who would become, in my viewpoint, the Saviour of the world.

As Luke wrote in his Gospel:

And the angel said unto them, Fear not: for, behold, I bring you tidings of great joy, which shall be to all people. For unto you is born this day in the city of David a Saviour, which is Christ the Lord.

Good tidings. Great joy. How many people think of those words standing in the long lines of their local shopping malls?

I worry that too many of us, in the hectic pace of the modern world, have forgotten the true spirit of Christmas, have forgotten about the story of Jesus’ birth, and have forgotten about the wise men who would become, in this evening to hear you speak. I hope everyone across America has the sense of how you love this body, the great Senate, and the people we serve.

I suggest the absence of a quorum.

The Senator from New Jersey.

**COMMENDING SENATOR BYRD**

Mr. CORZINE. Mr. President, it is my honor to address you in the chair. Your remarks with regard to Christmas are ones that stir one’s heart and feelings. I am the lucky one to be here this evening to hear you speak. I hope everyone across America has the sense of how you love this body, the great Senate, and the people we serve.

And no matter what our religion, we believe that the season has not changed. The season has not changed. It is the same.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Nevada.

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the quorum call is waived.

The Senator from Nevada.

**RECESS SUBJECT TO THE CALL OF THE CHAIR**

Mr. REID. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 8:11 p.m., recessed subject to the call of the Chair and reassembled at 9:37 p.m. when called to order by the President pro tempore.

The President pro tempore. The Senator from Nevada is recognized.

**EXECUTIVE SESSION**

**NOMINATIONS DISCHARGED**

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed.
to executive session and that the HELP Committee be discharged from further consideration of the nomination of Michael Hammond to be the chairman of the National Endowment for the Arts. I ask that the nomination be confirmed, the motion to reconsider be laid on the table, that any statements thereon be printed in the RECORD, and that the President be immediately notified of the Senate’s action.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The nomination was considered and confirmed, as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Committee on Health, Education, Labor, and Pensions

Michael Hammond, of Texas, to be Chairman of the National Endowment for the Arts for a term of four years.

Mr. KENNEDY. Mr. President, I welcome this opportunity to express my strong support for the confirmation of Michael Hammond to be Chairman of the National Endowment for the Arts, and I urge the Senate to confirm him.

Mr. Hammond is a distinguished composer, conductor, arts educator and scientist. His is the Dean of the Shepherd School of Music at Rice University, where he is also a professor of music and a faculty fellow in neuroscience.

Mr. Hammond is an excellent choice to lead the Arts Endowment. He is also one of the nation’s leaders in the field of community and local arts and understands the vast potential of the arts in early childhood education. I welcome his leadership, and I believe that he will be an outstanding chairman for this very important agency.

During the consideration of his nomination by the Committee on Health, Education, Labor and Pensions, I submitted a number of questions to Mr. Hammond. His responses are responsive and I ask unanimous consent that they may be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, the material ordered to be printed in the RECORD, as follows:

QUESTIONS BY SENATOR EDWARD KENNEDY FOR MICHAEL HAMMOND, NOMINEE FOR CHAIRMAN OF THE NATIONAL ENDOWMENT FOR THE ARTS

1. Do you support the mission of the National Endowment for the Arts and believe that there is a federal role in support of the arts?

Yes. The Arts Endowment’s mandate is to provide national recognition and support to significant projects of artistic excellence, thus preserving and enhancing our nation’s diverse cultural heritage. This is a noble and essential national goal and I embrace it completely. I believe there are important aspects of this task that can best be performed at the federal level. If I have the opportunity to serve as chairman, I will work to advance the Endowment’s mandate in every conceivable way.

2. In what circumstances would you support the elimination of the agency?

No.

3. Due to budget cuts and the impact of inflation, the NEA’s spending power has been dramatically reduced. The decline in funding has also reduced the agency’s reach and impact. How do you view the current funding? Will you advocate for higher spending levels for the agency?

Although the Endowment’s financial resources are limited, it has a national voice that I believe should articulate clearly and strongly the importance of the arts in enriching the aesthetic and cultural life of all Americans. It is now more important than ever that the Endowment make performances and presentations of the highest artistic quality accessible to our urban, rural, and suburban communities.

The Endowment’s financial capability is important in gearing grants to new forms that it makes and for the matching money grants generated from other sources. I would advocate for spending levels that are adequate to realize the Endowment’s goals. Should I have the honor to be the chairman, I would look for ways to stimulate more public and private support for the arts and arts education.

4. How do you think the Endowment should best balance its various programs which support the creation and presentation of the arts? Do you have any thoughts about ways that the Endowment can better serve the arts?

Each of these tasks is crucial and the balance between them, though difficult, must be reconsidered regularly. A full review of the Endowment’s activities and concerns must be made. The alternatives of (creation/presentation and broad access) would be a high priority for me. Further, I would pursue these goals nationwide in all communities, including rural and suburban communities.

5. What do you think are the highest programming priorities for the agency?

In the days following September 11, in ceremonies and private, public and private, music and dance performances turned to the arts, especially music and poetry, for expressions of our anguish over our human losses and for confirmation of our common commitments as Americans. It is essential that the Arts Endowment help provide opportunities for our citizens to experience works whose meaning transcends the momentary and speak to us as human beings, sharing one another’s mortality and longing for beauty and understanding.

At the same time the Endowment must, I believe, continue to support those programs favorable to our professional artists—conditions in which they will be inspired to fulfill their deepest artistic aspirations, encouraging all of us as individuals and one another in continuously new ways. If I am given the opportunity to serve, I will also try to direct the Endowment’s efforts toward enlivening the artistic culture of the nation from the ground up by strengthening all forms of educational activity in the arts, especially among the young. If there is to be a further flowering of our artistic culture in the coming years, it must begin by making the best achievements of our rich heritage a reality in the lives of people.

6. You have had an extremely accomplished career in music and music education. Do you have any thoughts about ways that the agency can develop or initiate programs for young children and the arts?

To ensure the artistic future of our country, I believe, today’s children and those of generations to come must have the opportunity to learn by actual experience, the techniques of music-making, the skills of drawing, painting and sculpting, dance, poetry and the various forms of writing, and the art of acting and play-making. Such experiences together with regular access to the finest art can stimulate a child’s imagination, establish a discipline, produce physical skill and enhance curiosity and joy. Few may become professional artists, but many will become grateful audiences for the arts. A richer artistic culture can be brought into being with consistent effort over time in this way.

7. How do you think the agency can best promote educational opportunities for children from preschool through high school. The country has vast educational resources both public and private for this undertaking. These needs to be surveyed, documented and enhanced.

It is my understanding that grants for arts education are now funded under two new Arts Endowment funding programs—Challenging America and Arts Learning. The state arts agencies also contribute very significantly to education. I would do a number of private organizations and programs. The Endowment can advocate and promote models for cooperation among these groups and incentives for imaginative action.

8. From my own studies in neuroscience, I know there is a growing body of information concerning cognitive development among preschoolers showing their ability to discriminate clearly among musical sounds, visual colors, movements and language elements. Do you believe that learning in the arts at very early ages? I would actively pursue this agenda and attempt to work closely with that growing body of scientists and educators throughout the world who are concerned with such early cognitive development.

How do you think the agency can best support K-12 education programs?

First, there must be an accurate assessment of the programs and institutions, both state and private, which are doing the work of arts education for school-age young people in each region of the country. Working with these groups and with the state and regional arts agencies, the Endowment can help to set goals for instruction and experience at each stage of a student’s life, in each of the arts. The Endowment can encourage cooperative efforts among arts groups to get the job done. It is a challenging task that will require all our available institutional resources as well as a new generation of aspiration from the families, includ- ing parents, schools, museums, community centers, performing arts organizations, church groups, Boys and Girls Clubs and many others. Much valuable work is already being done in many parts of the country. These efforts can serve as models for others.

I believe the Endowment can lead in cer- tain areas by initiating conversations, encour- aging fine teaching, generating funding from corporations, foundations, private benefactors and arts support groups. It can as- sist and strengthen the efforts of others in identifying, organizing and mobilizing resources and support, which are addressing the matter of arts education for school-age young people. Much valuable work is already being done in many parts of the country. These efforts can serve as models for others.

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December 20, 2001

S14049

CONGRESSIONAL RECORD — SENATE

their leaders and the important work they do. I will explore with them ways in which their partnership with the Endowment can be strengthened and broadened. They have played a vital role in carrying out Challenge America and other important Endowment programs. Many of them have been extremely successful in promoting the arts in their communities. I believe them as already valuable allies for the Endowment, and I would hope that these alliances can be made even more productive for our citizens everywhere.

9. Do you believe that the Arts Endowment should actively pursue private funds to supplement its federal appropriation? I understand that legislation gives the Endowment the authority to accept private gifts and donations. I also understand that there is concern in the arts community that major fundraising activities by the Arts Endowment could compete with, and therefore, conceivably diminish the ability of arts organizations to raise the funding necessary for their survival. In the current economic climate, and following September 11, the issue of financial support for arts groups everywhere is especially serious. If I am confirmed, I would approach this matter carefully in a collegial spirit.

10. Will you continue the agency's efforts to build partnerships and funding coalitions with other federal agencies? I support efforts to form coalitions and partnerships with other federal agencies whenever these can enhance access for Americans to projects of artistic quality. Accordingly, I would examine the current inter-agency agreements that the Endowment has entered into over the years to see how these and other such cooperative efforts can help to preserve our national artistic heritage and increase the value of that heritage to our citizens, especially those who may be underserved.

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from the consideration of the nomination of James Newsome, to be chairman of the Commodity Futures Trading Commission and his nomination to be a commissioner on the Commission; that the nominations be confirmed, the motion to reconsider be laid on the table, and that any statements thereon be printed at the appropriate place in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

DEPARTMENT OF AGRICULTURE

James E. Newsome, of Mississippi, to be Chairman of the Commodity Futures Trading Commission, to a term of four years. (Reappointment)

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Nos. 607, 624, 647, 650, 651, 667, and 668.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask that those nominations be confirmed, the motion to reconsider be laid upon the table, that any statements be printed in the RECORD, and the President be immediately notified.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

DEPARTMENT OF DEFENSE

Claude M. Bolton, Jr., of Florida, to be an Assistant Secretary of the Army.

DEPARTMENT OF THE INTERIOR

Kathleen Burton Clarke, of Utah, to be Director of the Bureau of Land Management.

THE JUDICIARY

C. Ashley Royal, of Georgia, to be United States District Judge for the Middle District of Georgia.

Harry E. Cummins, III, of Arkansas, to be United States Attorney for the Eastern District of Arkansas for the term of four years.

Christopher James Christie, of New Jersey, to be United States Attorney for the District of New Jersey for the term of four years.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Sean O'Keefe, of New York, to be Administrator of the National Aeronautics and Space Administration, vice Daniel S. Goldin, resigned.

ARMY

The following named officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., section 12203:

To be major general

Brigadier General Donna F. Barbisch, 0000
Brigadier General Jamie S. Barkin, 0000
Brigadier General Robert W. Chesnut, 0000
Brigadier General Richard S. Colt, 0000
Brigadier General Lowell C. Detamo, 0000
Brigadier General George Dollar, 0000
Brigadier General Kenneth D. Herbst, 0000
Brigadier General Karol A. Kennedy, 0000
Brigadier General Rodney M. Kobayashi, 0000
Brigadier General Chic B. Osthen, 0000
Brigadier General Michael W. Symanski, 0000
Brigadier General William B. Watson, Jr., 0000

To be brigadier general

Colonel James A. Amstrong, 0000
Colonel Thomas M. Bryson, 0000
Colonel Peter S. Cooke, 0000
Colonel Donna L. Dacier, 0000
Colonel Charles H. Davidson IV, 0000
Colonel Michael R. Eyre, 0000
Colonel Donald L. Jacka, Jr., 0000
Colonel William H. Johnson, 0000
Colonel Robert P. Kasulke, 0000
Colonel Jack L. Killen Jr., 0000
Colonel John C. Levasseur, 0000
Colonel James A. Mabley, 0000
Colonel Mark A. Moutjar, 0000
Colonel Carrie L. Nero, 0000
Colonel Arthur C. Nuttall, 0000
Colonel Paulette M. Risher, 0000
Colonel Kenneth R. Petrozzi, 0000
Colonel William Terpeluk, 0000
Colonel Michael H. Walter, 0000
Colonel Roger L. Ward, 0000
Colonel David Zalis, 0000
Colonel Bruce E. Zukauskas, 0000

REFERRAL OF THE NOMINATION OF JOSEPH SCHMITZ

Mr. REID. Mr. President, I ask unanimous consent that the nomination of Joseph Schmitz to be Inspector General, Department of Defense, which was ordered reported by the Committee on Armed Services, be referred to the Committee on Governmental Affairs for not to exceed 20 calendar days, beginning January 23, 2002, and that if the nomination is not reported after that 20-day period, the nomination be automatically discharged and placed on the Executive Calendar.

The PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATIONS TO REMAIN IN STATUS QUO NOTWITHSTANDING THE ADJOURNMENT OF THE SENATE

Mr. REID. Mr. President, I ask unanimous consent that all nominations received by the Senate during the 107th Congress, first session, remain in status quo notwithstanding the adjournment of the Senate and the provisions of rule XXXI, paragraph 6, of the Standing Rules of the Senate, with the following exceptions: PN850, Otto Reich, to be Assistant Secretary of State; PN983–4, Colonel David R. Leffarge, to be Brigadier General.

The PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

The President pro tempore. The Senate will return to legislative session.

AUTHORIZATION TO MAKE APPOINTMENTS NOTWITHSTANDING THE SINE DIE ADJOURNMENT

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding the sine die adjournment of the Senate, the President of the Senate, the Senate President pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, and conferences, or interparliamentary conferences authorized by law by concurrent action of the Two Houses, or by order of the Senate.

The PRESIDENT pro tempore. Without objection, it is so ordered.

SENATE RESOLUTIONS 195, 196, 197, AND 198, EN BLOC

Mr. REID. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed en bloc to the consideration of Senate Resolutions 195, 196, 197, and 198, all submitted earlier today, that the resolutions be agreed to en bloc, and the motions to reconsider be laid upon the table, with no intervening action.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The resolutions (S. Res. 195, S. Res. 196, S. Res. 197, and S. Res. 198) were agreed to en bloc. (The text of the resolutions are printed in today’s RECORD under “Statements on Submitted Resolutions.”)

MEASURE INDEFINITELY POSTPONED—S. 1178

Mr. REID. Mr. President, I ask unanimous consent that Calendar No. 88, S. 1178, be indefinitely postponed.
The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, for the information of the Senate, this item is an appropriations bill. The conference report on the House numbered bill is now public law.

BASIC PILOT EXTENSION ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to its consideration.

The PRESIDENT pro tempore. The clerk will report the title of the bill.

The legislative clerk read as follows:

A bill (H.R. 3030) to extend the basic pilot program for employment eligibility verification, and for other purposes.

There being no objection, the Senate proceeded to consider the bill:

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 3030) was read the third time and passed.

EXPRESSING THE SENSE OF CONGRESS REGARDING EFFORTS OF THE PEOPLE OF THE UNITED STATES OF KOREAN ANCESTRY TO REUNITE WITH FAMILY MEMBERS IN NORTH KOREA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 280, S. Con. Res. 90.

The PRESIDENT pro tempore. The clerk will state the title of the concurrent resolution.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 90) expressing the sense of Congress regarding the efforts of the people of the United States of Korean ancestry to reunite with their family members in North Korea.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 211, S.J. Res. 12.

The PRESIDENT pro tempore. The clerk will state the title of the joint resolution.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 12) granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding among the jurisdictions entering into this compact.

GRANTING CONSENT OF CONGRESS TO THE INTERNATIONAL EMERGENCY MANAGEMENT ASSISTANCE MEMORANDUM OF UNDERSTANDING

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 211, S.J. Res. 12.

The PRESIDENT pro tempore. The clerk will state the title of the joint resolution.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 12) granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. Mr. President, I ask unanimous consent that the joint resolution be read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the joint resolution be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 90) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, was read as follows:

S. Con. Res. 90

Whereas on June 25, 1950, North Korea invaded South Korea, thereby initiating the Korean War, leading to the loss of countless lives, and further polarizing a world engulfed by the Cold War;

Whereas in the aftermath of the Korean War, the division of the Koreas at the 38th parallel separated millions of Koreans from their families, tearing at the heart of every mother, father, daughter, and son;

Whereas on June 13 and 14, 2000, in the first summit conference to promote between leaders of North and South Korea, South Korean President Kim Dae Jung met with North Korean leader Kim Jong II in Pyongyang, North Korea's capital;

Whereas in a historic joint declaration, South Korean President Kim Dae Jung and North Korean leader Kim Jong II made an important promise to promote economic cooperation and hold reunions of South Korean and North Korean citizens;

Whereas such reunions have been held in North and South Korea since the signing of the joint declaration, reuniting family members who had not seen or heard from each other for more than 50 years;

Whereas 500,000 people of the United States of Korean ancestry bear the pain of being separated from their families in North Korea;

Whereas the United States values peace in the global community and has long recognized the significance of uniting families torn apart by the tragedy of war; and

Whereas in the aftermath of the Korean War, the United States Government to assist in the reunification efforts: Now, therefore, be it

Resolved by the Senate and House of Representatives in Congress assembled, That it is the sense of Congress that—

(1) Congress and the President should support efforts to reunite people of the United States of Korean ancestry with their families in North Korea; and

(2) such efforts should be made in a timely manner, as 50 years have passed since the separation of these families.

CONGRESSIONAL CONSENT

TO THE INTERNATIONAL EMERGENCY MANAGEMENT ASSISTANCE MEMORANDUM OF UNDERSTANDING

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 211, S.J. Res. 12.

The PRESIDENT pro tempore. The clerk will state the title of the joint resolution.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 12) granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding among the jurisdictions entering into this compact.

GRANTING CONSENT OF CONGRESS TO THE INTERNATIONAL EMERGENCY MANAGEMENT ASSISTANCE MEMORANDUM OF UNDERSTANDING

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 211, S.J. Res. 12.

The PRESIDENT pro tempore. The clerk will state the title of the joint resolution.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 12) granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. REID. Mr. President, I ask unanimous consent that the joint resolution be read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the joint resolution be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The joint resolution (S.J. Res. 12) was read the third time and, passed, as follows:

S.J. Res. 12

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress consents to the International Emergency Management Assistance Memo-
“Article III—Party Jurisdiction Responsibilities

“(a) FORMULATE PLANS AND PROGRAMS.—It is the responsibility of each party jurisdiction to formulate procedural plans and programs for inter-jurisdictional cooperation in the performance of responsibilities listed in this section. In formulating and implementing such plans and programs the party jurisdictions, to the extent practicable, shall—

"(1) review individual jurisdiction hazards analyses that are available and, to the extent reasonably possible, determine all those potential emergencies the party jurisdictions can suffer, whether due to natural disaster, technological hazard, man-made disaster or emergency aspects of resource shortages;

"(2) develop a process to review party jurisdiction’s individual emergency plans and develop a plan that will determine the mechanism for the inter-jurisdictional cooperation;

"(3) develop inter-jurisdictional procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing plans and programs;

"(4) assist in warning communities adjacent to or crossing jurisdiction boundaries;

"(5) provide delivery of such medical, firefighting, medicines, water, food, energy and fuel, search and rescue, and critical life-line equipment, services and resources, both human and material to the extent authorized by law;

"(6) inventory and agree upon procedures for the inter-jurisdictional loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

"(7) provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances, over which the province or state has jurisdiction, that impede the implementation of the responsibilities described in this subsection.

"(b) REQUEST ASSISTANCE.—The authorized representative of a party jurisdiction may request assistance of another party jurisdiction by contacting the authorized representative of that jurisdiction. These provisions only apply to requests for assistance made by and to authorized representatives. Requests may be oral or in writing. If verbal, the request shall be confirmed in writing within 15 days of the verbal request. Requests must provide the following information:

"(1) A description of the emergency service function for which assistance is needed and of the mission or missions, including but not limited to fire services, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

"(2) The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time the equipment may be required;

"(3) The specific place and time for staging of the assisting party’s response and a point of contact at the location.

'(c) CONSULTATION AMONG PARTY JURISDICTION OFFICIALS.—There shall be frequent consultation among the party jurisdiction officials who have assigned emergency management responsibilities, such officials collectively known hereinafter as the International Emergency Management Group, and other appropriate representatives of the party jurisdictions with free exchange of information and resource records relating to emergency capabilities to the extent authorized by law.

“Article IV—Limitation

Any party jurisdiction requested to render mutual aid may withhold or recall resources to the extent necessary to provide reasonable protection for that jurisdiction. Each party jurisdiction shall notify the other jurisdiction requesting aid of the condition of the emergency forces of any party jurisdiction, while operating within its jurisdictional limits, under the terms and conditions of this compact, of the condition of control of an officer of the requesting party, the same powers, duties, rights, privileges, and immunities as are afforded similar or like officers of the jurisdiction in which they are performing emergency services. Emergency forces continue under the command and control of their regular leaders, but the organization units can render the operational control of the emergency services authorities of the jurisdiction receiving assistance. These conditions may be activated, as needed, by the jurisdiction that is to receive assistance or upon commencement of exercises or training for mutual aid and as long as the exercising or training for mutual aid and as long as the exercising or training for mutual aid or disaster remains in effect or loaned resources remain in the receiving jurisdiction or jurisdictions, whichever is longer. The receiving jurisdiction is responsible for informing the assisting jurisdictions of the specific moment when services will no longer be required.

“Article V—Licenses and Permits

Whenever a person holds a license, certificate, or permit issued by any jurisdiction party to the compact evidencing the right to perform emergency services. Emergency forces of the jurisdiction in which they are performing emergency services. Emergency forces of the jurisdiction in which they are performing emergency services. Emergency forces of the jurisdiction in which they are performing emergency services.

“Article IX—Reimbursement

Any person or entity rendering aid in another jurisdiction pursuant to this compact are considered agents of the requesting jurisdiction for tort liability purposes. Any person or entity rendering aid in another jurisdiction pursuant to this compact are not liable on account of any act or omission in good faith on the part of such forces while engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article does not include willful misconduct, gross negligence, or recklessness.

“Article VII—Supplementary Agreements

Because it is probable that the pattern and detail of the machinery for mutual aid among 2 or more jurisdictions may differ from that among the jurisdictions that are party to this compact, this compact contains elements of a broad base common to all jurisdictions, and nothing in this compact precludes any party jurisdiction from entering into supplementary agreements with other jurisdictions or any party jurisdiction from entering into supplementary agreements with jurisdictions that are not party to this compact. But, any such loss, damage, expense, or other cost or may loan such equipment or donate such services to the receiving party jurisdiction without charge or cost. Any 2 or more party jurisdictions may enter into supplementary agreements establishing a different allocation of responsibilities among the jurisdictions.

“Article X—Evacuation

Each party jurisdiction shall initiate a procedure to prepare and mobilize as to facilitate the movement of and reception of evacuees into its territory or across its territory, according to its capabilities and powers. Any party jurisdiction through which the evacuees came shall assume the ultimate responsibility for the support of the evacuees, and after the termination of the emergency or disaster, for the repatriation of such evacuees.

“Article XI—Implementation

“(a) This compact is effective upon its execution or adoption by any 2 jurisdictions, and is effective as to any other jurisdiction upon its execution or adoption thereby: subject to approval or authorization by the United States Congress, if required, and subject to enactment of provincial or State legislation that may be required for the effectiveness of the Memorandum of Understanding.

"(b) Any party jurisdiction may withdraw from this compact, but the withdrawal does not take effect until 30 days after the governor or premier of the withdrawing jurisdiction has given notice in writing of such withdrawal to the governors or premiers of all other party jurisdictions. The action does not relieve the withdrawing jurisdiction from obligations accumulated under this compact prior to the effective date of withdrawal.

"(c) Duly authenticated copies of this compact in the French and English languages and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party jurisdictions.

“Article XIII—Consistency of Language

The validity of the arrangements and agreements content in this compact

"(a) FORMULATE PLANS AND PROGRAMS.—It is the responsibility of each party jurisdiction to formulate procedural plans and programs for inter-jurisdictional cooperation in the performance of responsibilities listed in this section. In formulating and implementing such plans and programs the party jurisdictions, to the extent practicable, shall—

"(1) review individual jurisdiction hazards analyses that are available and, to the extent reasonably possible, determine all those potential emergencies the party jurisdictions can suffer, whether due to natural disaster, technological hazard, man-made disaster or emergency aspects of resource shortages;

"(2) develop a process to review party jurisdiction’s individual emergency plans and develop a plan that will determine the mechanism for the inter-jurisdictional cooperation;

"(3) develop inter-jurisdictional procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing plans and programs;

"(4) assist in warning communities adjacent to or crossing jurisdiction boundaries;

"(5) provide delivery of such medical, firefighting, medicines, water, food, energy and fuel, search and rescue, and critical life-line equipment, services and resources, both human and material to the extent authorized by law;

"(6) inventory and agree upon procedures for the inter-jurisdictional loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

"(7) provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances, over which the province or state has jurisdiction, that impede the implementation of the responsibilities described in this subsection.

"(b) REQUEST ASSISTANCE.—The authorized representative of a party jurisdiction may request assistance of another party jurisdiction by contacting the authorized representative of that jurisdiction. These provisions only apply to requests for assistance made by and to authorized representatives. Requests may be oral or in writing. If verbal, the request shall be confirmed in writing within 15 days of the verbal request. Requests must provide the following information:

"(1) A description of the emergency service function for which assistance is needed and of the mission or missions, including but not limited to fire services, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

"(2) The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time the equipment may be required;

"(3) The specific place and time for staging of the assisting party’s response and a point of contact at the location.

'(c) CONSULTATION AMONG PARTY JURISDICTION OFFICIALS.—There shall be frequent consultation among the party jurisdiction officials who have assigned emergency management responsibilities, such officials collectively known hereinafter as the International Emergency Management Group, and other appropriate representatives of the party jurisdictions with free exchange of information and resource records relating to emergency capabilities to the extent authorized by law.
shall not be affected by any insubstantial difference in form or language as may be adopted by the various states and provinces.

“Article XIV—Amendment

This compact may be amended by agreement of the states and provinces.

SEC. 2. INCONSISTENCY OF LANGUAGE.

The validity of the arrangements consented to by this Act shall not be affected by any insubstantial difference in their form or language as adopted by the States and provinces.

SEC. 3. RIGHT TO ALTER, AMEND, OR REPEAL

The right to alter, amend, or repeal this Act is hereby expressly reserved.

RECOGNIZING RADIO FREE EUR-ope/Radio Liberty’s SUCCESS IN PROMOTING DEMOCRACY AND ITS CONTINUING CONTRIBUTION TO UNITED STATES NATIONAL INTERESTS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 281, S. Con. Res. 92.

The PRESIDENT pro tempore. The clerk will report the title of the concurrent resolution.

The legislative clerk read as follows:


There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 92) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. Con. Res. 92

Whereas on May 1, 1951, Radio Free Europe inaugurated its full schedule of broadcast services to the people of Eastern Europe and, subsequently, Radio Liberty initiated its broadcast services to the peoples of the Soviet Union on March 1, 1953, just before the death of Stalin;

Whereas now fifty years later, Radio Free Europe and Radio Liberty (in this concurrent resolution referred to as “RFE/RL”) continues to promote democracy and human rights and serve United States national interests and fulfill its mission “to promote democratic values and institutions by disseminating factual information and ideas”;

Whereas Radio Free Europe and Radio Liberty were established in the darkest days of the cold war as a substitute for the free media which no longer existed in the communist-dominated countries of Central and Eastern European Soviet Union;

Whereas Radio Free Europe and Radio Liberty developed a unique form of international broadcasting known as surrogate broadcasting by airing local news about the countries to which they broadcast as well as providing regional and international news, thus preventing the communist governments from establishing a monopoly on the dissemination of information and providing an alternative to the state-controlled, party dominated domestic media;

Whereas the broadcast of uncensored news and information by Radio Free Europe and Radio Liberty was a critical element contributing to the collapse of the totalitarian communist governments of Central and Eastern Europe and the Soviet Union;

Whereas since the fall of the Iron Curtain, RFE/RL has continued to inform and therefore strengthened forces in Central Europe and the countries of the former Soviet Union, and has contributed to the development of a new generation of political and economic leaders who have worked to strengthen civil society, free economies, and democratic government institutions;

Whereas United States Government funding established and continues to support international broadcasting, including RFE/RL, and this funding is among the most useful and effective in promoting and enhancing the Nation’s national security over the past half century;

Whereas RFE/RL has successfully downsized in response to legislative mandate and adapted its programming to the changing international broadcast environment in order to serve a broad spectrum of target audiences—people living in fledgling democracies where private media are still weak and do not enjoy full editorial independence, transitional societies where democratic institutions and practices are poorly developed, as well as countries which still have tightly controlled state media;

Whereas RFE/RL continues to provide objective news, analysis, and discussion of domestic and regional issues crucial to democratic and free-market transformations in emerging democracies as well as strengthening civil society in these areas;

Whereas RFE/RL broadcasts seek to combat ethnic, racial, and religious intolerance and promote mutual understanding among peoples;

Whereas RFE/RL provides a model for local media, assists in training to encourage media professionalism and independence, and develops partnerships with local media outlets in emerging democracies;

Whereas RFE/RL is a unique broadcasting institution long regarded by its audience as an alternative national media that provides both credibility and security for local journalists who work as its stringers and editors in the broadcast region; and

Whereas RFE/RL fosters closer relations between the United States and other democratic states, and the states of Central Europe and the former Soviet republics: Now therefore be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) congratulates the editors, journalists, and managers of Radio Free Europe/Radio Liberty on a half century of effort in promoting democratic values, and particularly their contribution to promoting freedom of the press and freedom of expression in areas of the world where such liberties have been denied or are not yet fully institutionalized; and

(2) recognizes the major contribution of Radio Free Europe/Radio Liberty to the growth of democracy throughout the world and its continuing efforts to advance the vital national interests of the United States in building a world community that is more peaceful, democratic, free, and stable.

REFFERING S. 846 TO CHIEF JUDGE OF U.S. COURT OF FEDERAL CLAIMS

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 83 and that the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will report the resolution by title.

The legislative clerk read as follows:


Whereas RFE/RL fosters closer relations between the United States and other democratic states, and the states of Central Europe and the former Soviet republics: Now therefore be it

Resolved, SECTION 1. REFERRAL.

S. 846 entitled “A bill for the relief of J.L. Simmons Company, Inc., of Champaign, Illinois”, now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims.

SEC. 2. PROCEEDING AND REPORT.

The chief judge shall—

(1) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code, notwithstanding the bar of any statute of limitations, laches, or bar of sovereign immunity; and

(2) report back to the Senate, at the earliest practicable date, providing—

(A) such findings of fact and conclusions as are sufficient to inform Congress of the nature, extent, and character of the claim for compensation referred to in such bill as a legal or equitable claim against the United States, or a gratuity; and

(B) the amount, if any, legally or equitably due from the United States to J.L. Simmons Company, Inc., of Champaign, Illinois.

AMENDING THE INTERNAL REVENUE CODE OF 1986

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 3346.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3346) to amend the Internal Revenue Code of 1986 to simplify the reporting requirements relating to higher education, tuition and related expenses.

Whereas the Senate proceed to consider the bill.

The PRESIDENT pro tempore. The Senate proceed to consider the bill.

The bill (H.R. 3346) was read the third time and passed.
Whereas Daw Aung San Suu Kyi has recently begun talks with the SPDC which are welcomed by the international community, although the slow pace of the talks reflects on the SPDC's sincerity to move toward national reconciliation;

Whereas the SPDC has recently allowed the National League for Democracy to open some political offices and has released some political prisoners, although over 1,800 such prisoners are believed to remain imprisoned;

Whereas with the exception of these positive developments the SPDC has made little progress in improving human rights conditions and restoring democracy to the country;

Whereas the SPDC has continued to restrict the political power of Daw Aung San Suu Kyi and the National League for Democracy;

Whereas Daw Aung San Suu Kyi's struggle to assert the rights of her people has spread beyond politics and into popular culture, as evidenced by others championing her cause, most notably the rock group U2 in their song "Walk On", which is banned in Burma; and

Whereas, in the face of oppression, Daw Aung San Suu Kyi has remained an outspoken champion of democracy and freedom: Now, therefore, be it

WHEREAS, since 1962, the people of Burma have lived under a repressive military regime;

WHEREAS, in recognition of her efforts to bring democracy to Burma, Daw Aung San Suu Kyi was awarded the Nobel Peace Prize on October 14, 1991;

WHEREAS, in 1988, the people of Burma rose up in massive pro-democracy demonstrations;

WHEREAS, in recognition of her efforts to bring democracy to Burma, Daw Aung San Suu Kyi was placed under house arrest after these demonstrations;

WHEREAS, in the 1990 Burmese elections, Daw Aung San Suu Kyi led the National League for Democracy and affiliated parties to a landslide victory, winning 80 percent of the parliamentary seats;

WHEREAS, the ruling military regime rejected this election and proceeded to arrest hundreds of members of the National League for Democracy;

WHEREAS, Daw Aung San Suu Kyi's freedom of speech was restricted by the military regime;

WHEREAS, Daw Aung San Suu Kyi remained under unlawful house arrest until 1995;

WHEREAS, even after her release, the Burmese military regime, known as the State Peace and Development Council (SPDC), has continued to ignore the basic human rights of 48,000,000 Burmese citizens and has brutally suppressed any opposition to its authority;

WHEREAS, according to the State Department, the SPDC has made no significant progress toward stopping the practice of human trafficking, whereby thousands of people have been sent to Thailand for the purpose of factory and household work and for sexual exploitation;

WHEREAS, the SPDC has forced civilians to work in industrial, military, and infrastructure construction operations throughout Burma, and on a large-scale basis has targeted ethnic and religious minorities for this work;

WHEREAS, a Department of Labor report in 2000 documented the human rights abuses of forced laborers, including beating, torture, starvation, and summary executions;

WHEREAS, the worldwide scourge of heroin and methamphetamine is significantly aggravated by large-scale cultivation and production of these drugs in Burma;

WHEREAS the Drug Enforcement Agency has reported that Burma is the world's second largest producer of opium and opiate-based drugs;

WHEREAS officials in Thailand have estimated that as many as 800 million tablets of methamphetamine will be smuggled into their country this year, contributing to the growing methamphetamine problem in Thailand;

WHEREAS there are as many as a million internally displaced persons in Burma;

WHEREAS the SPDC has severely restricted Daw Aung San Suu Kyi's political activities;

WHEREAS in September 2000, Daw Aung San Suu Kyi was placed under house arrest when she attempted to visit a National League for Democracy meeting on the outskirts of Rangoon, and again when she attempted to travel by train to Mandalay;

WHEREAS Daw Aung San Suu Kyi's struggle to assert the rights of her people has spread beyond politics and into popular culture, as evidenced by others championing her cause, most notably the rock group U2 in their song "Walk On", which is banned in Burma; and

WHEREAS, in the face of oppression, Daw Aung San Suu Kyi has remained an outspoken champion of democracy and freedom: Now, therefore, be it

WHEREAS, since 1962, the people of Burma have lived under a repressive military regime;

WHEREAS, in recognition of her efforts to bring democracy to Burma, Daw Aung San Suu Kyi was awarded the Nobel Peace Prize on October 14, 1991;

WHEREAS, in 1988, the people of Burma rose up in massive pro-democracy demonstrations;

WHEREAS, in response to this call for change, the Burmese military brutally suppressed these demonstrations;

WHEREAS, opposition leader Daw Aung San Suu Kyi was placed under house arrest after these demonstrations;

WHEREAS, in the 1990 Burmese elections, Daw Aung San Suu Kyi led the National League for Democracy and affiliated parties to a landslide victory, winning 80 percent of the parliamentary seats;

WHEREAS, the ruling military regime rejected this election and proceeded to arrest hundreds of members of the National League for Democracy;

WHEREAS, Daw Aung San Suu Kyi's freedom of speech was restricted by the military regime;

WHEREAS, Daw Aung San Suu Kyi remained under unlawful house arrest until 1995;

WHEREAS, even after her release, the Burmese military regime, known as the State Peace and Development Council (SPDC), has continued to ignore the basic human rights of 48,000,000 Burmese citizens and has brutally suppressed any opposition to its authority;

WHEREAS, according to the State Department, the SPDC has made no significant progress toward stopping the practice of human trafficking, whereby thousands of people have been sent to Thailand for the purpose of factory and household work and for sexual exploitation;

WHEREAS, the SPDC has forced civilians to work in industrial, military, and infrastructure construction operations throughout Burma, and on a large-scale basis has targeted ethnic and religious minorities for this work;

WHEREAS, a Department of Labor report in 2000 documented the human rights abuses of forced laborers, including beating, torture, starvation, and summary executions;

WHEREAS the Drug Enforcement Agency has reported that Burma is the world's second largest producer of opium and opiate-based drugs;
Whereas officials in Thailand have estimated that as many as 800 million tablets of methamphetamine will be smuggled into their country this year, contributing to the growing methamphetamine problem in Thailand;

Whereas there are as many as a million internally displaced persons in Burma;

Whereas the SPDC continues to severely restrict the political activities of Daw Aung San Suu Kyi and the National League for Democracy;

Whereas, in September 2000, Daw Aung San Suu Kyi was placed under house arrest when she attempted to visit a National League for Democracy party office in the outskirts of Rangoon, and again when she attempted to travel by train to Mandalay;

Whereas Daw Aung San Suu Kyi and the SPDC have recently begun talks under the auspices of the United Nations Special Envoy to Burma, Razali Ismail, which are welcomed by the international community;

Whereas the SPDC has recently allowed the National League for Democracy to open some political offices, and has released some political prisoners, although over 1,800 such prisoners are believed to remain imprisoned;

Whereas, with the exception of these positive developments, the SPDC has made little progress in improving human rights conditions and restoring democracy to Burma;

Whereas the United Nations General Assembly recently expressed its concern over the slow progress in the talks between Daw Aung San Suu Kyi and the SPDC;

Whereas Daw Aung San Suu Kyi’s struggle to assert the rights of her people has spread beyond politics and into popular culture, as evidenced by others championing her cause, most notably the rock group U2 in their song “Walk On,” which is banned in Burma;

Whereas Daw Aung San Suu Kyi is the recipient of the Presidential Medal of Freedom; and

Whereas, in the face of oppression and at great personal sacrifice, Daw Aung San Suu Kyi has remained an outspoken champion of democracy and freedom: Now, therefore, be it

RESOLVED by the Senate (the House of Representatives concurring),

That—

(1) the Congress commends and congratulates Daw Aung San Suu Kyi on the 10th anniversary of her receiving the Nobel Peace Prize, and recognizes her remarkable contributions and tireless work toward bringing international recognition and democracy to Burma;

(2) it is the sense of the Congress that the President and Secretary of State should continue to encourage the Government of Burma to restore basic human rights to the Burmese people, to eliminate the practice of human trafficking, to address the manufacture of heroin and methamphetamines, to release all political prisoners; (3) that the United States continue to press the Burmese regime to make concrete steps to achieve national reconciliation and the restoration of democracy through genuine and substantive dialogue with Daw Aung San Suu Kyi;

Mr. REID. I ask unanimous consent that the committee amendment be agreed to, the concurrent resolution, as amended, be agreed to, the amendment to the preamble be agreed to, the preamble be amended, as agreed to.

The concurrent resolution (H. Res. 211), as amended, was agreed to.

The amendment (No. 2693) was agreed to.

The resolution (S. Res. 194), as amended, was agreed to.

The preamble, as amended, was agreed to.

The resolution will appear in a future edition of the RECORD.

AMERICAN WILDLIFE ENHANCEMENT ACT OF 2001

Mr. REID. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 283, S. 990.

The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore. The President pro tempore.

TITLES—CONGRESS

Provision relating to wildlife conservation and restoration programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “American Wildlife Enhancement Act of 2001”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 101. Title.
Sec. 102. Definitions.
Sec. 103. Wildlife Conservation and Restoration Account.
Sec. 104. Apportionment of amounts in the Account.
Sec. 105. Wildlife conservation and restoration programs.
Sec. 106. Nonapplicability of Federal Advisory Committee Act.
Sec. 107. Technical amendments.
Sec. 108. Effective date.

TITLE II—ENDEANGERED AND THREATENED SPECIES RECOVERY

Sec. 109. Federal wilderness areas.
Sec. 110. Paleotheres.
Sec. 111. Federal emergency response programs.

TITLE III—NON-FEDERAL LAND CONSERVATION GRANT PROGRAM

Sec. 112. Federal funding for land conservation.
Sec. 113. Non-Federal land conservation grant program.

TITLE IV—CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND

Sec. 114. Conservation and restoration of shrubland and grassland.

TITLES—US CONGRESS

This title may be cited as the “Pittman-Robertson Wildlife Conservation and Restoration Programs Improvement Act”.

SEC. 101. SHORT TITLE.

This title may be cited as the “Pittman-Robertson Wildlife Conservation and Restoration Programs Improvement Act”.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—Section 2 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669a) is amended to read as follows:

SEC. 2. DEFINITIONS.

(1) In this Act—The term ‘Account’ means the Wildlife Conservation and Restoration Account established by section 3(a)(2).
“(2) CONSERVATION.—

“(A) IN GENERAL.—The term ‘conservation’ means the use of a method or procedure necessary or desirable—

“(i) to sustain healthy populations of wildlife; or

“(ii) to restore declining populations of wildlife.

“(B) INCLUSIONS.—The term ‘conservation’ includes any activity associated with scientific resources management, such as—

“(i) research;

“(ii) monitoring; or

“(iii) access.

“(C) EXCLUSIONS.—The term ‘conservation’ does not include any activity associated with scientific resources management, such as—

“(i) acquisition of land or water described in subparagraph (A) that is not suitable or capable of being made suitable for feeding, resting, or breeding wildlife;

“(ii) restoration or rehabilitation of an area of land or water described in subparagraph (A) that is not capable of being made suitable for feeding, resting, or breeding wildlife;

“(iii) construction in an area described in subparagraph (A) of such works as are necessary to make the area available for feeding, resting, or breeding wildlife;

“(iv) such research into any problem of wildlife management as is necessary for efficient administration of wildlife resources; and

“(v) such preliminary or incidental expenses as are incurred with respect to activities described in this paragraph.

“(3) FUND.—The term ‘fund’ means the Federal aid to wildlife restoration fund established by section 12.

“(4) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450h).

“(5) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(6) STATE FISH AND GAME DEPARTMENT.—The term ‘State fish and game department’ means any department or division of a department of another name, or commission, or 1 or more officials, of a State, the District of Columbia, a territory, or an Indian tribe empowered under the laws of the State, the District of Columbia, the territory, or the Indian tribe, respectively, to exercise the functions ordinarily exercised by a State fish and game department or a State fish and wildlife department.

“(7) TERRITORY.—The term ‘territory’ means Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

“(8) WILDLIFE.—

“(A) IN GENERAL.—Except as provided in paragraph (B), the term ‘wildlife’ means—

“(i) any species of wild, free-ranging fauna (excluding fish); and

“(ii) any species of fauna (excluding fish) in a captive breeding program the object of which is to reintroduce individuals of a depleted native species into the previously occupied range of the species.

“(B) WILDLIFE CONSERVATION AND RESTORATION PROGRAM.—For the purposes of each wildlife conservation and restoration program, the term ‘wildlife’ includes fish and native plants.

“(9) WILDLIFE-ASSOCIATED RECREATION PROJECT.—The term ‘wildlife-associated recreation project’ means—

“(A) a project intended to meet the demand for an outdoor activity associated with wildlife, such as hunting, fishing, and wildlife observation and photography;

“(B) a project such as construction or restoration of a wildlife viewing area, observation tower, blind, platform, land or water trail, water access route, area for field training, or trail head; and

“(C) a project to provide access for a project described in subparagraph (A) or (B).

“(10) WILDLIFE CONSERVATION AND RESTORATION PROGRAM.—The term ‘wildlife conservation and restoration program’ means a program developed by a State fish and game department and approved by the Secretary under section 12.

“(11) WILDLIFE CONSERVATION EDUCATION PROJECT.—The term ‘wildlife conservation education project’ means a project, including public outreach activities, intended to foster responsible natural resource stewardship.

“(12) WILDLIFE-RESTORATION PROJECT.—

“(A) IN GENERAL.—The term ‘wildlife-restoration project’ means a project consisting of the selection, restoration, rehabilitation, or improvement of an area of land or water (including a water body) by wildlife management activities that are capable of being made suitable for feeding, resting, or breeding for wildlife.

“(B) INCLUSIONS.—The term ‘wildlife-restoration project’ includes—

“(i) acquisition of an area of land or water described in subparagraph (A) that is suitable or capable of being made suitable for feeding, resting, or breeding for wildlife;

“(ii) restoration or rehabilitation of an area of land or water described in subparagraph (A) that is suitable or capable of being made suitable for feeding, resting, or breeding for wildlife;

“(iii) such preliminary or incidental expenses as are incurred with respect to activities described in this paragraph.

“(C) CONFORMING AMENDMENTS.—

“(1) The first sentence of section 3(a)(1), and section 12 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669, 669b(a)(1), 669b) are amended by striking ‘Secretary of Agriculture’, each place it appears and inserting ‘Secretary’.

“(2) The Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 et seq.) is amended by striking ‘Secretary of the Interior’ each place it appears and inserting ‘Secretary’.

“(3) Section 3(a)(1) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b(a)(1)) is amended by striking ‘hereinafter referred to as the ‘fund’’.

“(4) Section 6(c) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c) is amended by striking ‘established by section 3 of this Act’.

“(5) Section 11(b) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669a–2(b)) is amended by striking ‘wildlife restoration projects’ each place it appears and inserting ‘wildlife-restoration projects’.

“SEC. 103. WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

“(a) IN GENERAL.—Section 3 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b) is amended—

“(1) by striking ‘Sec. 3. (a)(1) An’ and inserting the following:

“(2) WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

“(A) ESTABLISHMENT.—There is established in the fund an account to be known as the ‘Wildlife Conservation and Restoration Account’.

“(B) FUNDING.—

“(i) IN GENERAL.—There are authorized to be appropriated to the Account for apportionment to States, the District of Columbia, territories, and Indian tribes in accordance with section 4(d)—

“(I) $30,000,000 for fiscal years 2001 and

“(II) $30,000,000 for each of fiscal years 2002 through 2006.

“(ii) AVAILABILITY.—Notwithstanding the user the heading ‘FEDERAL AID TO WILDLIFE CONSERVATION AND RESTORATION’ under the heading ‘FEDERAL AID TO WILDLIFE CONSERVATION AND RESTORATION’ in title I of chapter VII of the General Appropriation Act, 1931 (64 Stat. 695), the amount appropriated under clause (i) is subject to the requirement of fiscal years 2002 through 2006 shall be available for obligation in that fiscal year.

“(3) by striking subsections (c) and (d).

“(b) CONFORMING AMENDMENTS.—

“(1) Section 3(a)(1) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b(a)(1)) is amended in the first sentence—

“(A) by inserting ‘other than the Account’ after ‘wildlife restoration fund’; and

“(B) by inserting before the period at the end the following: ‘other than sections 4(d) and 12’.

“(2) Section 4 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c) is amended—

“(A) in subsection (a)—

“(i) in paragraph (1)A—

“(I) by inserting ‘other than the Account’ after ‘the fund’; and

“(II) by inserting ‘other than subsection (d) and sections 3(a)(2) and 12’ after ‘this Act’; and

“(ii) in paragraph (2)(B), by inserting ‘from the fund (other than the Account)’ before ‘under this Act’; and

“(B) in the first sentence of subsection (b), by striking ‘said fund’ and inserting ‘the fund (other than the Account)’.

“(3) Section 6 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669e) is amended—

“(A) in subsection (a)—

“(i) in the matter preceding paragraph (1), by inserting ‘other than sections 4(d) and 12’ after ‘this Act’; and

“(ii) in the last sentence of paragraph (1), by striking ‘This Act from funds apportioned under this Act’ and inserting ‘This Act (other than sections 4(d) and 12) from funds apportioned from the fund (other than the Account) under this Act’;

“(B) in paragraph (2)—

“(i) in the first sentence, by inserting ‘other than sections 4(d) and 12’ after ‘this Act’; and

“(ii) in the last paragraph, by inserting ‘from the fund (other than the Account) before ‘under this Act’ each place it appears; and

“(B) in subsection (b), by inserting ‘other than sections 4(d) and 12’ after ‘this Act’ each place it appears.

“(4) Section 8A of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669g–1) is amended in the first sentence by inserting ‘the fund (other than the Account)’ before ‘under this Act’.

“(5) Section 9 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669h) is amended in subsections (a) and (b)(1) by striking ‘section 4(a)(2)’ each place it appears and inserting ‘subsections (a)(1) and (d)(1) of section 4’.

“(6) Chapter 10 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669h–1) is amended—

“(A) in subsection (a)(1)—

“(i) by inserting ‘other than the Account’ after ‘the fund’; and

“(ii) in subparagraph (B), by inserting ‘but excluding any use authorized solely by section 12’ after ‘target ranges’; and

“(B) in subsection (c)(2), by inserting before the period at the end the following: ‘other than sections 4(d) and 12’.

“(7) Section 11(a)(1) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669a–2(a)(1)) is amended by inserting ‘the Account’ after ‘the fund’.

“SEC. 104. APPORTIONMENT OF AMOUNTS IN THE WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

“(a) IN GENERAL.—Section 4 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669c) is amended by striking the second subsection (c) and subsection (d) and inserting the following:

“(B) APPORTIONMENT OF AMOUNTS IN THE WILDLIFE CONSERVATION AND RESTORATION ACCOUNT.—

“(1) by striking subsections (c) and (d).
“(i) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—For each fiscal year, the Secretary may deduct, for payment of administrative expenses incurred by the Secretary in carrying out activities authorized by section 4(a), an amount not more than 3 percent of the total amount of the Account available for apportionment for the fiscal year.

(2) APPORTIONMENT TO DISTRICT OF COLUMBIA, TERRITORIES, AND INDIAN TRIBES.—

“(A) IN GENERAL.—For each fiscal year, after making the deduction under paragraph (1), the Secretary shall apportion from the amount in the Account remaining available for apportionment—

“(i) to each of the District of Columbia and the Commonwealth of Puerto Rico, a sum equal to not more than ½ of 1 percent of that remaining amount;

“(ii) to the States of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, a sum equal to not more than ⅔ of 1 percent of that remaining amount; and

“(iii) to Indian tribes, a sum equal to not more than ⅓ of 1 percent of that remaining amount.

“(B) MINIMUM APPOINTMENT FOR EACH INDIAN TRIBE.—For each fiscal year, the amounts apportioned under subparagraph (A)(iii) shall be adjusted proportionately so that no Indian tribe is apportioned a sum that is more than 5 percent of the amount available for apportionment under subparagraph (A)(ii) for the fiscal year.

(3) APPORTIONMENT TO STATES.—

“(A) IN GENERAL.—Subject to subparagraph (B), for each fiscal year, after making the deduction under paragraph (1) and the apportionment under paragraph (2), the Secretary shall apportion the amount in the Account remaining available for apportionment among States in the following manner:

“(i) ⅔ based on the ratio that the area of each State bears to the total area of all States;

“(ii) ⅔ based on the ratio that the population of each State bears to the total population of all States.

“(B) MINIMUM AND MAXIMUM APPOINTMENTS.—For each fiscal year, the amounts apportioned under paragraph (3) shall be adjusted proportionately so that no State is apportioned a sum that—

“(i) less than 1 percent of the amount available for apportionment under this paragraph for the fiscal year; or

“(ii) more than 5 percent of that amount.

“(4) USE.—

“(A) IN GENERAL.—Apportionments under paragraphs (2) and (3)—

“(i) shall supplement, but not supplant, funds available to States, the District of Columbia, territories, and Indian tribes from other sources;

“(ii) from the fund; or

“(iii) from the Sport Fish Restoration Account established by section 504(a) of the Internal Revenue Code of 1986; and

“(ii) shall be used to address the unmet needs for wildlife (including species that are not hunted or fished, and species to which priority is given to species that are in decline), and the habitats on which the wildlife depend, for projects authorized to be carried out as part of wildlife conservation and restoration programs in accordance with section 12.

“(B) PROHIBITION ON DIVERSION.—A State, the District of Columbia, a territory, or an Indian tribe associated with a project to receive an apportionment under paragraph (2) or (3) if the Secretary determines that the State, the District of Columbia, the territory, or the Indian tribe respectively, divert funds from any source of revenue (including interest, dividends, and other income earned on the revenue) available to the State, District of Columbia, territory, or Indian tribe after January 1, 2000, for conservation of wildlife for any purpose other than the administration of the State fish and game department in carrying out wildlife conservation activities.

“(C) PERIOD OF AVAILABILITY OF APPOINTMENTS.—Notwithstanding section 3(a)(i), for each fiscal year, the apportionment to any Indian tribe, the District of Columbia, a territory, or an Indian tribe from the Account under this subsection shall remain available for obligation until the end of the second following fiscal year.”.

SEC. 105. WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.

“(a) IN GENERAL.—The Pittman-Robertson Wildlife Restoration Act is amended—

“(1) by redesignating sections 12 and 13 (16 U.S.C. 669b, 669 note) as sections 13 and 15, respectively; and

“(2) by inserting after section 11 (16 U.S.C. 669c–2) the following:

“SEC. 12. WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.

“(a) DEFINITION OF STATE.—In this section, the term ‘State’ means a State, the District of Columbia, any territory, or an Indian tribe.

“(b) WILDLIFE CONSERVATION AND RESTORATION PROGRAMS.—

“(1) IN GENERAL.—A State, acting through the State fish and game department, may apply to the Secretary—

“(A) for approval of a wildlife conservation and restoration program; and

“(B) to receive funds from the apportionment to the State under section 4(d) to develop and implement the wildlife conservation and restoration program.

“(2) APPLICATION CONTENTS.—As part of an application under paragraph (1), a State shall provide documentation demonstrating that the wildlife conservation and restoration program of the State includes—

“(A) provisions vesting in the State fish and game department overall responsibility and accountability for the wildlife conservation and restoration program of the State;

“(B) provisions to identify which species in the State are in greatest need of conservation; and

“(C) provisions for the development, implementation, and maintenance, under the wildlife conservation and restoration program, of—

“(i) wildlife conservation and restoration projects of the State through—

“(I) use such information on the distribution and abundance of species of wildlife as is indicative of the diversity and health of the wildlife of the State, including such information on species with low populations and declining numbers; and

“(II) the extent and condition of wildlife habitats and community types essential to wildlife habitats and community types that are in decline; and

“(ii) wildlife conservation education projects; and

“(iii) wildlife conservation education projects.

“(3) PUBLIC PARTICIPATION.—A State shall provide an opportunity for public participation in the development, implementation, and revision of the wildlife conservation and restoration program of the State and projects carried out under the wildlife conservation and restoration program.

“(4) APPROVAL FOR FUNDING.—If the Secretary finds that the application submitted by a State meets the requirements of paragraph (2), the Secretary may grant to the State such amounts from the fund as the Secretary determines are necessary to support the wildlife conservation and restoration program of the State.

“(5) PAYMENT OF FEDERAL SHARE.—

“(A) IN GENERAL.—Subject to subparagraph (D), after the Secretary approves a wildlife conservation and restoration program of a State, the Secretary may use the apportionment to the State under section 4(d) to pay the Federal share of—

“(i) the cost of implementation of the wildlife conservation and restoration program; and

“(ii) the cost of development, implementation, and maintenance of each project that is part of the wildlife conservation and restoration program.

“(B) FEDERAL SHARE.—The Federal share shall not exceed 75 percent.

“(C) TIMING OF PAYMENTS.—Under such regulations as the Secretary may promulgate, the Secretary—

“(i) shall make payments to a State under subparagraph (A) during the course of a project; and

“(ii) may advance funds to pay the Federal share of the costs described in subparagraph (A).

“(D) MAXIMUM AMOUNT FOR CERTAIN ACTIVITIES.—

“(i) IN GENERAL.—Notwithstanding section 8(a), except as provided in clause (ii), for each fiscal year, not more than 10 percent of the apportionment to a State under section 4(d) for the wildlife conservation and restoration program of the State may be used for each of the following activities:

“(I) Law enforcement activities.

“(II) Wildlife-associated recreation projects.

“(B) Excess of amount available for law enforcement activities and wildlife-associated recreation projects—

“(i) To the extent that the amount available for the activities referred to in clause (i) does not exceed 2 percent of the amount available for activities referred to in clause (II), the amount available for activities referred to in clause (II) shall be used for the activities referred to in clause (I).

“(ii) If the amount available for the activities referred to in clause (I) exceeds 2 percent of the amount available for activities referred to in clause (II), the amount available for the activities referred to in clause (II) shall be reduced by the amount by which the amount available for the activities referred to in clause (I) exceeds 2 percent of the amount available for activities referred to in clause (II).

“(D) METHOD OF IMPLEMENTATION OF PROJECTS.—A State may implement a project through—

“(i) any Federal, State, or local agency (including an agency that gathers, evaluates, and disseminates information on wildlife and wildlife habitats); and

“(ii) an Indian tribe;

“(iii) a wildlife conservation organization, sportmen’s organization, land trust, or other nonprofit organization; or

“(iv) an outdoor recreation or conservation education entity; and

“(B) any other method determined appropriate by the Secretary.

“(E) WILDLIFE CONSERVATION STRATEGY.—

“(1) IN GENERAL.—Not later than 5 years after the date of the initial apportionment to a State under section 4(d), the Secretary shall use funds to receive from the apportionment to the State under section 4(d), the State shall, as part of the wildlife conservation and restoration program of the State, develop and implement a wildlife conservation strategy that is based on the best available and appropriate scientific information.

“(2) REQUIRED ELEMENTS.—A wildlife conservation strategy shall—

“(A) use such information on the distribution and abundance of species of wildlife as is indicative of the diversity and health of the wildlife of the State, including such information on species with low populations and declining numbers; and

“(B) identify the extent and condition of wildlife habitats and community types essential to the conservation of the species of wildlife of the State identified using information described in subparagraph (A);

“(C)(i) identify the problems that may adversely affect—

“(I) the species identified using information described in subparagraph (A); and

“(II) the habitats of the species identified under subparagraph (B); and

“(ii) provide for high priority research and surveys to identify factors that may assist in the reduction and more effective conservation of—

“(I) the species identified using information described in subparagraph (A); and
"(A) the endangered species of the United States;
(B) the threatened species of the United States;
(C) the species of the United States that may become endangered species or threatened species if conservation actions are not taken to conserve and protect the species; and
(D) the habitats on which the species depend.

SEC. 202. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.

(a) IN GENERAL.—Section 13 of the Endangered Species Act of 1973 (87 Stat. 902) is amended to read as follows:

"SEC. 13. ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.

"(a) DEFINITIONS.—In this section:
"(1) CONSERVATION ENTITY.—
"(A) IN GENERAL.—The term 'conservation entity' means a nonprofit entity that engages in activities to conserve or protect fish, wildlife, or plants, or habitats for fish, wildlife, or plants.
"(B) Inclusion.—The term 'conservation entity' includes—
"(i) a sportsman's organization;
"(ii) an environmental organization; and
"(iii) a land trust.

"(2) FARM OR RANCH.—The term 'farm or ranch' means an activity with respect to which $1,000 in income is derived from agricultural production within a census year.

"(3) PERSON.—The term 'person' includes a conservation entity.

"(4) SMALL LANDOWNER.—The term 'small landowner' means—
"(A) an individual who owns land in a State that is used as a farm or ranch; and
"(ii) has an acreage of not more than 160 acres.

"(5) SPECIES AT RISK.—The term 'species at risk' means a species that may become an endangered species or a threatened species if conservation actions are not taken to conserve and protect the species.

"(6) SPECIES RECOVERY AGREEMENT.—The term 'species recovery agreement' means an endangered and threatened species recovery agreement entered into under subsection (c).

"(b) ENDANGERED AND THREATENED SPECIES RECOVERY ASSISTANCE.—

"(1) FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance to any person for the development and implementation of an endangered and threatened species recovery agreement entered into by the Secretary and the person under subsection (c).

"(2) PRIORITY.—In providing financial assistance under this subsection, the Secretary shall give priority to the development and implementation of species recovery agreements that—
"(A) implement activities identified under recovery plans approved by the Secretary under section 4(f);
"(B) have the greatest potential for contributing to the recovery of endangered species, threatened species, or species at risk;
"(C) benefit multiple endangered species, threatened species, or species at risk;
"(D) carry out activities specified in State or local conservation plans; or
"(E) are proposed by small landowners.

"(3) PROHIBITION ON ASSISTANCE FOR RE CREATION ACTIVITIES.—The Secretary shall not provide financial assistance under this subsection for any activity that is required—
"(A) by a permit issued under section 16(a)(1) of the Endangered Species Act; or
"(B) by an incidental taking statement provided under section 7(b)(4). or
“(C) under another provision of this Act, any other Federal law, or any State law.

“(4) PAYMENTS UNDER OTHER PROGRAMS.—

“(A) OTHER PAYMENTS NOT AFFECTED.—Financial assistance provided to a person under this subsection shall be in addition to, and shall not affect, the total amount of payments that the person receives under—

“(i) the conservation reserve program established under chapter 3 of title 12 of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.); or


“(B) LIMITATION.—A person shall not receive financial assistance under a species recovery agreement for any activity for which the person receives a payment under a program referred to in subparagraph (A) unless the species recovery agreement imposes on the person a financial or management obligation in addition to the obligation under that program.

“(c) ENDANGERED AND THREATENED SPECIES RECOVERY AGREEMENTS.—

“(1) IN GENERAL.—In accordance with this subsection, the Secretary may enter into an agreement that—

“(A) requires the person to carry out on real property owned or leased by the person, or on Federal or State public land, subject to subparagraphs (A) and (B) of paragraph (2) of subsection (a), activities that consist of—

“(i) actions that would not inhibit the recovery of an endangered species, threatened species, or species at risk, such as—

“(I) actions that would—

“(aa) provide financial assistance for conservation efforts on Federal or State public land.

“(bb) require the person to notify the Secretary of the decision of the Secretary on the application; and

“(cc) will contribute to the recovery of each species at risk that is the subject of the proposed species recovery agreement;

“(B) requires the Secretary to periodically monitor the implementation of the species recovery agreement;

“(C) requires the Secretary to periodically monitor the implementation of the species recovery agreement and to require the person to notify the Secretary of the decision of the Secretary on the application; and

“(D) requires the Secretary to periodically monitor the implementation of the species recovery agreement, and activities for attaining the goals of the agreement.

“(2) REQUIRED TERMS.—The Secretary shall include in each species recovery agreement with a person provisions that—

“(A) require the person—

“(i) to carry out on real property owned or leased by the person, or on Federal or State public land, activities (such as activities that consists of applicable State water law (including regulations), directly reduce the availability of water for such a species;

“(B) describe the real property referred to in clauses (i) and (ii) of subparagraph (A);

“(C) specify species recovery goals for the species recovery agreement, and activities for attaining the goals; and

“(D) require the person to make demonstrable progress in accomplishing the species recovery goals; and

“(ii) specify a schedule for implementation of the species recovery agreement; and

“(iii) specify a schedule for implementation of the species recovery agreement; and

“(E) specifies actions to be taken by the Secretary or the person to monitor the effectiveness of the species recovery agreement in attaining the species recovery goals.

“(F) require the person to notify the Secretary if any right or obligation of the person under the species recovery agreement is assigned to any other person.

“(G) require the person to notify the Secretary if any term of the species recovery agreement is breached.

“(H) specify the date on which the species recovery agreement took effect and the period of time during which the species recovery agreement shall remain in effect;

“(I) schedule the disbursement of financial assistance provided under subsection (b) for implementation of the species recovery agreement, on an annual or other basis during the period in which the species recovery agreement is in effect, based on the schedule for implementation required under clause (ii); and

“(J) provide that the Secretary shall, subject to paragraph (4)(C), terminate the species recovery agreement if the person fails to carry out the species recovery agreement.

“(3) REVIEW AND APPROVAL OF PROPOSED SPECIES RECOVERY AGREEMENTS.—On submission by any person of a proposed species recovery agreement under this subsection, the Secretary shall—

“(A) review the proposed species recovery agreement and determine whether the species recovery agreement—

“(i) complies with this subsection; and

“(ii) will contribute to the recovery of each endangered species, threatened species, or species at risk that is the subject of the proposed species recovery agreement;

“(B) propose to the person any additional provisions that are necessary for the species recovery agreement to comply with this subsection; and

“(C) if the Secretary determines that the species recovery agreement complies with this subsection, enter into the species recovery agreement with the person.

“(4) MONITORING OF IMPLEMENTATION OF SPECIES RECOVERY AGREEMENTS.—The Secretary shall—

“(A) periodically monitor the implementation of each species recovery agreement;

“(B) based on the information obtained from the monitoring, annually or otherwise disburse financial assistance for activities that contribute to the recovery of an endangered species, threatened species, or species at risk that is the subject of the proposed species recovery agreement;

“(C) require the person to make demonstrate modifications to the species recovery agreement that are necessary to accomplish the species recovery goals; or

“(D) terminate the species recovery agreement.

“(5) LIMITATION WITH RESPECT TO FEDERAL OR STATE LAND.—The Secretary may enter into a species recovery agreement with a person with respect to Federal or State land only if the United States or the State, respectively, is a party to the species recovery agreement.

“(6) ALLOCATION OF FUNDS.—Of the amounts made available to carry out this section for a fiscal year—

“(1) ½ shall be made available to provide financial assistance for development and implementation of species recovery agreements on public land, subject to subparagraphs (A) through (D) of subsection (b)(2); and

“(2) 1/3 shall be made available to provide financial assistance for development and implementation of species recovery agreements on non-Federal land or water of regional or national significance.

“(b) ALLOCATION OF FUNDS.—Of the amounts made available under this section, enter into the species recovery agreement with the person.

“(4) MONITORING OF IMPLEMENTATION OF SPECIES RECOVERY AGREEMENTS.—The Secretary shall—

“(A) periodically monitor the implementation of each species recovery agreement;

“(B) based on the information obtained from the monitoring, annually or otherwise disburse financial assistance for activities that contribute to the recovery of an endangered species, threatened species, or species at risk that is the subject of the proposed species recovery agreement;

“(C) if the Secretary determines that the person is not making demonstrable progress in accomplishing the species recovery goals specified in paragraph (2)(C)—

“(i) propose to the person any additional provisions that are necessary for the species recovery agreement to comply with the terms of this section; and

“(ii) require the person to notify the Secretary of the decision of the Secretary on the application; and

“(D) requires the Secretary to periodically monitor the implementation of the species recovery agreement and to terminate the species recovery agreement if the person fails to carry out the species recovery agreement.

“(E) that the State considers to be a State priority.

“(C) GRANTS TO STATES.—

“(1) NOTICE OF DEADLINE FOR APPLICATIONS.—

“(A) in the case of a project to acquire an interest in non-Federal land or water of regional or national significance.

“(B) that seek to protect ecosystems;

“(B) that are developed in collaboration with other States;

“(C) with respect to which there has been public participation in the development of the project proposal;

“(D) that are supported by communities and individuals that are located in the immediate vicinity of the proposed project or that would be directly affected by the proposed project; or

“(E) that the Secretary determines to be a State priority.

“(2) REQUIRED CONTENTS OF APPLICATIONS.—Each application shall include—

“(i) a detailed description of each proposed project;

“(ii) a detailed analysis of project costs, including costs associated with—

“(B) federal administration;

“(C) property acquisition; and

“(IV) property management;

“(D) a statement describing how the project is of regional or national significance; and

“(E) a plan for stewardship of any land or water, or interest in land or water, to be acquired under the project.

“(3) SELECTION OF GRANT RECIPIENTS.—Not later than 90 days after the date of receipt of an application, the Secretary shall—

“(A) review the application; and

“(B) reject any application for non-Federal land or water on which, in the Secretary’s judgment, the conservation easement would not be reasonable.

“(4) COST SHARING.—The Federal share of the costs of a project under the program shall be—

“(A) in the case of a project to acquire an interest in non-Federal land or water, a permanent conservation easement, not more than 50 percent of the costs of the project;
(b) Grants to State of New Hampshire.—Notwithstanding subsection (b) and paragraphs (3) and (5), the Secretary shall make grants under the program to the State of New Hampshire to pay the Federal share determined under paragraph (4) of the costs of acquiring conservation easements with respect to land or water located in northern New Hampshire and sold by International Paper to the Trust for Public Land.

(d) Report.—Not later than 60 days after the end of each fiscal year, the Secretary shall submit to the Committee on Environment and Public Works of the Senate a report describing the grants made under this section, including an analysis of how projects were selected.

(e) Authorization of Appropriations.—There are authorized to be appropriated—

(1) to carry out this section (other than subsection (b)) $50,000,000 for each of fiscal years 2002 through 2006; and

(2) to carry out subsection (c) $9,000,000 for the period of fiscal years 2002 and 2003.

(b) Conforming Amendment.—Section 7105(g)(2) of the Partnerships for Wildlife Act (16 U.S.C. 3741(g)(2)) is amended by striking “this section” and inserting “this chapter” and inserting “this section”.

Congressional Record - Senate

SEC. 401. CONSERVATION AND RESTORATION OF SHRUBLAND AND GRASSLAND.

The Congress hereby declares that the purposes of this chapter are to—

(1) conserve and restore shrubland and grassland.

(2) conserve species, or species at risk, as determined by the Secretary, or conservation entity under that program.

(3) conserve species, or species at risk, as determined by the Secretary, or conservation entity under that program.

(4) permit holder.---The term ‘permit holder’ means an individual who holds a grazing permit for covered land that is subject to a conservation agreement.

(5) PROGRAM.---The term ‘program’ means the conservation assistance program established under subsection (b).

(6) SPECIES AT RISK.---The term ‘species at risk’ means a species that may become an endangered species or a threatened species if conservation actions are not taken to conserve and protect the species.

(7) THREATENED SPECIES.---The term ‘threatened species’ has the meaning given the term in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532).

(b) Establishment of Program.—As soon as practicable after the date of enactment of this chapter, the Secretary shall establish a conservation assistance program to encourage the conservation and restoration of covered land.

(c) Conservation Agreements.—

(1) In general.—Subject to paragraph (2), the Secretary shall enter into a conservation agreement with a landowner, permit holder, or conservation entity with respect to covered land under which—

(A) the Secretary shall award a grant to the landowner, permit holder, or conservation entity; and

(B) the landowner, permit holder, or conservation entity shall carry out conservation activities on the covered land subject to the conservation agreement.

(2) PERMITTED ACTIVITIES.—

(A) IN GENERAL.—Subject to subparagraph (B), a conservation agreement may permit on the covered land subject to the conservation agreement—

(i) operation of a managed grazing system;

(ii) haying or mowing (except during the nesting season for birds);

(iii) fire rehabilitation; and

(iv) the construction of fire breaks and fences.

(B) LIMITATION.—An activity described in subparagraph (A) may be permitted only if the activity contributes to maintaining the viability of natural grass and shrub plant communities on the covered land subject to the conservation agreement.

(d) Payments Under Other Programs.—

(1) OTHER PAYMENTS NOT AFFECTED.—A grant awarded to a landowner, permit holder, or conservation entity under this section shall be in addition to, and shall not affect, the total amount of payments that the landowner, permit holder, or conservation entity is eligible to receive under—

(A) the conservation reserve program established under subsection B of chapter 2 of subchapter D of title XII of the Food Security Act of 1985 (16 U.S.C. 3381 et seq.);

(B) the wetlands reserve program established under subchapter C of that chapter (16 U.S.C. 3387 et seq.);

(C) the environmental quality incentives program established under section 387 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3386a);

(D) the Wildlife Habitat Incentive Program established under section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1531).

(e) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $50,000,000 for each of fiscal years 2002 through 2006.

Mr. REID. Mr. President, Senator SMITH has an amendment at the desk. I ask for its consideration; that the amendment be agreed to, the motion to reconsider be laid upon the table, the committee substitute amendment be agreed to, the bill, as amended, be read three times and passed, and the motion to reconsider be laid upon the table, with no further intervening action or debate, and any statements be printed in the Record.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 2894) was agreed to, as follows:

On page 49, strike lines 7 through 14 and insert the following:

(1) Section 3 of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669b) is amended—

(A) in the first sentence of subsection (a)(1)—

(i) by inserting ‘‘other than the Account’’ after ‘‘wildlife restoration fund’’; and

(ii) by inserting before the period at the end of section—

‘‘(other than sections 4(d) and 12); and

(B) in subsection (b), by inserting ‘‘other than the Account’’ after ‘‘the fund’’ each place it appears.

On page 74, line 11, insert ‘‘other than an incidental taking statement with respect to a species recovery agreement entered into by the Secretary under subsection (c)’’ before the semicolon.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 990), as amended, was read the third time and passed.

Designation of George P. Shultz National Foreign Affairs Training Center

Mr. REID. Mr. President, I ask consent that the Foreign Relations Committee be discharged from further consideration of H.R. 3348 and the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the title of the bill.

The legislative clerk read as follows:

A bill (H.R. 3348) to designate the National Foreign Affairs Training Center as the George P. Shultz National Foreign Affairs Training Center.

There being no objection, the Senate proceeded to the immediate consideration of the bill.

Mr. REID. I ask consent the bill be read three times, passed, the motion to reconsider be laid upon the table, and ...
any statements be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 3348) was read the third time and passed.

SECURITY ASSISTANCE ACT OF 2001

Mr. REID. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 276, S. 1803.

The PRESIDENT pro tempore. The bill clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1803) to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2002 and 2003, and for other purposes.

There being no objection, the Senate proceeded to the immediate consideration of the bill.

AMENDMENT NO. 2695

(Purpose: To make managers' amendments to the text of the bill)

Mr. REID. I understand Senators BIDEN and HELMS have an amendment at the desk, and I ask unanimous consent be it considered.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I am very pleased to urge Senate adoption of S. 1803, the Security Assistance Act of 2001. This is legislation that the Foreign Relations Committee reports out each year, either free-standing or as a title in our State Department authorization bill.

But the substance of the Security Assistance Act is anything but routine. It includes: foreign military assistance, including Foreign Military Financing, FMF, and International Military Education and Training, IMET; international arms transfers; and many of our arms control, nonproliferation and anti-terrorism programs.

The Security Assistance Act of 2001 covers those programs and includes not only routine adjustments, but also some significant initiatives. For example, a 5-year National Security Assistance Strategy is mandated, so as to provide country-by-country foreign policy guidance to a function that may tend otherwise to operate on the basis more of military or bureaucratic concerns.

Several provisions are designed to streamline the arms export control system, so as to make it more efficient and responsive to competitive requirements in the global economy, without sacrificing controls that serve foreign policy or nonproliferation purposes. This is a vital enterprise. U.S. industry depends upon the efficient processing of arms export applications, and U.S. firms lose contracts when the U.S. Government cannot make up its mind expeditiously.

At the same time, however, an ill-advised export license could lead to sensitive equipment getting into the hands of enemies or of unstable regimes. So there is a tension between the need for efficiency and the need not to make the mistake that ends up putting U.S. lives at risk. This bill addresses that tension by providing funds for improved staff, enhanced information and communications to enable the State Department to make quicker and smarter export licensing decisions.

The Security Assistance Act of 2001 includes important new provisions to reduce proliferation and antimissile terrorism measures. For example, the ban on arms sales to state supporters of terrorism, in section 40(d) of the Arms Export Control Act, is broadened to include states engaging in the proliferation of chemical, biological or radiological weapons.

Subtitle III-C of this bill establishes an interagency committee to coordinate nonproliferation programs directed at the independent states of the former Soviet Union. This provision is based on an effort led by Senator Hagel and me with the co-sponsorship of Senators Domenici and Lugar. It will ensure continuing, high-level coordination of our many nonproliferation programs, so that we can be more confident that a single mesh holds the different parties together with each other. The need for better coordination was cited in the report, earlier this year, of the Russia Task Force chaired by former Senator Howard Baker and former White House counsel Lloyd Cutler.

Section 306 of this bill encourages the Secretary of State to seek an increase in the regular budget of the International Atomic Energy Agency, beyond that required to keep pace with inflation, and funds are authorized for the U.S. share of such an enlarged budget. This organization is vital to our nuclear nonproliferation efforts, and its workload is increasing. The lack of a sufficient assessed budget has impaired its ability to retain top-flight scientists, however, so the Committee believes that an increase in that budget is essential.

Subtitle III-B of this bill authorizes the President to offer Soviet-era debt reduction to the Russian Federation as part of an arrangement whereby a significant proportion of the savings to Russia would be invested in agreed nonproliferation programs or projects. Debt reduction is a potentially important means of funding the costs of securing Russia's stockpiles of sensitive nuclear material, chemical weapons and dangerous pathogens, of destroying its chemical weapons and dismantling strategic weapons, and of helping its former weapons experts to find civilian careers and resist offers from rogue states or terrorists. The Administration is reportedly considering this funding option, and this bill gives the President authority to pursue it.

A few changes were made in a managers' amendment to this bill, which I would like to summarize for the record.

The managers' amendment adds, at the request of Senator Feinstein of California, a new section 206 on congressional notification of small arms and light weapons export license approvals. This section makes license approvals for commercial sales of such weapons, with a value over $1,000,000, subject to the provisions of section 36(c) of the Arms Export Control Act. It also requires annual reports on end-use monitoring of such arms transfers, the yearly value of such transfers, the activities of registered arms brokers, and efforts of the Bureau of Alcohol, Tobacco and Firearms to stop U.S. weapons from being used in terrorist acts and international crime.

I want to commend Senator Feinstein for raising this issue, which is central to our efforts to stem wars and civil bloodshed in Africa and other regions. The United States leads the way on this issue, but we must do more. Senator Feinstein's proposals for U.S. policy and international negotiations in this field are contained in S. 1555, which has been referred to the Committee on Foreign Relations. I will work with her and with my House and Senate colleagues in the coming weeks and months to see whether we can take further steps to arms transfers, and light weapons exports. Personally, I think we can do so.

The managers' amendment deletes subsection 221(c), and I am sorry that we did that to do that. The subsection would have returned to Israel certain funds that Israel was forced to give back to the United States due to a general rescission last year. This provision was first proposed by Republican staff to the Foreign Relations Committee, when the Republicans were in the majority, but it was one that I heartily supported. The $4,000,000 at stake may be a small amount of money, but each dollar we provide to Israel is given because it serves our national security interests.

Unfortunately, the chairman of the Appropriations Subcommittee on Foreign Operations and the chairman of the full Appropriations Committee objected strongly to this provision, not least because it was scored by the Congressional Budget Office as an appropriation. I intend to press this issue in the coming year, and I hope that my good friends from Vermont and West Virginia will work with me to provide these funds. If we are ever to have a lasting peace in the Middle East, we must do all we can to give Israel confidence that the United States will continue to help assure that country's continued sovereignty and well-being.

Section 222, on funds for humanitarian demining programs, is amended in two respects. First, we have deleted any number for the Fiscal Year 2003 authorization for these programs. I welcome this change, because it comes with suggestions that the Foreign Operations Subcommittee favorably on an increase in that figure. I will work with that subcommittee on this matter, and I would hope that in
conference we could insert a higher figure for Fiscal Year 2003 than the $40,000,000 that has been spent on humanitarian demining each of the last several years. The second change is to delete subsections (b) and (c) of section 311. The Foreign Operations Committee, in its desire to increase funds for humanitarian demining, had suggested that the Secretary of State be authorized to provide up to $40,000,000 from development assistance funds in addition to the $40,000,000 authorized in the State Department's Nonproliferation, Anti-terrorism, Demining and Related Programs account. The Foreign Operations Committee informs us that this is not tenable, and I accept their point that this would have been robbing Peter to pay Paul. I think we have made our point, however, that more funds are needed for this program, which has an important political impact in addition to providing humanitarian benefits.

Another provision that is deleted in the managers' amendment is section 302, (on an interagency program to prevent diversion of sensitive U.S. technology). This provision authorized the Secretary of State to institute new joint programs with the Department of Commerce and the Commissioner of Customs to improve our export control, as well as a program to use retired inspectors and investigators from the U.S. Customs Service and the Bureau of Export Enforcement in our diplomatic missions overseas. Another committee questioned our jurisdiction in this matter, and we did not have time to work out this matter today, so we are dropping the provision. The need remains, however, to make more use of the many talents of current and former Commerce and Customs personnel. Especially in our overseas missions, those people can make contracts with law enforcement and border control agencies in foreign countries that traditional diplomats have a hard time achieving. So I hope that we can work something out on this issue in the weeks and months to come.

Another provision in the managers' amendment inserts into section 409, on improvements to the Automated Export System new subsections to extend the range of exporters that must file their Shippers' Export Declarations electronically to increase the penalties for failure to file and for filing false information. An earlier version of these subsections was deleted by the Committee at the request of Senator Enzi of Wyoming, who spotted some faulty language. The version added to the managers' amendment was worked out with Senator Enzi and with the Department of Commerce, and I am pleased to thank my friend from Wyoming, who is a new member of the Foreign Relations Committee, but an expert on export control, for his sage counsel on this provision.

Section 602 of this bill, on non-proliferation interests and free trade agreements, is deleted by the managers' amendment. There were questions from other committees as to whether this was within our jurisdiction. I hope we can resolve those concerns, because the facts remain that other proliferation and export control laws and actions are relevant to the question of whether we should engage in free trade with those countries.

The managers' amendment inserts into section 701 authorizing certain ship transfers, a subsection authorizing the transfer of four KIDD-class guided-missile destroyers to Taiwan. This provision was accidentally omitted from the bill at the Committee's business meeting. In fact, thoseship transfers, and the others in this bill, have already been enacted in the defense authorization act. The Foreign Relations Committee is the committee of jurisdiction on this matter, so we do that in this bill.

One issue that is not addressed in this bill, but that is of considerable interest to Senator MILKULSKI and others, is the need for a Center for Antiterrorism and Security Training in the Department of State. We tried to get funding for this in Fiscal Year 2001, but the executive branch went to the wrong subcommittee of the Appropriations Committee and this center fell between the cracks. Now, as our Antiterrorism Assistance Program increases its course offerings for security personnel from friendly countries, the need for a training center is greater than ever. The Security Assistance Act must be the best vehicle in which to address this issue, but I want to assure my good friend from Maryland that we work on this and that we will assure the State Department of our support for a new center.

Even within the managers' amendments this is a good bill that will contribute to our national security. I am happy to urge support of it and I am very pleased that my colleagues appear ready to approve it.

Mr. REID. I ask consent the amendment be agreed to, the bill be read the third time and passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 2695) was agreed to.

(‘‘The amendment is printed in today’s RECORD under ‘‘Amendments Submitted and Proposed.’’"

The bill (S. 1803), as amended, was read the third time and passed.

(‘‘The bill will appear in a future edition of the RECORD.’’)

TO PROVIDE GRANTS TO DRINKING WATER AND WASTEWATER FACILITIES

Mr. REID. I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 273, S. 1608.
under this section shall ensure, to the maximum extent practicable in accordance with the income and population distribution of the State, that a sufficient percentage of the funds allocated under subsection (b) are available for disadvantaged, small, and rural eligible entities in the State.

(d) ELIGIBLE PROJECTS AND ACTIVITIES—
(1) A grant awarded by a State under subsection (c) shall be used by an eligible entity to carry out 1 or more eligible projects or activities.

(2) COORDINATION WITH EXISTING TRAINING PROGRAMS.—In awarding a grant for an eligible project or activity described in subsection (a)(3) of this section, the State shall ensure that the program or project is a part of a comprehensive, coordinated, or training programs of the State or local government.

Nature of a substitute was agreed to.

out objection, it is so ordered.

The legislative clerk read as follows: A bill (S. 1099) to increase the criminal penalty for assaulting or threatening Federal judges, law enforcement officers, and United States officials and their families. Federal law enforcement officers, under our bill, include United States Capitol Police Officers, United States officials, under our bill, include the President, Vice President, Members of Congress.

Specifically, our legislation would increase the maximum prison term for a Federal judge, law enforcement officer or United States official from 3 years imprisonment to 8 years; increase the maximum prison term for use of a deadly weapon or infliction of bodily injury against a Federal judge, law enforcement officer or United States official from 10 years imprisonment to 20 years; and increase the maximum prison term for threatening murder or kidnapping of a member of the immediate family of a Federal judge or law enforcement officer from 5 years imprisonment to 10 years.

Our bipartisan bill has the support of the Department of Justice, the United States Judicial Conference, the United States Sentencing Commission and the United States Marshal Service.

It is most troubling that the greatest democracy in the world needs this legislation to protect the hard working men and women who serve in our Federal government. Just a few months ago, I was saddened to read about threats against my colleague from Vermont after his act of conscience in declaring himself an Independent.

SEC. 2. ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES.

Section 111 of title 18, United States Code, is amended—

(1) in subsection (a), by striking “three” and inserting “five”; and

(2) in subsection (b), by striking “ten” and inserting “20”.
IMMIGRATION AND NATIONALITY ACT AMENDMENTS

Mr. REID. Mr. President, I ask unanimous consent that we move now to Calendar No. 292, H.R. 2278. The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2278) to provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent the bill be read the third time and passed.

The bill (H.R. 2278) was read the third time and passed.

WORK AUTHORIZATION FOR NON-IMMIGRANT SPOUSES OF TREATY TRADERS AND TREATY INVESTORS

Mr. REID. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 291, H.R. 2269.

The PRESIDENT pro tempore. Without objection, the several requests are granted.

The bill (H.R. 2269) was read the third time and passed.

SMALL BUSINESS LIABILITY RELIEF AND BROWNFIELDS REVITALIZATION ACT

Mr. REID. I ask unanimous consent the Senate proceed to H.R. 2869, just received from the House, now at the desk.

The PRESIDENT pro tempore. Without objection, the several requests are granted.

The bill (H.R. 2869) was read the third time and passed.

There being no objection, the Senate proceeded to consider the bill.

Mr. NICKLES. Mr. President, for the information of colleagues regarding H.R. 2869, I ask unanimous consent the following letter be printed in the RECORD:

There being no objection, the letter was ordered to be printed in the RECORD, as follows:


MEMORANDUM

Subject: Davis-Bacon Applicability Under Brownfields Legislation

From: Robert E. Fabricant, General Counsel.
To: Marianne Horinko, Assistant Administrator, Office of Solid Waste and Emergency Response.

As you know, the House of Representatives has passed a bill, H.R. 2869, which we are informed would amend CERCLA to add a new section 104(k), “Brownfields Revitalization Funding.” We have been asked whether CERCLA, if amended as proposed in H.R. 2869, would require the Davis-Bacon Act to apply to contracts under loans made from a Brownfields Revolving Loan Fund (BRLF) entirely with non-federal funds. We have concluded that H.R. 2869 does not change the legal applicability of the Davis-Bacon Act to the Brownfields program. We have also concluded that this bill will not require or prohibit the application of the Davis-Bacon Act to contracts under BRLF loans made entirely with non-grant funds.

A bill (H.R. 2869) to provide for small business liability relief and brownfields revitalization, and for other purposes.

The proposed legislation would add section 104(k) to CERCLA. New sections 104(k)(3)(A) and (B) authorize the President to make grants “for capitalization of revolving loan funds” for the “remediation of brownfield sites.” Under section 104(k)(3)(B)(i)-(iii), each recipient of a capitalization grant must provide a non-federal matching share of at least 20 percent (unless the Administrator makes a hardship determination). Section 104(k)(12), “Funding,” authorizes the appropriation of $200 million for each fiscal years 2002 through 2006 to carry out section 104(k).

Under the Davis-Bacon Act, 40 U.S.C. 276a et seq., most public building or public works construction contracts entered into by the United States must stipulate that the wages paid to laborers and mechanics will be comparable to the prevailing wages for similar work in the locality where the contract is to be performed. The Davis-Bacon Act does not apply by its own terms to contracts under loans made by the United States that are not a party, including contracts awarded by recipients of federal grants in performance of a grant project.

The proposed legislation is silent regarding the applicability of the Davis-Bacon Act to BRLFs. However, an existing provision of CERCLA section 104(g), extends the reach of the Davis-Bacon Act beyond direct federal procurement. That section applies Davis-Bacon Act to contracts awarded by recipients of federal grants in performance of a grant project.

The proposed legislation is silent regarding the applicability of the Davis-Bacon Act to BRLFs. However, an existing provision of CERCLA section 104(g), extends the reach of the Davis-Bacon Act beyond direct federal procurement. That section applies Davis-Bacon Act to contracts awarded by recipients of federal grants in performance of a grant project.

Under the Davis-Bacon Act, 40 U.S.C. 276a et seq., most public building or public works construction contracts entered into by the United States must stipulate that the wages paid to laborers and mechanics will be comparable to the prevailing wages for similar work in the locality where the contract is to be performed. The Davis-Bacon Act does not apply by its own terms to contracts under loans made by the United States that are not a party, including contracts awarded by recipients of federal grants in performance of a grant project.

The proposed legislation is silent regarding the applicability of the Davis-Bacon Act to BRLFs. However, an existing provision of CERCLA section 104(g), extends the reach of the Davis-Bacon Act beyond direct federal procurement. That section applies Davis-Bacon Act to contracts awarded by recipients of federal grants in performance of a grant project.

Under the Davis-Bacon Act, 40 U.S.C. 276a et seq., most public building or public works construction contracts entered into by the United States must stipulate that the wages paid to laborers and mechanics will be comparable to the prevailing wages for similar work in the locality where the contract is to be performed. The Davis-Bacon Act does not apply by its own terms to contracts under loans made by the United States that are not a party, including contracts awarded by recipients of federal grants in performance of a grant project.

The proposed legislation is silent regarding the applicability of the Davis-Bacon Act to BRLFs. However, an existing provision of CERCLA section 104(g), extends the reach of the Davis-Bacon Act beyond direct federal procurement. That section applies Davis-Bacon Act to contracts awarded by recipients of federal grants in performance of a grant project.
If a statute does not address the precise question at issue, an agency may adopt an interpretation that is reasonable and consistent with the statute and legislative history. (ii) does not address the precise question at issue here, EPA may adopt a reasonable interpretation, which would be entitled to deference. Chevron, USA v. NRDC, 467 U.S. 837 (1984). If H.R. 2869 is enacted, one reasonable interpretation of CERCLA, as amended, would be that contracts under every loan made from a BRLF that matches grant funds and the associated 20 percent matching funds are subject to Davis-Bacon. Under this interpretation, Davis- Bacon labor standards would be met. This provision would also include all contracts awarded by a BRLF, which might not exist but for the EPA capitalization grant(s).

However, it would be at least equally reasonable to interpret CERCLA, as amended by H.R. 2869, to require that only contracts under BRLF loans made with the federal grant funds and the associated 20 percent matching funds are subject to Davis-Bacon. The phrase “funded in whole or in part under this section” could be construed to encompass every contract indirectly supported by federal grant funds. This arguably would include all contracts awarded by a BRLF, which might not exist but for the EPA capitalization grant(s).

Mr. JEFFORDS. Mr. President, today, we take a historic step toward bolstering economic development. The Small Business Liability Relief and Brownfields Revitalization Act, H.R. 2869, will protect our small businesses. This bill will revitalize once abandoned factory sites. This bill will give new life to our aging industrial sites. This bill will provide hope and prosperity to locations long ago forgotten.

Earlier this year, the U.S. Senate declared a mandate in the form of a 99–0 vote on Brownfields Revitalization and Environmental Restoration Act, S. 350. Unanimously, the Senate pledged its commitment to the redevelopment of potentially contaminated industrial sites. As Chairman of the Senate Environment and Public Works Committee, I have taken that mandate seriously. I am pleased that, today, the House followed suit.

The Brownfields Revitalization and Environmental Restoration Act authorizes $250 million a year over the next five years for assessment and cleanup grants, including petroleum sites, and State program enhancement. The bill would provide liability relief for three groups: contiguous property owners, prospective purchasers, and innocent landowners. Lastly, the bill outlines the parameters by which EPA may re-enter a site to protect human health and the environment.

We also have fulfilled another mandate today when the Small Business Liability Protection Act passed the House of Representatives 419–0; today, the Senate followed suit. This legislation is a victory for small businesses, on which the foundation of our nation is made. The Small Business Liability Protection Act provides Superfund liability relief for small businesses and others who disposed of, or arranged disposal of, small amounts of hazardous waste. The legislation also allows expedited settlements for a lesser amount if a business can show financial hardship.

There are many who share in this victory. It was truly a bipartisan and bicameral effort. In particular, I would like to recognize the efforts of Senator Smith, Senator HARKER, and Senator BOXER. I also thank all the Leadership offices, on both sides and in both Chambers, for their dedication to the passage of H.R. 2869.

I am very proud of this legislation. I am pleased to have played an integral role in these efforts to encourage development of our urban cores, reduce development demands in greenfields, and promote our economic base by supporting our small businesses. This new year is three years in the making. I am gratified that our communities will reap the rewards of further tools to redevelop brownfields and sustain small businesses in 2002 and beyond.

Mr. REID. Mr. President, I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD with no intervening action or question.

The PRESIDENT pro tempore. Without objection, it is so ordered. The several requests are granted.

The bill (H.R. 2869) was read the third time and passed.

FAMILY SPONSOR IMMIGRATION ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Calendar No. 289, H.R. 1892.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1892) to amend the Immigration and Nationality Act (8 U.S.C. 1182a(f)) is amended to read as follows:

(Matter to be added is printed in italic.)

H.R. 1892
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE. This Act may be cited as the "Family Sponsor Immigration Act of 2001."

SEC. 2. SUBSTITUTION OF ALTERNATIVE SPONSOR IF ORIGINAL SPONSOR HAS DIED. (a) PERMITTING SUBSTITUTION OF ALTERNATIVE CLOSE FAMILY SPONSOR IN CASE OF DEATH OF PETITIONER.—

(1) RECOGNITION OF ALTERNATIVE SPONSOR.—

Section 213A(f)(5) of the Immigration and Nationality Act (8 U.S.C. 1183a(f)(5)) is amended to read as follows:

"(5) NON-PETITIONING CASES.—Such term also includes an individual who does not meet the requirement of paragraph (1)(D) but who—" (A) accepts joint and several liability with a petitioning sponsor under paragraph (2) or (3) of an employment-based immigrant under paragraph (4) and who demonstrates (as provided under paragraph (6)) the ability to maintain an income equal to at least 125 percent of the Federal poverty line; or (B) is a spouse, parent, mother-in-law, father-in-law, sibling, son, daughter, daughter-in-law, sister-in-law, brother-in-law, grandparent, or grandchild of a sponsored alien or a legal guardian of a sponsored alien, meets the requirements of paragraph (1) (other than subparagraph (D)), and executes an affidavit of support with respect to such alien in a case in which—") (i) the individual petitioning under section 204 for the classification of such alien died after the approval of such petition; and (ii) the Attorney General determined for humanitarian reasons that revocation of such petition under section 205 would be inappropriate." (2) CONFORMING AMENDMENT PERMITTING SUBSTITUTION.—Section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1118a(a)(4)(C)(ii)) is amended by striking "(including any additional sponsor required under section 213A(f)" and inserting "(and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5) of such section)."

(3) ADDITIONAL CONFORMING AMENDMENTS.—

Section 213A(f) of such Act (8 U.S.C. 1183a(f)) is amended, in each of paragraphs (2) and (4), by striking "(ii)," by striking "(i)" and inserting "(5)(A)."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to deaths occurring before, on, or after the date of the enactment of this Act, except that, in the case of a death occurring before such date, such amendments shall apply only if—

(1) the sponsored alien—

(A) requests the Attorney General to reinstates the classification of such alien that was filed with respect to the alien by the deceased and approved under section 201 of the Immigration and Nationality Act (8 U.S.C. 1101) before such death; and (B) demonstrates that he or she is able to satisfy the requirement of section 212(a)(4)(C)(ii) of such Act (8 U.S.C. 1118a(a)(4)(C)(ii)) by reason of such amendments; and

(2) the Attorney General reinstates such petition after making the determination described in subsection (a)(1) of such Act (as amended by subsection (a)(1) of this Act).

Mr. REID. Mr. President, I ask unanimous consent that the committee
amendment be agreed to, the bill be read a third time and passed, the motion to reconsider be laid on the table with no intervening action or debate, and that any statements pertaining to this matter be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (H.R. 1892), as amended, was passed.

NURSE REINVESTMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 1864, introduced earlier today by Senators Mikulski, Hutchison, Kerry, and others.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk reads as follows:

A bill (S. 1864) to amend the Public Health Service Act establishing a nurse corps and recruitment and retention strategy to address the nurse shortage, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid on the table, and that any statements on this matter be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 1864) was passed.

(Generally Shelton Congressional Gold Medal Act

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2751.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk reads as follows:

A bill (H.R. 2751) to authorize the President to award a Gold Medal on behalf of the United States Attorneys for project safe neighborhoods.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid on the table, and that any statements pertaining to this matter be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 2751) was passed.

21ST CENTURY DEPARTMENT OF JUSTICE AUTHORIZATION ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 206. H.R. 2215.

The PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk reads as follows:

A bill (H.R. 2215) to authorize the appropriations for the Department of Justice for fiscal year 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the bill Appropriations for the Department of Justice for fiscal year 2002, and for other purposes, and which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1.—SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “21st Century Department of Justice Appropriations Authorization Act.”

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

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TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2002

SEC. 1. Short title; table of contents.

SEC. 2. Permanent authority.

SEC. 3. Permanent authority relating to enforcement of laws.

SEC. 4. Notifications and reports to be provided simultaneously to committees.

SEC. 5. Miscellaneous uses of funds; technical amendments.

SEC. 6. Technical and miscellaneous amendments to Department of Justice authorities; authority to transfer property of marginal value; recordkeeping; protection of the Attorney General.

SEC. 7. Oversight; waste, fraud, and abuse of appropriations.


SEC. 10. Strengthening law enforcement in United States territories, commonwealths, and possessions.


TITLE II—PERMANENT ENABLING ACT

SEC. 1. Permanent authority.

SEC. 2. Permanent authority relating to enforcement of laws.

SEC. 3. Notifications and reports to be provided simultaneously to committees.

SEC. 4. Miscellaneous uses of funds; technical amendments.

SEC. 5. Technical and miscellaneous amendments to Department of Justice authorities; authority to transfer property of marginal value; recordkeeping; protection of the Attorney General.

SEC. 6. Oversight; waste, fraud, and abuse of appropriations.


SEC. 8. Continuing congressional oversight.


SEC. 10. Additional authorities of the Attorney General.

TITLE III—MISCELLANEOUS

SEC. 1. Repealers.


SEC. 3. Required submission of proposed authorization of appropriations for the Department of Justice for fiscal years 2002 through 2006.

SEC. 4. Study of untested rape examination kits.


SEC. 7. Use of truth-in-sentencing and violent offender incarceration grants.

SEC. 8. Authority of the Department of Justice Inspector General.


SEC. 10. Use of residential substance abuse treatment grants to provide for services during and after incarceration.


TITLE IV—VIOLENCE AGAINST WOMEN

SEC. 1. Short title.

SEC. 2. Establishment of Violence Against Women Office.

SEC. 3. Jurisdiction.

SEC. 4. Director of Violence Against Women Office.

SEC. 5. Regulatory authority.

SEC. 6. Office staff.


TITLE V—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2002

SEC. 1. Specified sums authorized to be appropriated.

There are authorized to be appropriated for the fiscal year 2002, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, subdivision, unit, or other component thereof), the following sums:

(1) General Administration.—For General Administration: $93,433,000.

(2) Administrative Review and Appeals.—For Administrative Review and Appeals: $178,499,000 for administration of pardon and clemency petitions and for immigration-related activities.

(3) Office of Inspector General.—For the Office of Inspector General: $55,000,000, which shall include for each such fiscal year, not to exceed $10,000 to meet unforeseen emergencies of a confidential character.

(4) General Legal Activities.—For General Legal Activities: $666,822,000, which shall include for each such fiscal year, not to exceed $4,000,000 for the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals; and

(5) Antitrust Division.—For the Antitrust Division: $140,973,000.

(6) United States Attorneys.—For United States Attorneys: $1,346,289,000, which shall include not less than $10,000,000 for the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105-147), provided that such amounts in the appropriations account “General Legal Services” as may be expedited for such investigations or prosecutions shall not exceed 10% of such fiscal year’s appropriation for such investigations or prosecutions; and

(7) Federal Bureau of Investigation.—For the Federal Bureau of Investigation: $3,507,109,000, which shall include for each such fiscal year—

(A) not to exceed $1,250,000 for construction, to remain available until expended; and

(B) not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(8) United States Marshals Service.—For the United States Marshals Service: $626,439,000, which shall include for each such fiscal year not to exceed $6,621,000 for construction, to remain available until expended.

(9) Federal Prison System.—For the Federal Prison System, including the National Institute of Corrections: $4,662,710,000.

(10) Drug Enforcement Administration.—For the Support of United States Poisoners in Non-Federal Institutions, as authorized by section 4013(a) of title 18 of the United States Code: $724,682,000, to remain available until expended.

(11) Drug Enforcement Administration.—For the Drug Enforcement Administration: $1,346,289,000, which shall include not to exceed $70,000 to meet unforeseen emergencies of a confidential character.

(12) Immigration and Naturalization Service.—For the Immigration and Naturalization Service: $3,516,411,000, which shall include—

(A) not to exceed $2,737,341,000 for salaries and expenses of enforcement and border affairs; and

(B) $750,000 for the Border Patrol, for intelligence, investigations, and inspection programs, and the detention program;
SEC. 102. AUTHORIZATION FOR ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS FOR PROJECT SAFE NEIGHBORHOODS.

(a) IN GENERAL.—The Attorney General shall establish a program for each United States Attorney to provide for coordination with State and local law enforcement officials in the identification and prosecution of violations of Federal firearms laws including school gun violence and juvenile gun crime.

(b) AUTHORIZATION FOR HIRING 9 ADDITIONAL ASSISTANT UNITED STATES ATTORNEYS.—There are authorized to be appropriated for fiscal year 2004 $8,106,000 for the hiring of 9 additional Assistant United States Attorneys in each United States Attorney Office.

TITLE II—PERMANENT ENABLING PROVISIONS

SEC. 201. PERMANENT AUTHORIZATION TO USE AVAILABLE FUNDS.

(a) IN GENERAL.—Chapter 31 of title 28, United States Code, is amended by adding at the end the following:

1838), as incorporated by section 815(d) of Public Law 102–395 (106 Stat. 3818).

``(b) PERMITTED USES.—

(1) primary and secondary schooling for dependents of personnel stationed outside the continental United States; (2) education of dependents authorized by the Department of Defense for the same area, when it is determined by the Attorney General that schools available in the area are not usable to provide education for the education of such dependents; and (3) transportation of those dependents between their place of residence and schools serving the area in which they are located normally attend when the Attorney General, under such regulations as he may prescribe, determines that such schools are not accessible by public means of transportation.

``(L) Payment of rewards (i.e., payments pursuant to public advertisements for assistance to the Department of Justice), in accordance with procedures and regulations established or issued by the Attorney General: provided that—

(i) no such reward shall exceed $2,000,000 (unless a statute should authorize a higher amount); (ii) no such reward of $250,000 or more may be made or offered without the personal approval of either the Attorney General or the President; (iii) the Attorney General shall give written notice to the Chairmen and ranking minority members of the Committees on Government Operations and the Judiciary of the Senate and of the House of Representatives not later than 30 days after the approval of a reward under clause (ii); (iv) any executive order regarding the award (as defined, respectively, in sections 105 and 102 of title 5) may provide the Attorney General with funds for the payment of rewards; and (v) neither the failure of the Attorney General to authorize a payment nor the amount authorized shall be subject to judicial review.

``(S) SPECIFIC PERMITTED USES.—

(A) AIRCRAFT AND BOATS.—Funds available to the Attorney General for United States Attorneys for the Federal Bureau of Investigation, for the Drug Enforcement Administration, and for the Immigration and Naturalization Service may be used for the purchase, lease, maintenance, and operation of aircraft and boats, for law enforcement purposes.

(B) PURCHASE OF AMMUNITION AND FIREARMS.—Funds available to the Attorney General for United States Attorneys, for the Federal Bureau of Investigation, for the Drug Enforcement Administration, and for the Federal Prison System, for the Office of the Inspector General, and for the Immigration and Naturalization Service may be used for the purchase of ammunition and firearms; and

(C) LOCATION OF OFFICE.—The Assistant United States Attorneys serving on the staff of the United States Attorney for a district shall have offices in any particular place or places in such district as the United States Attorney may direct.

(D) CONSENT OF PERSONS.—No Gosling or other officer or employee of the United States shall be required to consent to the appointment or removal of any person as an Assistant United States Attorney unless such officer or employee shall have been advised in writing that consent is required.

(E) APPOINTMENTS.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(F) DISQUALIFICATION.—The Attorney General shall not be disqualified from being appointed as an Assistant United States Attorney unless he shall have been advised in writing that disqualification is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(G) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(H) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(I) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(J) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(K) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(L) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(M) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(N) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(O) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(P) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(Q) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(R) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(S) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(T) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(U) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(V) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(W) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(X) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(Y) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.

(Z) APPOINTMENT OF PERSON.—No Gosling or other officer or employee of the United States shall be appointed as an Assistant United States Attorney unless he shall have been advised in writing that appointment is the subject of any action or proceeding before the President or any agency of the Government of the United States.
(C) CONSTRUCTION.—Funds available to the Attorney General for construction may be used for expenses of planning, designing, acquiring, building, constructing, actuating, renovating, converting, extending, activating, remodeling, equipping, repairing, or maintaining buildings or facilities, including the expenses of acquisition of sites therefor, and all necessary expenses incident thereto; but the funds so available shall not be construed to mean that funds generally available for salaries and expenses are not also available for certain incidental or minor construction, activation, remodeling, maintenance, and other related construction costs.

(3) FEES AND EXPENSES OF WITNESSES.—Funds available to the Attorney General for fees and expenses of witnesses may be used for—

(A) expenses, mileage, compensation, protection, and per diem in lieu of subsistence, of witnesses in the construction of any public money); and as authorized by section 1823 or other law, except that no witness may be paid more than 1 attendance fee for any 1 calendar day; and

(B) fees and expenses of neutrals in alternative dispute resolution proceedings, where the Department of Justice is a party; and

(C) construction of protected witness safes.

(4) FEDERAL BUREAU OF INVESTIGATION.—Funds available to the Attorney General for the Federal Bureau of Investigation for the detection, investigation, and prosecution of crimes against the United States may be used for the conduct of all its authorized activities.

(5) NATURALIZATION SERVICE.—Funds available to the Attorney General for the Immigration and Naturalization Service may be used for—

(A) acquisition of land as sites for enforcement fences, and construction incident to such fences;

(B) cash advances to aliens for meals and lodging en route;

(C) refunds of maintenance bills, immigration fines, and other items properly returnable, except deposits of aliens who become statistics and deposits to secure payment of fines and passage money; and

(D) expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies.

(6) FEDERAL PRISON SYSTEM.—Funds available to the Attorney General under the Federal Prison System may be used for—

(A) inmate medical services and inmate legal services, within the Federal prison system;

(B) the purchase, sale, and exchange of farm products and livestock;

(C) the acquisition of land as provided in section 1701 of title 18; and

(D) the construction of buildings and facilities for penal and correctional institutions (including prison camps), by contract or force account, including the payment of United States prisoners for their work performed in any such construction; except that no funds may be used to distribute or maintain prisoners in any communication published information or material that is sexually explicit or features nudity.

(7) DETENTION TRUSTEE.—Funds available to the Attorney General for the Detention Trustee may be used for all the activities of such Trustee in the exercise of all powers and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service and to the detention of aliens in the custody of the Immigration and Naturalization Service, including the assessment, relocation, and payment of the costs of construction of detention facilities or for housing related to such detention, the management of funds appropriated to the Department for the exercise of all powers and functions, and the maintenance of the United States Marshals Service and Immigration Service with respect to the exercise of detention policy setting and operations for the Department of Justice.

(8) RELATED PROVISIONS.—

(I) LIMITATION OF COMPENSATION OF INDIVIDUALS EMPLOYED AS ATTORNEYS.—No funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide immigration services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia.

(II) REIMBURSEMENTS PAID TO GOVERNMENTAL ENTITIES.—Funds made available to the Attorney General that are paid as reimbursement to a governmental unit of the Department of Justice, to another Federal entity, or to a unit of State or local government, may be used under authorities available to the unit or entity receiving such reimbursement.

(III) FOREIGN REIMBURSEMENTS.—Whenever the Department of Justice or any component participates in a cooperative project to improve law enforcement or national security operations or services with a friendly foreign country on a cost-sharing basis, any contributions received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the participating foreign country. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

(e) RAILROAD POLICE TRAINING FEES.—The Attorney General is authorized to establish and collect a fee to defray the costs of railroad police officers participating in the Federal Bureau of Investigation law enforcement training program authorized by Public Law 106–110, and to credit such fees to the appropriation account “Federal Bureau of Investigation, Salaries and Expenses,” to be available until expended for salaries and expenses incurred in providing such services.

(f) WARRANTY WORK.—In instances where the Attorney General determines that law enforcement-, security-, or mission-related considerations mitigate against obtaining maintenance or repair services from private sector entities for Department of Justice facilities, and to credit contributions received from that foreign country to meet its share of the project may be credited to appropriate current appropriations accounts of the participating foreign country. The amount of a reimbursement or contribution credited shall be available only for payment of the share of the project expenses allocated to the participating foreign country.

(II) mere reporting requirements or agreements merely to comply with statutes or regulations;

(V) any criminal sentence or any requirements or agreements to perform community service, to serve probation, or to participate in supervised release from detention, confinement, or prison;

(VI) agreements to cooperate with the government in investigations (whether or not the agreement is a matter of public record).

(2) SUBMISSION OF REPORT TO THE CONGRESS.—For the purposes of paragraphs (1), a report shall be considered to be submitted to the Congress if the report is submitted to—

(A) the majority leader and minority leader of the Senate;

(B) the Speaker, majority leader, and minority leader of the House of Representatives; and

(C) the chairman and ranking minority member of the Committee on the Judiciary of the Senate; and

(D) the Senate Legal Counsel and the General Counsel of the House of Representatives.

(3) TIMELINES.—The Attorney General shall—

(I) after subsection (a)(1)(A), not later than 30 days after the establishment or implementation of each policy;

(II) after subsection (a)(1)(B), within such time as will reasonably enable the House of Representatives and the Senate to take action, separately or jointly, to intervene in timely fashion in any proceeding, but not more than 30 days after the making of each determination; and

(III) after subsection (a)(2)(A), not later than 30 days after the making of each determination;
“(3) Not later than 30 days after the date of the enactment of this Act, the President shall advise the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of the United States Code) of the enactment of this section.

(4)(A) Not later than 90 days after the date of the enactment of this section, the Attorney General (and, as applicable, the President, and the head of any executive agency or military department described in subsection (e) of section 530D of title 5, United States Code) shall submit to Congress a report (in accordance with subsections (a), (c), and (e) of such section) on—

(i) all policies of which the Attorney General and applicable official are aware described in subsection (a)(1)(A) of such section that were established or implemented before the date of the enactment of this Act and were in effect on such date; and

(ii) all determinations of which the Attorney General and applicable official are aware described in subsection (a)(1)(B) of such section that were made before the date of the enactment of this Act and were in effect on such date.

(b) May be made, entered into, or used, directly or indirectly, to provide any security enhancements or any equipment to any non-governmental entity that is not engaged in law enforcement or law enforcement support, criminal justice, or delinquency prevention.;”

(5) in section 511 by striking “503” and inserting “501(b)”,

(b) ATTORNEYS SPECIALLY RETAINED BY THE ATTORNEY GENERAL.—The 3d section of title 515(b) of title 28, United States Code, is amended by striking “at not more than $125.”.

SEC. 205. TECHNICAL AND MISCELLANEOUS AMENDMENTS TO DEPARTMENT OF JUSTICE AUTHORITIES, AUTHORITY TO TRANSFER PROPERTY OF MARKET VALUE; RECORDKEEPING; PROTECTION OF THE ATTORNEY GENERAL.

(a) Section 524 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting “to the Attorney General of the United States” after “may be used, entered into, or used, directly or indirectly, to provide any security enhancements or any equipment to any non-governmental entity that is not engaged in law enforcement or law enforcement support, criminal justice, or delinquency prevention.”; and

(2) in subsection (c)(1)—

(A) by striking the semiocolon after “503” and inserting a period; (B) by striking the 2d subparagraph (i); (C) by striking “(iv), (B), (F), (G), and (H)” in the first sentence following the second subparagraph (i) and inserting “(B), (F), and (G)”;

(D) by striking “fund” in the 3d sentence following the 2d subparagraph (i) and inserting “fund”;

(E) by striking “$250,000” the 2d and 3d places it appears and inserting “$500,000”;

(F) in subsection (c)(3) by striking “(F)” and inserting “(G)”;

(G) in subsection (c)(5) by striking “Fund which” and inserting “Fund, that;”;

(H) in subsection (c)(6) by striking “(B), (F), (G), and (H)” and inserting “(B), (F), and (G)”;

(I) by striking “not” in the last sentence and inserting “and”;

(2) in subsection (c)(2)—

(A) by inserting before “1997” and inserting “years 2002 and 2003”; and

(B) by striking “Such transfer shall not” and inserting “Each such transfer shall be subject to the satisfaction by the recipient of any outstanding lien or charge and the property transferred, but no such transfer shall”;

(b) Section 522 of title 28, United States Code, is amended by inserting “(a)” before “The” and by inserting the sentence after the following:

“(c) In this section, the term “aggregation” means a combination of two or more amounts of money in such manner as to exceed the amount described in subsection (b) by adding “and” after the semicolon.

SEC. 204. MISCELLANEOUS USES OF FUNDS; TECHNICAL AMENDMENTS.

(a) BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) in section 5301(a)(1) by striking “502” and inserting “501(b)”; (2) in section 5306(a)(1) by striking “participating”;

(3) in section 5306(c)(1) by striking “502” and inserting “501(b)”; (4) in section 5310 by adding at the end the following:

“(d) No grants or contracts under subsection (b) may be made, entered into, or used, directly or indirectly, to provide any security enhancements or any equipment to any non-governmental entity that is not engaged in law enforcement or law enforcement support, criminal justice, or delinquency prevention.”.

SEC. 205. TECHNICAL AND MISCELLANEOUS AMENDMENTS TO DEPARTMENT OF JUSTICE AUTHORITIES; AUTHORITY TO TRANSFER PROPERTY OF MARKET VALUE; RECORDKEEPING; PROTECTION OF THE ATTORNEY GENERAL.

(a) Section 524 of title 28, United States Code, is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by adding after paragraph (2) a new paragraph as follows:

(3) Not later than 30 days after the date of the enactment of this Act, the President shall advise the head of each executive agency or military department (as defined, respectively, in sections 105 and 102 of the United States Code) of the enactment of this section.

(b) May be made, entered into, or used, directly or indirectly, to provide any security enhancements or any equipment to any non-governmental entity that is not engaged in law enforcement or law enforcement support, criminal justice, or delinquency prevention.”.
“(3) to assist in the protection of the person of the Attorney General.”.

(f) Hereafter, no compensation or reimbursement paid pursuant to section 501(a) of Public Law 98-477 (other than one made to a governmental entity) for the performance of a contractual service, cooperative agreement, or programmatic services contract that was made, entered into, awarded, or for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof) or the Office of Community Oriented Policing Services and inclusive, without limitation, for each such grant, cooperative agreement, or contract: a description of its specific purpose or purposes, the names of all grantees or parties, or value, a description of its specific purpose or purposes, the names of all grantees or parties, or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

(2) a report identifying and reviewing every grant (other than one made to a governmental entity pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof) or the Office of Community Oriented Policing Services and inclusive, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, or purposes proposed in each unsuccessful application or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

(3) a report identifying and reviewing every grant (other than one made to a governmental entity pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof) or the Office of Community Oriented Policing Services and inclusive, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, or purposes proposed in each unsuccessful application or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

(4) a report identifying and reviewing every grant (other than one made to a governmental entity pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof) or the Office of Community Oriented Policing Services and inclusive, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, or purposes proposed in each unsuccessful application or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

SEC. 206. OVERSIGHT; WASTE, FRAUD, AND ABUSE OF APPROPRIATED FUNDS.

(a) Section 529 of title 28, United States Code, is amended by inserting “(a)” before “Beginning—”.

(b) Notwithstanding any provision of law limiting the amount of management or administrative expenses, the Attorney General shall, not later than (A) one year after the enactment of this Act, and thereafter, prepare and provide to the Committees on the Judiciary and Appropriations of each House of the Congress using funds available for the under an appropriation—

(1) a report identifying and describing every grant (other than one made to a governmental entity pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof) or the Office of Community Oriented Policing Services and inclusive, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, or purposes proposed in each unsuccessful application or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

(2) a report identifying and reviewing every grant (other than one made to a governmental entity pursuant to a statutory formula), cooperative agreement, or programmatic services contract that was made, entered into, awarded, or for which additional or supplemental funds were provided in the immediately preceding fiscal year, by or on behalf of the Office of Justice Programs (including any component or unit thereof) or the Office of Community Oriented Policing Services and inclusive, without limitation, for each such grant, cooperative agreement, or contract: the term, the dollar amount or value, a description of its specific purpose or purposes, the names of all grantees or parties, or purposes proposed in each unsuccessful application or bidder, and a description of the specific purpose or purposes proposed in each unsuccessful application or bid, and of the reason or reasons for rejection or denial of the same; and

SEC. 207. ENFORCEMENT OF FEDERAL CRIMINAL LAWS BY ATTORNEY GENERAL.

Section 535 of title 28, United States Code, is amended—

(1) by replacing “title 18” with “title 18”; and

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively.

(3) in inserting “(J)” after “(J)” and

(4) by adding the end the following:

“(J) The number of infringement cases involving specific types of works, such as audiovisual works, sound recordings, software, video games, books, and other types of works.

(3) The number of infringement cases involving an online exercise of exclusive rights beginning at the beginning of the service period, times the number of years in the service period; or

(4) The number of infringement cases involving an online exercise of exclusive rights beginning at the beginning of the service period, times the number of years in the service period; or

SEC. 208. COUNTERTERRORISM FUND.

(a) ESTABLISHMENT; AVAILABILITY.—There is hereby established in the Treasury of the United States a separate fund to be known as the “Counterterrorism Fund”, amounts in which shall remain available without fiscal year limitation—

(1) to reimburse any Department of Justice component for any costs incurred in connection with—

(A) reestablishing the operational capability of an office or facility that has been damaged or destroyed as the result of any domestic or international terrorism incident;

(B) providing support to counter, investigate, or prosecute domestic or international terrorism, including without limitation any terrorism-related reparations payments made under section 1203 of title 18, United States Code; and

(C) conducting terrorism threat assessments of Federal agencies and their facilities; and

(2) to reestablish the operational capability of the Federal Government for any costs incurred in connection with detaining in foreign countries individuals accused of acts of terrorism that violate the laws of the United States.

(b) NO EFFECT ON PRIOR APPROPRIATIONS.—The amendment made by subsection (a) shall not affect the amount or availability of any appropriation made before the date of enactment of this Act.

SEC. 209. STRENGTHENING LAW ENFORCEMENT IN UNITED STATES TERRITORIES, COMMONWEALTHS, AND POSSESSIONS.

(a) EXTENDED ASSIGNMENT INCENTIVE.—Chapter 7 of title 5, United States Code, is amended—

(1) in subchapter IV, by inserting at the end the following:

“§5757. Extended assignment incentive

(a) The head of an Executive agency may pay an extended assignment incentive to an employee if—

(1) the employee has completed at least 2 years continuous, uninterrupted service in a critical service position located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands;

(2) the agency determines that replacing the employee with another employee possessing the required qualifications and experience would be difficult; and

(3) the agency determines it is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in the territory or possession, the Commonwealth of Puerto Rico or Commonwealth of the Northern Mariana Islands, except that the total amount of service performed in a particular territory, commonwealth, or possession under 1 or more agreements established under this section may not exceed 5 years.

(b) The sum of extended assignment incentive payments for a service period may not exceed the greater of—

(1) an amount equal to 25 percent of the annual base pay of the employee at the beginning of the service period, times the number of years in the service period; or

(2) $15,000 per year in the service period.

(2) Payment of an extended assignment incentive shall be contingent upon the employee entering into a written agreement with the agency specifying the period of service and other terms and conditions under which the extended assignment incentive is payable.

(2) The agreement shall set forth the method of payment, including any use of an initial lump-sum payment, a final lump-sum payment upon completion of the entire period of service.

(3) The agreement shall describe the conditions under which the extended assignment incentive may be canceled prior to the completion of agreed-upon service period and the effect of the cancellation. The agreement shall require that if, at the time of cancellation of the incentive, the employee has received incentive payments which exceed the amount which bears the same relationship to the total amount to be paid under the agreement as the period of services bears to the agreed-upon service period, the employee shall repay that excess amount, at a minimum, except that an employee who is involuntarily separated outside the territory, commonwealth, or possession or involuntarily separated (not for cause on
charges of misconduct, delinquency, or inefficiency may not be required to repay any excess amounts.

(d) An agency may not put an extended assignment under section 5757 into effect for a period of time during which the employee is fulfilling a recruitment or relocation bonus service agreement under section 5753 or for which an employee is receiving a retention allowance under section 5754.

"(e) Extended assignment incentive payments may not be considered part of the basic pay of an employee.

(1) The Office of Personnel Management may prescribe regulations for the administration of this section, including regulations on an employee's entitlement to retain or receive incentive payments when an agreement is canceled. Neither this section nor implementing regulations may impair any agency's independent authority to administratively determine compensation for a class of its employees.

(2) In the analysis by adding at the end the following:

"5737. Extended assignment incentive.".

(b) CONFORMING AMENDMENT.—Section 5307(a)(2)(B) of title 5, United States Code, is amended by striking "or 5755" and inserting "5755, or 5757:"

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first day of the first applicable pay period beginning on or after 6 months after the date of enactment of this Act.

(2) PAYMENT.—No later than 3 years after the effective date of this section, the Office of Personnel Management, after consultation with affected agencies, shall submit to the Committee on Appropriations of the Senate a report assessing the effectiveness of the extended assignment incentive authority as a human resources management tool and making recommendations for any changes necessary to improve or restructure the incentive authority. Each agency shall maintain such records and report such information, including the number and size of incentive offers made and accepted and the time at which geographic location and occupation, in such format and at such times as the Office of Personnel Management may prescribe, for use in preparing the report.

SEC. 210. ADDITIONAL AUTHORITIES OF THE ATTORNEY GENERAL.

Section 151 of the Foreign Relations Act, fiscal years 1990 and 1991 (5 U.S.C. 5928 note) is amended by striking "or "Federal Bureau of Investigation" after "Drug Enforcement Administration".

TITLE III—MISCELLANEOUS

SEC. 301. REPEALERS.

(a) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL INSTITUTE OF CORRECTIONS.—Chapter 319 of title 18, United States Code, is amended by striking section 3153.

(b) OPEN-ENDED AUTHORIZATION OF APPROPRIATIONS FOR UNITED STATES MARSHALS SERVICE.—Section 561 of title 28, United States Code, is amended by striking subsection (i).

(c) REDUNDANT AUTHORIZATIONS OF PAYMENTS FOR REWARDS.—(1) Chapter 203 of title 18 of the United States Code is amended by striking sections 3059, 3059A, 3059B, 3071, and all the matter after the first sentence of 3072; and

(2) Public Law 101-647 is amended in section 2565, by replacing all the matter after "2561" in subsection (c)(1) with "the Attorney General may, in a report to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and of the House of Representatives a report, covering the same respective time period, on the number of orders under section 3123 applied for by law enforcement agencies of the Department of Justice and whose implementation involved the use of the DCS 1000 program (or any subsequent version of such program)—"

(1) the kind of order or extension applied for (including whether or not the order was an order with respect to which the requirements of sections 2518(b)(i) and 2518(c)(d) of title 18, United States Code, did not apply by reason of section 2514(b)(1) of title 18);

(2) the period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(3) the offense specified in the order or application, or extension of an order;

(4) the identity of the applying investigative or law enforcement officer and agency making the application and the person authorizing the application;

(5) the nature of the facilities from which or places where communications were to be intercepted;

(6) a general description of the interceptions made under such order or extension, including—

(A) the approximate nature and frequency of incriminating communications intercepted;

(B) the approximate nature and frequency of other communications intercepted;

(C) the approximate number of persons whose communications were intercepted;

(D) the number of orders in which encryption was encountered and whether such encryption prevented law enforcement from obtaining the plain text of communications intercepted pursuant to such order; and

(E) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;

(7) the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;

(8) the number of trials resulting from such interceptions; and

(9) the number of motions to suppress made with respect to such interceptions, and the number granted or denied;

(10) the number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions; and

(11) the specific persons authorizing the use of the DCS 1000 program (or any subsequent version of such program) in the implementation of such order.

SEC. 306. STUDY OF ALLOCATION OF LITIGATING ATTORNEYS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit to the chairman and ranking minority member of the Committees on the Judiciary of the House of Representatives and Committee on the Judiciary of the Senate, detailing the distribution or allocation of appropriated funds, attorneys and other personnel, personnel workload, for each Office of United States Attorney and each division of the Department of Justice except the Justice Management Division.

SEC. 207. USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.

Section 203(5) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13705(b)) is amended by adding at the end the following:
"(b) USE OF TRUTH-IN-SENTENCING AND VIOLENT OFFENDER INCARCERATION GRANTS.—Funds provided under section 2003 or 2004 may be applied to the cost of:

(1) providing correctional facilities to separate facilities for juveniles under the jurisdiction of an adult criminal court who are detained or serving sentences in adult prisons as juveniles;

(2) providing correctional staff who are responsible for supervising juveniles who are detained or serving sentences under the jurisdiction of an adult criminal court in adult facilities, consistent with guidelines issued by the Assistant Attorney General.

SEC. 308. AUTHORITY OF THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL.


(1) in subsection (b), by striking paragraphs (2) and (3) and inserting the following:

"(2) except as specified in subsection (a) and paragraph (2), investigating allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the Inspector General’s discretion, refer such allegations to the Office of Professional Responsibility or the internal affairs office of the appropriate component of the Department of Justice; and

(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators or law enforcement agents, as of the date of enactment of this Act, be responsible for reviewing such allegations of programs and operations of the Federal Bureau of Investigation ."

SEC. 310. USE OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANTS TO PROVIDE FOR SERVICES DURING AND AFTER INCARCERATION.

Section 1901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3766) is amended by adding at the end the following:

"(c) ADDITIONAL USE OF FUNDS.—States that demonstrate that they have existing in-prison drug treatment programs that are in compliance with the requirements of this subsection, and that have demonstrated their ability to develop and implement programs that will ensure that funds awarded under this part for treatment and sanctions both during incarceration and after release."

SEC. 311. REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.

(a) REPEAL OF COMPILATION OF STATISTICS RELATING TO INSTITUTION OF GOVERNMENT EMPLOYEES.—Section 808 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132; 110 Stat. 1311) is repealed.

(b) REPORT ON THREATS AND ASSAULTS AGAINST FEDERAL LAW ENFORCEMENT OFFICERS, UNITED STATES JUDGES, UNITED STATES OFFICIALS AND THEIR FAMILIES.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall submit a report to the Chairmen and ranking minority members of the Committees on the Judiciary of the Senate and the House of Representatives a report on the number of investigations and prosecutions under section 111 of title 18, United States Code, and section 115 of title 18, United States Code, for the fiscal year 2001.

SEC. 312. ADDITIONAL FEDERAL JUDGESHIPS.

(a) PERMANENT DISTRICT JUDGES FOR THE DISTRICT COURTS.—

(1) In General.—The President shall appoint, by and with the advice and consent of the Senate—

(A) 5 additional district judges for the southern district of California;

(B) 1 additional district judge for the western district of North Carolina; and

(C) 2 additional district judges for the western district of Texas.

(2) Tables.—In order that the table contained in section 133 of title 28, United States Code, shall, with the jurisdiction of each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of paragraph (1) of this subsection, such table is amended—

(A) by striking the item relating to California and inserting the following:

<table>
<thead>
<tr>
<th>State</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Carolina</td>
<td>14</td>
</tr>
<tr>
<td>Eastern</td>
<td>6</td>
</tr>
<tr>
<td>Central</td>
<td>27</td>
</tr>
<tr>
<td>Southern</td>
<td>12</td>
</tr>
</tbody>
</table>

(b) by striking the item relating to North Carolina and inserting the following:

<table>
<thead>
<tr>
<th>State</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Carolina</td>
<td>4</td>
</tr>
<tr>
<td>Eastern</td>
<td>4</td>
</tr>
<tr>
<td>Middle</td>
<td>4</td>
</tr>
<tr>
<td>Western</td>
<td>4</td>
</tr>
</tbody>
</table>

(c) by striking the item relating to Texas and inserting the following:

<table>
<thead>
<tr>
<th>State</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Carolina</td>
<td>12</td>
</tr>
<tr>
<td>Southern</td>
<td>19</td>
</tr>
<tr>
<td>Eastern</td>
<td>7</td>
</tr>
<tr>
<td>Western</td>
<td>13</td>
</tr>
</tbody>
</table>

(d) TEMPORARY JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the western district of North Carolina. The first vacancy in the office of district judge in the western district of North Carolina, occurring 7 years or more after the confirmation date of the judge named to fill the temporary district judgeship created in this section, shall not be filled.

(e) TEMPORARY DISTRICT COURT JUDGESHIP FOR THE NORTHERN DISTRICT OF OHIO.—

(1) IN GENERAL.—Section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note) is amended—

(A) in the first sentence following paragraph (12), by striking “and the eastern district of Pennsylvania” and inserting “, the eastern district of Pennsylvania, and the northern district of Ohio”; and

(B) by inserting after the third sentence following paragraph (12) “The first vacancy in the office of district judge in the northern district of Ohio occurring 15 years or more after the confirmation date of the judge named to fill the temporary judgeship created in this section shall not be filled.”

(2) EFFECTIVE DATE.—The amendments made by this section shall take effect on the earlier of—

(A) the date of enactment of this Act; or

(B) November 15, 2001.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created under this section.

TITLE IV—VIOLATION AGAINST WOMEN
SEC. 401. SHORT TITLE.

This title may be cited as the “Violence Against Women Office Act.”
SEC. 402. ESTABLISHMENT OF VIOLENCE AGAINST WOMEN OFFICE. 

(a) IN GENERAL.—There is established in the Department of Justice a Violent Against Women Office (in this title referred to as the “Office”) under the general authority of the Attorney General.

(b) OFFICE.—The Office—

(1) shall not be part of any division or component of the Department of Justice; and

(2) shall be a separate office headed by a Director who shall report to the Attorney General through the Associate Attorney General of the United States, and who shall also serve as Counsel to the Attorney General.

SEC. 403. JURISDICTION. 

The Office—

(1) shall have jurisdiction over all matters related to administration, enforcement, coordination, and implementation of all responsibilities of the Attorney General or the Department of Justice related to violence against women, including formula and discretionary grant programs authorized under the Violence Against Women Act of 2000 (Division B of Public Law 106–386); and the Violence Against Women Act of 2000 (Division B of Public Law 106–386); and

(2) shall be solely responsible for coordination with other agencies of administration, enforcement, and implementation of the programs, grants, and activities authorized or undertaken under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

SEC. 404. DIRECTOR OF VIOLENCE AGAINST WOMEN OFFICE. 

(a) APPOINTMENT.—The President, by and with the advice and consent of the Senate, shall appoint a Director for the Office (in this title referred to as the “Director”) to be responsible for the administration, coordination, and implementation of the programs and activities of the Office.

(b) OTHER EMPLOYMENT.—The Director shall not—

(1) engage in any employment other than that of serving as Director; or

(2) hold any office in, or act in any capacity for, any organization, agency, or institution with which the Office makes any contract or other agreement under the Violence Against Women Act of 1994 (title IV of Public Law 103–322) or the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

(c) VACANCY.—In the case of a vacancy, the President may designate an officer or employee who shall act as Director during the vacancy.

(d) COMPENSATION.—The Director shall be compensated at a rate of pay not to exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 405. REGULATORY AUTHORIZATION. 

The Director may, after appropriate consultation with representatives of States and units of local government, establish such rules, regulations, and procedures as are necessary to the exercise of the Office, and are consistent with the stated purposes of this Act and those of the Violence Against Women Act of 1994 (title IV of Public Law 103–322) and the Violence Against Women Act of 2000 (Division B of Public Law 106–386).

SEC. 406. OFFICE STAFF. 

The Attorney General shall ensure that there is adequate staff to support the Director in carrying out the responsibilities of the Director under this title.

SEC. 407. AUTHORIZATION OF APPROPRIATIONS. 

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mr. LEAHY. Mr. President, I am pleased to the Senate is finally passing the 21st Century Department of Justice Appropriations Authorization Act. I thank Senator HATCH, the ranking Republican member of the Judiciary Committee, for his hard work and support of this legislation.

The last time Congress properly authorized spending for the entire Department of Justice (DOJ) for the 21st Century Department of Justice (Division A of our bipartisan legislation) was in 1979. Congress extended that authorization in 1980 and 1981. Since then, Congress has not passed nor has the President signed an authorization bill for the Department. In fact, the number of years where Congress failed to consider any Department authorization bill. This 21-year failure to properly reauthorize the Department has forced the Appropriations Committees in both houses to reauthorize and appropriate money.

We have ceded the authorization power to the appropriators for too long. Our bipartisan legislation is an attempt to reaffirm the authorizing authority and responsibility of the House and Senate Judiciary Committees. I commend Chairman SENSENBRENNER and Ranking Member CONYERS of the House Judiciary Committee for working in a bipartisan manner to pass similar legislation in the House of Representatives.

The 21st Century Department of Justice Appropriations Authorization Act, is divided into two divisions: the first division is a comprehensive authorizing the Department; and the second division is a comprehensive authorization of expenditures, Department grants programs and improvements to criminal law and procedures.

Division A of our bipartisan legislation contains four titles which authorize appropriations for the Department for fiscal year 2002, provides permanent enabling authorities which will allow the Department to efficiently carry out its mission, clarify and harmonize existing statutory authority, and repeal obsolete statutory authorities. The bill establishes funding requirements and other mechanisms, such as DOJ Inspector General authority to investigate allegations of misconduct by employees of the Federal Bureau of Investigation (FBI), intended to better enable the Congress and the Department to oversee the operations of the Department. Finally, the bill creates a separate Violence Against Women Office to combat domestic violence.

Title I authorizes appropriations for the programs, projects, and activities of the Department for fiscal year 2002. The authorization mirrors the President’s request regarding the Department except in two areas. First, the bill increased the President’s request for the DOJ Inspector General by $10 million. This is necessary because the Committee is concerned about the severe downsizing of that office and the need for oversight, particularly of the FBI, at the Department. Second, the bill authorizes at least $10 million for the investigation and prosecution of intellectual property crimes, including software counterfeiting crimes and crimes identified in the No Electronic Theft (NET) Act (Public Law 105-147). The American copyright industry is the largest exporter of goods from the United States, employing more than 7 million Americans, and these additional funds are needed to strengthen the resources available to DOJ and to investigate and prosecute cyberpiracy.

Title II permanently establishes a clear set of authorities that the Department may rely on to use appropriated funds, including establishing permitted uses of appropriated funds by the Attorney General, the FBI, the Federal Bureau of Investigation, the Federal Prison System, and the Detention Trustee. Title II also establishes new reporting requirements which are intended to enhance Congressional oversight of the Department, including new reporting requirements for information about the enforcement of existing laws, for information regarding the Office of Justice Programs (OJP), and the submission of other reports, required by existing law, to the House and Senate Judiciary Committees. Section 206(e) expands an existing reporting requirement regarding copyright infringement cases.

Title II also provides the Department with additional law enforcement tools in the war against terrorism. For instance, section 201 permits the FBI to enter into cooperative projects with foreign countries to improve law enforcement or intelligence operations. Section 210 of the committee approved bill also provides for special ‘danger pay’ allowances for FBI agents in hazardous duty locations outside the United States, as is provided for agents of the Drug Enforcement Administration. At the insistence of a Republican Senator, section 210 have regrettably been removed from the bill to ensure final passage.

Title III repeals outdated and open-ended statutes, requires the submission of an annual authorization bill to the House and Senate Judiciary Committees, and provides states with flexibility to use existing Truth-In-Sentencing and Violent Offender Incarceration Grants to account for juveniles being housed in adult prison facilities. Title III requires the Department to submit to Congress studies on untested rape examination kits, and the allocation of funds, personnel, and workloads for each office of U.S. Attorney and each division of the Department.

In addition, Title III provides new oversight and reporting requirements for the FBI and other activities conducted by the Justice Department. Specifically, section 308 codifies the Attorney General’s order of July 11, 2001, which revised Department of Justice’s regulations concerning the Inspector General. The section insures that the Inspector General for the Department of Justice has the authority to conduct an investigation of misconduct by Department of Justice personnel, including employees of the Federal Bureau of Investigation.
and the Drug Enforcement Administration, should be investigated by the Inspector General or by the internal affairs unit of the appropriate component of the Department of Justice.

Section 309 directs the Inspector General to appoint an official from the Inspector General’s office to be responsible for supervising and coordinating independent oversight of programs and operations of the FBI until the end of the 2003 fiscal year. This section also requires the Inspector General to submit a report and recommendations to the House and Senate Committees on the Judiciary not later than 90 days after enactment of this Act on whether there should be established a separate office of Inspector General for the FBI that shall be responsible for supervising and coordinating independent oversight of programs and operations of the FBI.

In addition, the bill as passed by the committee, contains language offered as an amendment by Senator Feinstein to authorize a number of new judge’s salary. The amendment supported Senator Feinstein’s amendment, and believe that the need for these new judges are acute.

Title IV establishes a separate Violence Against Women Office (VAWO) within the Department. The VAWO is headed by a Director, who is appointed by the President and confirmed by the Senate. In addition, Title IV enumerates duties and responsibilities of the Director, and authorizes appropriations to ensure the VAWO is adequately staffed. I strongly support a separate VAWO office within the Department of Justice.

The 21st Century Department of Justice Appropriations Authorization Act should result in a more effective, as well as efficient, Department of Justice for the American people.

Division B of our bipartisan legislation includes eight titles which compile a comprehensive authorization of expired and new Department of Justice grants programs and improvements to criminal law and procedures.

Title I authorizes Department of Justice grants to establish 4,000 Boys and Girls Clubs across the country before January 2002. In bipartisan fashion, this legislation authorizes Department of Justice grants for each of the next 5 years to establish 1,200 additional Boys and Girls Clubs across the Nation. In fact, this will bring the number of Boys and Girls clubs to 4,000. That means they will serve approximately 6 million young people by January 1, 2007.

I am very impressed with what I see about the Boys and Girls Clubs as I travel around the country. In 1997, I was very proud to join with Senator HATCH and others to pass bipartisan legislation to authorize grants by the Department of Justice to fund 2,500 Boys and Girls Clubs across the Nation.

We increased the Department of Justice grant funding for the Boys and Girls Clubs from $20 million in fiscal year 1998 to $60 million in fiscal year 2001. That is why we have now 2,591 Boys and Girls Clubs in all 50 States and 3.3 million children are served. It is a success story.

I hear from parents certainly across my State how valuable it is to have the Boys and Girls Clubs. I hear it also from police chiefs. In fact, one police chief told me, rather than giving him a couple more police officers, fund a Boys and Girls Club in his district; it would be more beneficial. This long-term Federal commitment has enabled Vermonners to establish six Boys and Girls Clubs—in Brattleboro, Burlington, Montpelier, Randolph, Rutland, and Vergennes. In fact, I believe the Vermont Boys and Girls Clubs have received more than a million dollars from the Department of Justice grants since 1998.

In May of this year at a Vermont town meeting on heroin prevention and treatment, I was honored to present a check for more than $150,000 in Department of Justice funds to the members of the Burlington club to continue the very successful money for drug treatment grants program. I was happy to see the constructive alternatives for both their talents and energies, because we know that in Vermont and across the Nation Boys and Girls Clubs are proving they are a growing success at preventing crime within their communities.

Parents, educators, law enforcement officers, and others know we need safe havens where young people can learn and grow up free from the influence of the drugs and gangs and crime. That is why the Boys and Girls Clubs are so important to our Nation’s children. Indeed, the success already in Vermont has led to efforts to create nine more clubs throughout my home State. Continued Federal support would be critical to these expansion efforts in Vermont and the other 49 States as well.

Title II and III is the Drug Abuse Education, Prevention, and Treatment Act of 2001. I am pleased that we have included in this package the version of S. 304 that the Judiciary Committee passed unanimously on November 29. This legislation uthers in a new, bipartisan approach to our efforts to reduce drug abuse in the United States. It was introduced by Senator Hatch and I in February. Senator HATCH held an excellent hearing on the bill in March, the Judiciary Committee has approved it, and the full Senate should follow the Committee’s lead. This is a bill that is embraced by Democrats and Republicans alike. It is as well as law enforcement officers and drug treatment providers.

I have wanted to pass legislation like this for years. This legislation provides a comprehensive approach to reducing drug abuse in America. I hope that the innovative programs established by this legislation will assist all of our States in their efforts to address the drug problems that most affect our communities.

No community or State is immune from the ravages of drug abuse. Earlier this year, I held two town meetings up in Vermont to talk about the most pressing drug problem about: heroin. Vermont has historically had one of the lowest crime rates in the nation, but we are experiencing serious troubles because of drug abuse. I was pleased that so many Vermonters—parents, students, teachers, and concerned professionals from our State’s prevention, treatment, and enforcement communities—took time out of their busy schedules to discuss the way Vermont’s heroin problem affects their lives. They have informed my thinking on these issues and redefined me to reducing the scourge of drug abuse throughout our nation.

This bill will provide necessary assistance to Vermont and every other State. It contains numerous grant programs to aid States and local communities in their efforts to prevent and treat drug abuse. Of particular interest to Vermonters, S. 304 establishes drug treatment grants for rural States and communities to help them develop new drug treatment centers for mothers addicted to heroin, methamphetamines, or other drugs.

This legislation also will help States and communities reduce drug use in children and juvenile placement. This is an effort I proposed in the Drug Free Prisons Act, which I introduced in the last Congress. It will fund programs designed to reduce recidivism through drug treatment and other services for former prisoners after release. As Joseph Califano, Jr., the president of the Center on Addiction and Substance Abuse and former secretary of the Department of Health, Education, and Welfare, told the National Commission onรางวัลที่แตกต่างกันจากที่เราได้รับยา, "This next great opportunity to reduce crime is to provide treatment and training to drug and alcohol abusing prisoners who will return to a life of criminal activity unless they leave prison substance free and, upon release, enter treatment and continuing aftercare." This legislation will accomplish both of those goals. In addition, this bill will authorize drug courts—another step I proposed in the Drug Free Prisons Act—into American drug courts.

Through this legislation, we extend food stamps to people who are ineligible under current law due to a past drug offense, but have completed or are enrolled in drug treatment. Senator HATCH and I wanted to go further, and this Judiciary Committee approved language that would have also extended food stamps to those who were pregnant, seriously ill, or had dependent children. At Senator KYLE’s insistence, those provisions have regretfully been removed from this amendment.

This legislation also includes a grant program to assist State and local law enforcement in developing new ways to
fight crime. My Comprehensive Crime-Free Communities Act will provide funding for 250 communities, including at least one from every State, to support crime prevention efforts. It also provides funding for each State to train local community leaders by among other things, providing training and technical assistance in preventing crime.

Our bipartisan bill, S. 304, represents a major step forward for our drug policy. It is a bill that has been very important to me, Senator Hatch, and it has been very important to me. I think it will greatly benefit Vermonters, and citizens of every State, and I urge the Senate to give this bill its full support.

Title IV is similar to S. 1915, the Judicial Improvement and Integrity Act of 2001, introduced by myself and Senator HATCH, to protect witnesses who provide information on criminal activity to law enforcement officials by increasing maximum sentences and other improvements to the criminal code. This title would do a number of things, such as:

No. 1. Protect witnesses who come forward to provide information on criminal activity to law enforcement officials by increasing maximum sentences where physical force is actually used or attempted on the witness;

No. 2. Eliminate a loophole in the criminal contempt statute that allows some defendants to avoid serving prison sentences imposed by the Court;

No. 3. Eliminate a loophole in the statute of limitations that makes some defendants immune from further prosecution if they plead guilty then later get their plea agreements vacated;

No. 4. Grant the government the clear right to appeal the dismissal of a part of a count of an indictment, such as a predicate act in a RICO count;

No. 5. Insure that courts may impose appropriate terms of supervised release in violation of parole;

No. 6. Give the District Courts greater flexibility in fashioning appropriate conditions of release for certain elderly prisoners; and

No. 7. Clarify the District Court’s authority to revoke or modify a term of supervised release when the defendant willfully violates the obligation to pay restitution to the victims of the defendant’s crime.

The only difference between this amendment and the earlier bill which was cosponsored by Senator HATCH and myself, is that this amendment adds language to the provision dealing with newly imposed terms of supervised release for certain elderly prisoners. The new language would allow the Senate to consider new terms to the unrevoked portion of the term which the judge is considering amending. I thank Senator HATCH for his assistance on this legislation.

Title V is the Criminal Law Technical Amendments Act, which makes clerical and other technical amendments to title 18, United States Code, and other laws relating to crime and criminal procedure and is similar to H.R. 2137 as passed by the House of Representatives by 374-0 vote. I commend Chairman SENSENIBRENNER and Senator HATCH for their leadership on this technical corrections legislation. Title VI clarifies that an attorney for the Government may provide written legal advice and supervision on certain undercover activities for the purpose of investigating terrorism. Title VI of the bill modifies the McDade law, 28 U.S.C. 530B, which was included in the omnibus crime bill at the end of the 106th Congress. The McDade law was intended to codify the principle—with which I strongly agree—that the Justice Department may not unilaterally exempt its lawyers from State ethics rules that apply to all members of the bar.

Unfortunately, the McDade law has had serious unintended consequences for Federal law enforcement, delaying important criminal investigations, preventing the use of effective and traditional techniques, and serving as the basis of litigation to interfere with legitimate federal prosecutions.

Of particular concern, the McDade law is wreaking havoc on law enforcement by preventing the government from using an attorney ethics decision by the State Supreme Court—In re Gatti, 330 Or. 517 (2000)—has resulted in a complete shutdown of all undercover activity. The loss of this essential crime-fighting tool by the Criminal Division is a problem for law enforcement in that State, and threatens to hamstring investigations into all manner of criminal activity, including terrorism.

I have introduced a bill, together with Senators HATCH and Wyden, that would remedy the problems caused by the McDade law while adhering to its basic premise: The Department of Justice does not have the authority it long claimed to write its own ethics rules. The legislation I propose would clarify the ethical standards governing the conduct of government attorneys and address the most pressing contemporary question of government attorney ethics—namely, the question of which rule should govern government attorneys’ communications with represented persons. The Senate approved S. 1437 on October 11, 2001, as part of a broader antiterrorism bill (S. 1510), but the House dropped this reasonable corollary provision to the final antiterrorism package (H.R. 3162).

Title VI of Division B of the bill that the Senate passes today is a subset of S. 1437, which will restore to Federal law enforcement in Oregon the ability to use undercover techniques to investigate terrorist activities. This legislation is a much-needed step in the right direction; however, it is hardly a complete solution for the many serious problems caused by the McDade law. At a time when we need our Federal law enforcement to move quickly to catch those responsible for the recent terrorist attacks, and to prevent further attacks, we need to address these problems in a thorough and comprehensive manner. I therefore urge my colleagues in the House both to approve title VI of this bill, and to consider the other provisions of S. 1437. We cannot afford to wait until more investigations are completed.

Title VII contains amendments, authored by Senator SESSIONS, that modify the Paul Coverdell National Forensic Science Improvement Act of 2000 (P.L. 106-561) to enhance participation by state and local law enforcement in DNA backlog elimination. Dr. Eric Buel, the Director of the Vermont Forensic Laboratory, has written to me to endorse these changes to the Coverdell Act, which I was proud to cosponsor last year. I support this title to help bring the necessary forensic technology to all states to improve their criminal justice systems.

Title VIII contains the Ecstasy Prevention Act, authored by Senator GRAHAM, which authorizes several Department of Justice grant programs to combat Ecstasy drug abuse. I commend Senator GRAHAM for his leadership in fighting Ecstasy use.

I look forward to working with Senator HATCH, Congressman SENSENIBRENNER, and other members of the upcoming conference to bring the important business of re-authorizing the Department back before the Senate and House Judiciary Committees. Clearly, regular reauthorizations of law enforcement should be part and parcel of the Committees’ traditional role in overseeing the Department’s activities. Swift passage into law of the 21st Century Department of Justice Appropriations Authorization Act will be a significant step toward restoring our oversight role.

Mr. HATCH. Mr. President, I rise to commend my colleagues today for the passage of the 21st Century Department of Justice Appropriations Authorization Act. This legislation contains a host of provisions that are critical to law enforcement and to our efforts to combat illegal drug use. Let me take a moment to discuss some of them in more detail.

This provision establishes operating authority for the Department of Justice and expressly authorizes some practices that have developed at the Department of Justice on an ad hoc basis. The Department’s authority to provide assistance to or cooperate with non-Federal parties in certain cases or to enter into agreements with non-Federal parties.

The legislation ensures accountability by directing the Attorney General to provide annually to the House and Senate Judiciary and Appropriations Committees: (1) a report detailing every grant, cooperative agreement, or programmatic services contract that was made, entered into,
awarded, or extended in the immediately preceding fiscal year by or on behalf of the Office of Justice Programs; and (2) a report identifying and reviewing every grant, agreement, or contract that was closed out or otherwise ended in the immediately preceding fiscal year. The bill also enhances oversight over the FBI by requiring the Inspector General of DOJ to appoint a Deputy Inspector General for the FBI who shall be responsible for supervising independent oversight of FBI programs and operations until September 30, 2004, and submitting to Congress a plan for FBI oversight.

The legislation also assists our ongoing war against terrorism. It establishes in the U.S. Treasury a Counterterrorism Fund to reimburse DOJ for certain counter-terrorism activities and Federal departments or agencies for the cost of detaining accused terrorists in foreign countries.

The bill protected the privacy rights of law-abiding Americans by directing the Attorney General and the FBI Director to report on the use of the DCs 1000, or “Carnivore” surveillance system. The report will include the number of times the system was used for surveillance in the preceding year, the persons who approved its use, the criteria applied to requests for its use, and any information gathered or accessed that was not authorized by the court or to be gathered or accessed. Many concerns have been raised about the use of this system, and it is my hope that the reporting requirement will provide policymakers with valuable information and encourage Department to use the system responsibly.

The bill amends the Omnibus Crime Control and Safe Streets Act of 1968 to establish within the Department of Justice a Violence Against Women Office. With this amendment, the Director of the Office currently—Diane Stenhouse—will: (1) serve as special counsel to the Attorney General on the subject of violence against women; (2) maintain liaison with the judicial branches of the Federal and State governments on related matters; (3) provide information to the Federal, State and local governments and the general public on related matters; (4) upon request, serve as the DOJ representative on domestic task forces, committees, or commissions related to issues and as the U.S. Government representative on human rights and economic justice matters related to violence against women in international forums; (5) carry out DOJ functions under the Violence Against Women Act of 1994 and other DOJ functions on related matters; and (6) provide technical assistance, coordination, and support to other elements of DOJ and to other Federal, State, and tribal agencies in efforts to develop policy and to enforce Federal laws relating to violence against women.

The legislation authorizes Department of Justice grants to establish 4,000 Boys and Girls Clubs across the country before January 1, 2007. As my colleagues know, for years these clubs have steered thousands of our young people away from lives of drugs and crime. I am pleased that we are able to expand this excellent program to serve other needy young people.

The legislation also contains S. 304, the “Drug Abuse Education, Prevention, and Treatment Act of 2001,” which I authored with Chairman LEAHY and a bipartisan group of Senators in an effort to shore up our national commitment to the demand reduction component of our national drug control strategy.

Each year, drug abuse exacts an enormous toll on our nation. I am increasingly alarmed that the drug epidemic in America continues to worsen, with more of our youth experimenting with and becoming addicted to illegal drugs. According to recent national surveys, youth drug use, particularly use of “club drugs,” such as Ecstasy and GHB, tragically is again on the rise. Over the past two years, use of ecstasy among 12th graders increased dramatically. Hearings I held last year in Utah highlighted the extent of drug problem pervades not just our major cities, but our entire country.

This dangerous trend is not going to reverse course unless we attack the drug abuse problem from all angles. I am pleased to say that while we must remain steadfast in our commitment to enforcing our criminal laws against drug trafficking and use, the time has come to invest in demand reduction programs that have been proven effective. Only through such a balanced approach can we fully remove the scourge of drugs from our society.

The provisions of this bill provide tools that will make a difference in the fight against drug abuse. It has broad, bipartisan support on Capitol Hill, as well as the support of numerous distinguished law enforcement groups, including the Fraternal Order of Police and the National Sheriff’s Association. Several mainstream prevention and treatment organizations have also voiced their support for the bill, including the Phoenix House, the National Crime Prevention Council, and the Community Anti-Drug Coalitions of America.

This title is similar to S. 1315, the Judicial Improvement and Integrity Act of 2001, which I introduced with Senator LEAHY to protect witnesses who provide information on criminal activity to law enforcement officials by increasing maximum sentences and other improvements to the criminal code.

The legislation contains provisions from the Professional Standards for Government Attorneys Act of 2001 that will allow Government attorneys, for the purpose of conducting terrorism investigations, to provide legal advice, authorization, concurrence, direction, or supervision on conducting covert ac-

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 2697) was agreed to.

(The text of the amendment is printed in today’s RECORD under “Amendments Submitted and Proposed.”) The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 2215), as amended, was passed.

The PRESIDENT pro tempore appointed Mr. LEAHY, Mr. KENNEDY, and Mr. HATCH conferees on the part of the Senate.

Mr. REID. Mr. President, I ask unanimous consent that the Leahy-Hatch amendment, which is at the desk, be agreed to, the committee substitute amendment, as amended, be agreed to, the act, as amended, be read a third time and passed, the amendment be agreed to, be reconsidered be laid on the table, and that any statements relating thereto be printed in the RECORD; further, that the Senate insist on its amendment and request a conference with the House on the disagreement of the two Houses, and the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 2697) was agreed to.

(Peremptorily.)
Mr. ROCKEFELLER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I urge prompt Senate passage of H.R. 3447, the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001. This bill passed the House on December 11, 2001, and our action will clear the measure for the President's signature. This bill reflects a compromise agreement that the Senate and House Committees on Veterans' Affairs have reached on a number of health-related bills considered in the Senate and House during the 107th Congress. Including: a bill to help VA respond to the looming nurse crisis; a bill to extend health care for Persian Gulf War veterans; and a bill to improve specialized treatment and rehabilitation for disabled veterans.

The centerpiece of this bill are provisions to improve recruitment and retention of VA nurses. On June 14, 2001, the Committee on Veterans' Affairs held a hearing to explore reasons for the imminent shortage of professional nurses in the United States and how this shortage will affect health care for veterans served by Department of Veterans Affairs' health care facilities.

Several registered nurses, including Sandra McMeans from my state of West Virginia, testified before the Committee that unpredictable and dangerously long working hours lead to nurses' fatigue and frustration—and patient care suffers. Following this hearing, I joined with Senators SPECTER and CLELAND to introduce the Department of Veterans Affairs Nurse Recruitment and Retention Enhancement Act of 2001, S. 1188. This bill was included in full in S. 1188 as reported on October 10, 2001, the Department of Veterans Affairs Medical Programs Enhancement Act of 2001, and all of the provisions are now included in H.R. 3447.

I will highlight a number of the provisions included in the pending measure and refer my colleagues to the joint explanatory statement on the legislation which I will insert at the end of my remarks, for more detail.

The legislation before us includes a requirement that VA produce a policy on staffing standards in VA health care facilities. Such a policy shall be developed in consultation with the VA Under Secretary for Health, the Director of VA's National Center for Patient Safety, and VA's Chief Nurse. While it is up to VA to develop the policy, the policy must consider the numbers and skill mix required of staff in specific medical settings, such as critical care and long-term care. I thank J. David Cox, R.N. from the American Federation of Government Employees for eloquently demonstrating the need for this critical provision at our June hearing.

Because mandatory overtime was frequently cited at the Committee's June hearing as being of serious concern, the legislation also includes a requirement that the Secretary report to the House and Senate Committees on Veterans' Affairs on the use of overtime by licensed nursing staff and nursing assistants in each facility. This is a critical first step in determining what can be done to reduce the amount of mandatory overtime.

In terms of providing sufficient pay, the pending legislation mandates that VA provide Saturday premium pay to certain health professionals. This group of professionals includes licensed practical nurses (LPN's), certified or registered respiratory therapists, licensed practical nurses, pharmacists, and occupational therapists. These workers are known as "hybrids" as they straddle two different personnel authorities—titles 38 and 5 of the United States Code. Hybrid status allows for greater hiring and a more flexible compensation system.

This is an issue of equity, especially for LPN's who work alongside other nurses on Saturdays. When LPN's who do not receive Saturday premium pay must work together with registered nurses (RN's) who do, poor morale inevitably results. Being aware of the looming nurse shortage, we should be doing all we can to improve VA's ability to recruit and retain these caregivers.

Currently, hospital directors have the discretion to provide Saturday premium pay. But of the 17,000 hybrid employees, 8,000 are not receiving the pay premium. I believe this change in law will make pay more consistent and fair for our health care workers. There are other VA health care employees who are employed under the title 5 personnel system who are not affected by this change. But since the title 5 system is not under the Veterans' Affairs Committee jurisdiction, we were not able to address Saturday pay for these workers. However, because of concerns with the pending legislation, I have worked with my colleagues on other committees to provide other title 5 workers with Saturday premium pay.

Programs initiated within VA to improve conditions for nurses and patients have focused on issues other than staffing ratios, pay, and hours. A highly praised scholarship program that I spearheaded in 1998 allows VA nurses to pursue degrees and training in return for their service, thus encouraging professional development and improving health care, to the benefit of patients.

Included within the legislation before us are modifications to the existing scholarship and debt reduction programs. These changes are intended to improve the programs by providing additional flexibility to recipients.

In the Upper Midwest, the special skills of nurses and nurse practitioners are being recognized in clinics that treat the unique needs of the veterans who need it. The legislation before us seeks to encourage more nurse-managed clinics and also includes a requirement that VA evaluate these clinics.

The legislation before us would amend the treatment of part-time service performed by certain title 38 employees prior to April 7, 1986, for purposes of retirement credit. Currently, part-time service performed by title 5 employees prior to April 7, 1986, is treated as full-time service; however, title 38 employees' part-time services prior to April 7, 1986, is counted as part-time service and therefore results in lower annuities for these employees. In order to rectify this, the pending legislation exempts licensed vocational nurses, physician assistants, and expanded-function dental auxiliaries from the requirement that part-time service performed prior to April 7, 1986, be prorated when calculating retirement annuity.

Although the nursing crisis has not yet reached its projected peak, the shortage is already endangering patient safety in the areas of critical and long-term care, where demands on staff are the greatest. I am encouraged to encourage higher enrollment in nursing schools, improve the work environment, and offer nurses opportunities to develop as respected professionals, while taking steps to ensure safe staffing levels in the short-term.

In addition to the many important changes for nurses, this bill also contains other significant health care provisions. For example, the legislation would enable the Department of Veterans Affairs to allow severely impaired veterans and veterans with spinal cord injury or dysfunction, in addition to blind veterans, to obtain service dogs to assist them with everyday activities.

This bill would also establish a VA chiropractic program in each of the VA's health care networks. A chiropractic advisory committee will be established for the purpose of advising the Secretary in the development and operation of a chiropractic program. The Secretary will provide protocols governing referrals, direct access, chiropractic scope of practice, and definition of chiropractic services, which will be available to all veterans enrolled in the VA health care system.
veterans whose family incomes fall between the VA’s current means test level and the Department of Housing and Urban Development low income index for the area of their primary residence, the current inpatient copayments would be reduced by 90 percent. This is a significant first step in reducing the inequities imposed on those veterans in high cost-of-living areas.

Another very important provision of this bill authorizes $28.3 million for a much needed repair project at the Miami VA Medical Center. Three years ago there was a devastating fire that destroyed the electrical plant at the medical center, and this project is desperately needed.

As has been the case in previous years and is particularly important in light of our country’s current military actions, this legislation truly represents a bipartisan commitment to our Nation’s veterans. I particularly recognize the hard work of Kim Lipsky and Mickey Thursam of the Democratic Committees on Veterans’ Affairs; Bill Cahill of the Republican staff of the Committee; Tamera Jones of Senator Cleland’s staff, and John Bradley, Kimberly Cowins, and Susan Edgerton of the House Veterans’ Affairs Committee in seeing this bill through the legislative process.

In conclusion, I believe that this bill represents a real step forward for veterans and for the health care system which veterans turn to for care. I urge my colleagues to support this important piece of health care legislation for our veterans.

I ask unanimous consent that the material was ordered to be printed in the Record.

The following is a summary of the provisions in the Senate Bill to request waivers of redundant VA authority for this program, a program not yet implemented by the Department, to authorize VA to request waivers of the pay reduction otherwise required by law for re-employed Federal annuitants who are recruited to the Department in order to meet staffing needs in so scarce health care specialties.

Under sections 8341 and 8468 of title 5, United States Code, the Department is authorized to operate the Education Debt Reduction Program (hereafter EDRP) under section 7671 of title 38, United States Code. Under the EDRP, the Department may award scholarship funds, up to $10,000 per year per participant in full-time study, for up to 3 years. These scholarships require participants to serve in high demand periods of obligated service to the Department. Currently, enrollment in the scholarship program is limited to employees with 2 or more antecedent years of VA employment. Statutory authority for this program terminates December 31, 2001.

The Department is authorized to operate the Education Debt Reduction Program (hereafter EDRP) under section 7671 of title 38, United States Code. Under the EDRP, the Department may award education-related loans incurred by recruited Federal annuitants to help pay for VA professionals in high demand positions. Statutory authority for this program a program not yet implemented by the Department, terminates December 31, 2001. If implemented, the program would authorize VA to repay $6,000, $8,000, and $10,000 per year, respectively, over a 3-year period, in combined principal and interest on educational loans obtained by scarce VA professionals.

Under sections 8341 and 8468 of title 5, United States Code, the Department is authorized to request waivers of redundant VA authority for this program, a program not yet implemented by the Department, to authorize VA to request waivers of the pay reduction otherwise required by law for re-employed Federal annuitants who are recruited to the Department in order to meet staffing needs in so scarce health care specialties.

Senate Bill
Section 111 would permanently authorize the EISF; reduce the minimum period of employment for eligibility in the program from 2 years to 1 year; remove one year from the education pursued during a particular school year by a participant, as long as the participant had not exceeded the overall limitation of $10,000 for equivalent college education; and, extend authority to increase the award amounts based on Federal national comparability increases in pay.

Section 112 would permanently authorize the EDRP; expand the list of eligible occupations furnishing direct patient care services
and services incident to such care to veterans; extend the number of years to 5 that a Departmental employee may participate in the EDRP, and increase the gross award limit to any participant to $44,000, with the award payments for the fourth and fifth years to a participant limited to $10,000 in each; and provide limited authority (until June 30, 2007) for the Secretary to waive the eligibility requirement limiting EDRP participation to recently appointed employees on a case-by-case basis for individuals appointed on or after January 1, 1999, through December 30, 2001.

Section 113 would require the Department to report to Congress its use of the authority in title 5, United States Code, to request waivers of pay reduction normally required from re-employed Federal annuitants, when such requests are used to meet its nurse staffing requirements.

House Bill

The House bill has no comparable provisions.

Compromise Agreement

Section 101, 102, and 103 follow the Senate language.

Subtitle B—Nurse Retention Authorities

Current Law

Section 7453(c) of title 38, United States Code, guarantees premium pay (at 25 percent over the basic pay rate) to VA registered nurses who work regularly scheduled tours of duty on Saturdays and Sundays. However, licensed vocational nurses and certain health care support personnel, whose employment status is grounded in employment authorizations in title 5 and title 38, United States Code, are eligible for premium pay on regularly scheduled tours of duty that include Sundays. Saturday premium pay for these employees is discretionary decision at individual medical facilities.

At retirement, VA registered nurses enrolled in the Civil Service Retirement System receive annuity credit for unused sick leave. This credit is unavailable, however, for registered nurses who retire under the Federal Employee Retirement System.

Senate Bill

Section 121 would mandate that VA provide Saturday premium pay to employees specified in Section 7454(b).

Section 122 would extend authority for the Department to provide premium pay to nurses enrolled in the Federal Employee Retirement System the equivalent sick-leave credit in their retirement annuity calculations that is provided to nurses who are enrolled in the Civil Service Retirement System.

Section 123 would require the Department to evaluate nurse-managed clinics, including those providing primary and geriatric care to veterans. Several nurse-managed clinics are in operation throughout the VA health care system, with a preponderance of clinics operating in the Upper Midwest Health Care Network. The evaluation would include information on patient satisfaction, provider experiences, cost, access and other matters.

The Secretary would be required to report to the Committees on Veterans’ Affairs 18 months after enactment.

Section 124 would require the Department to develop a nationwide clinical staffing standards policy to ensure that veterans are provided with safe and high quality care. Section 125, United States Code, sets forth the manner in which medical facilities shall be operated, but does not include reference to staffing levels for such operations.

Section 125 would require the Secretary to submit annual reports on exceptions approved by the Secretary to VA’s nurse qualification standards. Such reports would include the number of waivers requested and granted to permit promotion of nurses who do not have baccalaureate degrees in nursing, and other pertinent information.

Section 126 would require the Department to report facility-specific use of mandatory overtime for professional nursing staff and nursing assistants during 2001. The Department has no nationwide policy on the use of mandatory overtime. Such reports would be required within 180 days of enactment. The report would include information on the amount of mandatory overtime paid by VA as a percentage of total hours that VA employed employees were employed to monitor overtime use, assessment of any ill effects on patient care, and recommendations on preventing or minimizing its use.

House Bill

The House bill has no comparable provisions.

Compromise Agreement

Sections 121, 122, 123, 124, 125, and 126 are identical to the provisions in the Senate bill. The Committees are concerned about VA’s current national policy requiring VA nurses to achieve baccalaureate degrees as one means of quality assurance. VA has issued directive 5012.1, a directive that requires VA’s registered nurses to obtain baccalaureate degrees in nursing as a precondition to advancement to a mid-level, and to do so by 2005. This policy is effective immediately for newly employed nurses. At a time of looming crisis in achieving adequacy of basic clinical staffing of VA facilities, the Committees express concern over whether such a policy guiding nurse qualifications may work against VA’s interests, and would recommend that VA consider the implications of continuing such a policy in the face of future shortages of nursing personnel. The American Association of Community Colleges has reported that, each year, more than 60 percent of new US registered nurses are produced in two-year associate degree programs. The Department’s current qualification standard for registered nurses is fully irony licensed health care professionals from considering VA employment.

Subtitle C—Other Authorities

Current Law

Section 7306(a)(5) of title 38, United States Code, requires that the Office of the Under Secretary for Health include a Director of Nursing Service, responsible to the Under Secretary for Health.

Section 7426 of title 38, United States Code, provides retirement rights for, among others, nurses, physician assistants and expanded-function dental auxiliaries with part-time appointments. These employees’ retirement annuity calculations are in a way that carries a significant financial disadvantage for them compared to other Federal employees. Congress has made a number of efforts since 1980 to provide equity for this group, many members of whom are now retired. These individuals, appointed to their part-time VA positions prior to April 6, 1986, under the employment authority of title 38, United States Code, have been entitled with lower annuities by subsequent Acts of Congress that addressed retirement annuity calculation rules for other part-time Federal employees appointed to the authority of title 5, United States Code.

Section 7251 of title 38, United States Code, authorizes the directors of VA health care facilities to establish the minimum rates of basic pay for nurses based on local variations in the labor market.
Section 101 would amend section 1714 of title 38, United States Code, to authorize the Department to provide service dogs to veterans suffering from spinal cord injury or dysfunction, other diseases causing physical immobility (or other types of disabilities susceptible to improvement or enhanced functioning) for which use of service dogs is likely to improve or enhance their quality of life, perform activities of daily living or other skills of independent living. Under the provision, a veteran would be required to pay the co-payments as otherwise required under title 38, United States Code, or the local low-income limits set by HUD.

Section 103 also would include a 5-year limitation on the effects of adoption of the HUD low-income limits policy on system resource allocation within the Veterans Health Administration. Such allocations would not be increased or decreased during the period by more than 5 percent due to this provision. The provision would take effect on October 1, 2002.

Section 202 would amend section 1722 of title 38, United States Code, to include the HUD income limits for treatment as a low-income family based upon the veteran’s permanent residence. The current national threshold would remain in place as the base figure if the HUD formula determines the low-income rate for a particular area is actually less than that amount. The effective date of this change would be January 1, 2002, and would apply to all means tests after December 31, 2001, using data from the HUD index at the time the means test is given.

Section 204 of the Senate Bill would establish a Veterans Health Administration-wide policy regarding chiropractic care. Veterans Health Administration Directive 2000-014, dated May 5, 2000, established such a policy.

Section 204 of the Senate Bill would establish a VA chiropractic services program, implemented over a 5-year period; authorize VA to employ chiropractors as federal employees and obtain chiropractic services through contracts; establish an advisory committee on chiropractic care; authorize chiropractors to function as VA primary care providers; authorize the appointment of a director of chiropractic care reporting to the Secretary with the same authority as other service directors in the VA health care system; and provide for training and materials relating to chiropractic care to Department health care providers.
Compromise Agreement

Section 207 contains a Sense of the Congress Resolution on the Department’s need to assess and report on special telephone services for veterans.

RECODIFICATION OF BEREAVEMENT COUNSELING AUTHORITY AND CERTAIN OTHER HEALTH-RELATED AUTHORITIES

Current Law

Chapter 17 of title 38, United States Code, contains various legal authorities under which VA provides services to non-veterans. These provisions, that authorize bereavement and mental health counseling, care for research subjects, care for dependents and survivors of permanently totally disabled veterans, and emergency humanitarian care, are intermingled with authorities for the care of veterans in various sections of chapter 17.

House Bill

Section 105 of the House bill would in a new subchapter consolidate and reorganize without substantive change all of the legal authorities under which VA provides services to non-veterans. It would reorganize section 1901 of title 38, United States Code, by transferring one provision (pertaining to sensorineural aids) to section 1707.

Section 105 would create a new Subchapter V in chapter 17 of title 38, United States Code, to incorporate provisions concerning bereavement-counseling services for family members of certain veterans and active duty personnel. A new section 1782 would provide counseling, training, and mental health services for immediate family members.

Section 105 would place in the new subchapter the current dependent health care authorities known as “Civilian Health and Medical Programs—Veterans Affairs” (CHAMPVA), transferred from current section 1782 of title 38, United States Code, to incorporate provisions concerning bereavement-counseling services for family members of certain veterans and active duty personnel. A new section 1782 would provide counseling, training, and mental health services for immediate family members.

Section 105 would place in the new subchapter the current dependent health care authorities known as “Civilian Health and Medical Programs—Veterans Affairs” (CHAMPVA), transferred from current section 1782 of title 38, United States Code, to incorporate provisions concerning bereavement-counseling services for family members of certain veterans and active duty personnel. A new section 1782 would provide counseling, training, and mental health services for immediate family members.

Section 210 follows the House bill.

HEALTH CARE FOR PERSIAN GULF WAR VETERANS

Current Law

Section 1710 of title 38, United States Code, defines eligible veterans for whom the Secretary is required to furnish hospital, nursing home, and domiciliary care.

Section 1710 of title 38 authorizes the Secretary to provide health care services on a priority basis to veterans who served in the Southwest Asia Theater of operations during the Persian Gulf War. Section 1710(e)(3)(B) of title 38 specifies that this eligibility expires on December 31, 2001.

Senate Bill

The Senate Bill would amend section 1710 of title 38, United States Code, to extend health care eligibility for veterans who served in Southwest Asia during the Gulf War, to December 31, 2011.

House Bill

The House Bill contains no comparable provision.

Compromise Agreement

Section 211 follows the Senate bill but extends the health care eligibility to December 31, 2002.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid on the table with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 3447) was read the third time and passed.

RELIEF FOR RETIRED SERGEANT FIRST CLASS JAMES D. BENOIT AND WAN SOOK BENOIT

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1834, and that the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill, S. 1834, for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit.

There being no objection, the Senate proceeded to consider the bill.
Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 1834) was read the third time and passed.

AMENDING TITLE 18 OF THE UNITED STATES CODE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. 1888, which was introduced earlier today by Senator STEVENS.

The PRESIDENT pro tempore. The clerk will state the bill by title.

Mr. STEVENS. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 3392) was read the third time and passed.

GRANTING A FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 392 and the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will state the bill by title. A bill (S. 392) to grant a Federal charter to Korean War Veterans Association, Incorporated, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related thereto be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 392) was read the third time and passed.

SECTION 1. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

“CHAPTER 1201—[RESERVED];” and

(2) by inserting the following:

“CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

* Sec.

1201. Organization.

120101. Purposes.

120103. Membership.

120104. Governing body.

120105. Powers.

120106. Restrictions.

120107. Duty to maintain corporate and tax-exempt status.

120108. Records and inspection.

120109. Service of process.

120110. Liability for acts of officers and agents.

120111. Annual report.

120101. Organization.

“(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated, in the State of New York, is a federally chartered corporation.

“(b) EXPEDITION OF CHARTER.—If the corporation does not comply with the provisions of this chapter, the charter granted by subsection (a) expires.
The purposes of the corporation are as provided in its articles of incorporation and include—

(1) organizing, promoting, and maintaining for benevolent and charitable purposes an association of persons who have seen honorable service in the Armed Forces during the Korean War, and of certain other persons

(2) providing a means of contact and communication among members of the corporation;

(3) promoting the establishment of, and establishing, war and other memorials commorative of persons who served in the Armed Forces during the Korean War; and

(4) designating members of the corporation, their wives and children, and the widows and children of persons who were members of the corporation at the time of their death.

SECTION 103. Membership

Eligibility for membership in the corporation, and the rights and privileges of members of the corporation, are as provided in the articles of incorporation of the corporation.

SECTION 104. Governing body

(a) BOARD OF DIRECTORS.—The board of directors of the corporation, and the responsibilities of the board of directors, are as provided in the articles of incorporation of the corporation.

(b) OFFICERS.—The officers of the corporation, and the election of the officers of the corporation, are as provided in the articles of incorporation.

SECTION 105. Powers

The corporation has only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

SECTION 106. Restrictions

(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

SECTION 107. Duty to maintain corporate and tax-exempt status

(a) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of New York.

(b) TAX-EXEMPT STATUS.—The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

SECTION 108. Records and inspection

(a) RECORDS.—The corporation shall keep—

(1) correct and complete records of account;

(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

SECTION 109. Service of process

The corporation shall have a designated agent in the District of Columbia to receive service of process on the corporation. Notice to or service on the agent is notice to or service on the Corporation.

SECTION 110. Liability for acts of officers and agents

The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

SECTION 111. Annual report

The corporation shall submit an annual report to Congress on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report may not be printed as a public document.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by striking the item relating to chapter 1201 and inserting the following new item:

"1201. Korean War Veterans Association, Incorporated........................120101"

AMENDING THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1400, and the Senate proceed to its immediate consideration.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 1400) was read the third time and passed, as follows:

S. 1400

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF DEADLINE FOR PRESENTATION OF CERTAIN BORDER CROSSING IDENTIFICATION CARDS.

Section 104(b)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note) is amended by striking "5 years" and inserting "6 years".

YEAR OF THE ROSE

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 292) was agreed to.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 292) was agreed to.

The preamble was agreed to.

RECOGNITION OF THE SENATE STAFF

Mr. REID. Mr. President, the staff is working on a couple more items. While they are doing that, I would like to express to the Presiding Officer my best wishes for a happy holiday.

I would also like to, at this late hour, acknowledge the work done by the
staff of the Senate. I spend days with these people. The work of the Senate is done by the people who get no recognition but do so much of the work. Each of them are experts at what they do. People around here will be working until the last hours of the morning. You and I may have to go late—the last two to leave the Senate—but they will arrive at their homes sometime tomorrow morning. The last time we did the Defense bill, I talked to one member of the staff who went home at 5 a.m. that morning.

I want each of them to know that even though they do not get the recognition that we get, their jobs are just as important as ours. We in effect couldn’t do without them. Every day they do things that help make us look as if we know what we are doing. Hopefully, we do most of the time, but if we don’t, they take care of things, point us in the right direction.

I am personally indebted to the help that each of these fine public servants give to the people of the State of Nevada, the people of West Virginia, and this country.

I want the record spread with my good wishes for a happy holiday. In saying this, I speak for every Senator. Democrats and Republicans, we probably, as busy as we are, don’t recognize how busy they are and in the process don’t express our appreciation nearly as much as we should.


Mr. REID. Mr. President, I ask unanimous consent that the following bills be received as the Secretary and Exchange Commission for the remainders of the days expire June 5, 2003, vice Arthur Lent, Jr., resigned.

Mr. REID. Mr. President, I ask unanimous consent that the following bills be received as the Secretary and Exchange Commission for the remainders of the days expire June 5, 2003, vice Laura A. Ung er, term expired.

NOMINATIONS

Executive nominations received by the Senate December 20, 2001:

DEPARTMENT OF AGRICULTURE

NANCY SOUTHERN BRYSON, OF THE DISTRICT OF COLUMBIA, TO BE SECRETARY, COUNSEL OF THE DEPARTMENT OF AGRICULTURE, VICE CHARLES B. RAVIS, RESIGNED.

DEPARTMENT OF STATE

STEVEN K. HATFIELD, OF COLORADO, TO BE PERSONNEL PROTECTION AGENT, VICE SAXEILYNNE BARBER.

DEPARTMENT OF THE INTERIOR

WILLIAM LEIDINGER, OF VIRGINIA, TO BE ASSISTANT SECRETARY OF HUMAN RESOURCES, VICE KAREN M. CHAPMAN, RESIGNED.

DEPARTMENT OF JUSTICE

ERNEST G. BLAIR, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT, VICE JOHN J. STEWART, RESIGNED.

DEPARTMENT OF TRANSPORTATION

MATTHEW D. BOWIE, OF TEXAS, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF TEXAS FOR THE TERM OF FIVE YEARS, VICE JOHN MICHAEL BRADFORD, RESIGNED.

FOREIGN SERVICE

The following-named career members of the Senior Foreign Service, class of career minister, for the personal rank of career ambassador in recognition of especially distinguished service or a sustained period.

JEFFREY DAVIDOW, OF VIRGINIA

GREGORY J. MOOLE, OF COLORADO

The following-named persons of the Department of State for appointment as special, general, or special service officers of the classes stated.

For appointment as foreign service officer of class one, consular officer and secretary in the Diplomatic Service of the United States of America.

GUSTAVO ALBERTO MEJIA, OF FLORIDA

GEORGE JOSEPH JOHN, OF CALIFORNIA

For appointment as foreign service officer of class two, consular officer and secretary in the Diplomatic Service of the United States of America.

KARL R. EMERSON, OF IOWA

J. ALBERT TAYLOR, OF MARYLAND

For appointment as foreign service officer of class three, consular officer and secretary in the Diplomatic Service of the United States of America.

L. JAMES KENT-STIERGILLER, OF CALIFORNIA

ANDRAS LEHocz, OF MARYLAND

For appointment as foreign service officer of class four, consular officer and secretary in the Diplomatic Service of the United States of America.

EDWARD L. ALLEN, OF ARIZONA

GARY DEAN ANDERSON, OF CALIFORNIA

MERRICK B. FABER, OF MICHIGAN

DAVID R. BLITZ, OF COLORADO

The following-named officers for the grade indicated in the Reserves in the Air Force under Title 10, U.S.C., Sections 1220 and 1212.

To be colonel

ROBERT J. ZAGRYON, OF TEXAS

To be colonel

JAMES C. COOPER, II, OF MARYLAND

December 20, 2001

Congressional Record — Senate S14083

DEPARTMENT OF STATE

MARK FLETCHER ELLIS, OF MAINE

MARK P. MARRANO, OF TEXAS

DENNIS K. KELLY, OF IOWA

JAMES KENT-STIERGILLER, OF CALIFORNIA

MERRICK B. FABER, OF MICHIGAN

DAVID R. BLITZ, OF COLORADO

To be colonel

ROBERT J. ZAGRYON, OF TEXAS

To be colonel

JAMES C. COOPER, II, OF MARYLAND

DEPARTMENT OF STATE

EDWARD L. ALLEN, OF ARIZONA

GARY DEAN ANDERSON, OF CALIFORNIA

MERRICK B. FABER, OF MICHIGAN

DAVID R. BLITZ, OF COLORADO

The following-named officers for the grade indicated in the Reserves in the Air Force under Title 10, U.S.C., Sections 1220 and 1212.

To be colonel

ROBERT J. ZAGRYON, OF TEXAS

To be colonel

JAMES C. COOPER, II, OF MARYLAND
CONFIRMATIONS

Executive nominations confirmed by the Senate December 20, 2001:

DEPARTMENT OF JUSTICE

JANE J. BOYLE, OF TEXAS, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS. VICE PAUL EDWARD COGGINS, RESIGNED.

JAMES K. VINES, OF TENNESSEE, TO BE UNITED STATES ATTORNEY FOR THE MIDDLE DISTRICT OF TENNESSEE FOR THE TERM OF FOUR YEARS. VICE JOHN MARSHALL ROBERTS, RESIGNED.

JOHNNY LEWIS HUGHES, OF MARYLAND, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MARYLAND FOR THE TERM OF FOUR YEARS. VICE GEORGE K. MCKINNEY.

RANDY MERLIN JOHNSON, OF ALASKA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF ALASKA FOR THE TERM OF FOUR YEARS. VICE JOHN DAVID CREWS, JR.

LARRY WADE WAGSTER, OF MISSISSIPPI, TO BE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF FOUR YEARS. VICE JOHN DAVID CREWS, JR.

JAMES K. VINES, OF TENNESSEE, TO BE UNITED STATES ATTORNEY FOR THE MIDDLE DISTRICT OF TENNESSEE FOR THE TERM OF FOUR YEARS, VICE JOHN MARSHALL ROBERTS, RESIGNED.

JANE J. BOYLE, OF TEXAS, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF TEXAS FOR THE TERM OF FOUR YEARS, VICE PAUL EDWARD COGGINS, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12202:

To be major general

BRIGADIER GENERAL DONNA F. BARRISCH
BRIGADIER GENERAL JAMES S. BARKIN
BRIGADIER GENERAL ROBERT W. CHRISTNUT
BRIGADIER GENERAL RICHARD S. COT
BRIGADIER GENERAL LOWELL C. DETAMORI
BRIGADIER GENERAL DOUGLAS O. DOLLAR
BRIGADIER GENERAL KENNETH D. HILLI
BRIGADIER GENERAL KAROL A. KENNEDY
BRIGADIER GENERAL RODNEY M. KOHAYASHI
BRIGADIER GENERAL ROBERT B. OSTENDEN
BRIGADIER GENERAL MICHAEL W. SYMANSKI
BRIGADIER GENERAL WILLIAM B. WATSON, JR.

To be brigadier general

COLONEL JAMES E. ARCHER
COLONEL THOMAS M. BRYSON
COLONEL PETER S. COOKE
COLONEL DONNA L. DADY
COLONEL CHARLES H. DAVIDSON IV
COLONEL MICHAEL R. EYRE
COLONEL DONALD L. JACKA, JR.
COLONEL WILLIAM R. JOHNSON
COLONEL ROBERT J. KASULKE
COLONEL JAMES L. KENJER
COLONEL JOHN E. LEVIESKE
COLONEL JAMES M. MORLEY
COLONEL MARK A. MORTON
COLONEL CARRIE L. NERO
COLONEL ARTHUR C. NUTTALL
COLONEL PAULIN D. RYER
COLONEL WILLIAM TERPLUCK
COLONEL MICHAEL H. WALTER
COLONEL ROGER L. WARD
COLONEL DAVID CALIS
COLONEL BRUCE E. ZUKASAS

DEPARTMENT OF THE INTERIOR

KATHLEEN BURTON CLARKE, OF UTAH, TO BE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEAN O’KEEFE, OF NEW YORK, TO BE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES’ COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

COMMODITY FUTURES TRADING COMMISSION


JAMES E. NEWSOME, OF MISSISSIPPI, TO BE CHAIRMAN OF THE COMMODITY FUTURES TRADING COMMISSION.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

MICHAEL HAMMOND, OF TEXAS, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE ARTS FOR A TERM OF FOUR YEARS.

THE JUDICIARY

C. ASHLEY ROYAL, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA.

DEPARTMENT OF DEFENSE

CLAUDE M. BOLTON, JR., OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF THE ARMY.

EXPORT-IMPORT BANK OF THE UNITED STATES


EXTENSIONS OF REMARKS

HONORING PEPPERELL MIDDLE SCHOOL, ROME, GA, "34,288 CANS OF FOOD IN THE HALL"

HON. BOB BARR OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. BARR of Georgia. Mr. Speaker, the main hall of Pepperell Middle School, located in the small community of Lindale, just outside the city of Rome, GA, has been lined with 12-25 inch cardboard boxes stacked halfway to the ceiling for several weeks. The boxes were crammed with more than 34,000 cans of food; all donated by students for this year’s local Salvation Army Can-a-Thon.

Sponsored by Atlanta NBC affiliate WXIA 11-Alive; Rome radio stations WRGA, Q–102, South 107; and the Forum, the Salvation Army Can-a-Thon accepts donations of canned, non-perishable food items in the Forum’s main parking lot on a designated day in December.

On November 1st each year, students begin to solicit canned goods from family, friends, neighbors, and others. Last year, over 24,000 cans were collected by students at Pepperell Middle School. The goal for 2001 was set at 25,000 cans. Once they exceeded that total, a new goal was set at 30,000 cans. On the morning of Friday, December 7, a large Marine Corps truck made its way to Pepperell Middle School. Upon arrival, students loaded 34,288 cans of food onto the truck which was escorted by the local police, and two bus loads of students from the school, making its way to the Forum.

The annual holiday Can-a-Thon collected more than 70,000 cans from throughout the city and county. Approximately 700 baskets will be filled with canned goods and will be given to families in need. The food will also go toward providing daily meals for men, women, and children who seek shelter at the Salvation Army.

Pepperell Middle School principal Frank Pinson is justifiably and extremely proud of his students, saying, “this is a big deal thing to them, and it teaches them one of the greatest lessons they learn.” The students work extremely hard, soliciting in many ways other than just going house to house. Some students donated their ice cream money; they held a dance and a talent show to raise money. The school has led the entire state in Can-a-Thon donations for 8 straight years.

Eight years ago, a tornado hit the Lindale community, destroying or damaging many homes, and leaving many families homeless. The Salvation Army was immediately there to assist those families. The students of Pepperell Middle School decided at that time to secure canned goods for those who experienced losses due to the storm. They found great satisfaction in helping those in need, and the tradition continues each year with the Can-a-Thon.

The principal, staff, faculty, students, their families, and, indeed, the entire community, are to be commended for their outstanding participation in this event. It is with great pride I recognize them today as true community leaders. I am honored to serve as their Representative in the U.S. Congress.

TRIBUTE TO MR. PETE ANDlena NEIN

HON. BOB SCHAFFER OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SCHAFFER. Mr. Speaker, I rise today to express gratitude to Mr. and Mrs. Pete and Lena Nein of Crook, Colorado, on their 70th Wedding Anniversary. In honor of this extraordinary occasion, I would like to convey to them my genuine congratulations.

Pete and Lena were married on January 3, 1932 in Sedgwick, Colorado, where they began their lives together. Mr. and Mrs. Nein moved to Crook, in 1934 where they rented 160 acres of land and began farming with horse-drawn equipment. Their first house, in which they lived for 42 years, had electricity installed in 1936. Indoor plumbing was not installed until 1940. Pete and Lena have witnessed and experienced extraordinary events including the Dust Bowl, Great Depression, World War II, Korean War, Vietnam War, fall of the Soviet Union and now, the war against terrorism. Throughout this time period they have devoted their lives to agricultural production and determined community service. Pete was the president of the Crook Volunteer Fire Department for 27 years and Lena was the organist and pianist in a Crook church for over 45 years. The Neins serve as a shining example, not only for their community, but for all Americans.

As a husband and father of five, I have come to adore the example of a strong marriage and loving children. Pete and Lena started their lives together humbly, working hard to build a happy and successful life together. My admiration for them, and the fortitude and commitment they have demonstrated is deep. Through the good times and the bad, Pete and Lena’s love has forged a seemingly unbreakable bond.

Pete and Lena Nein are amazing role models. As a Member of Congress, it is my honor to congratulate both Pete and Lena on their anniversary. Pete and Lena let nothing stand between their unceasing love for one another on their glorious day. I ask the House to join me in extending wholehearted congratulations to Mr. and Mrs. Pete Nein.

IN RECOGNITION OF THE CITY OF GAINESVILLE

HON. RALPH M. HALL OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. HALL of Texas. Mr. Speaker, I rise today to speak in recognition of the City of Gainesville, Texas, which has recently instituted the Medal of Honor Host City Program. This program, unique in the nation, will provide a stipend to cover lodging, food, and some travel expenses to Medal of Honor recipients visiting the City of Gainesville. The Medal of Honor Host City Program seeks both to honor the 149 living Medal of Honor recipients and to expose the citizens of Gainesville—especially its youth—to true

This “bullet” symbol identifies statements or insertions which are not spoken by the Member on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
American heroes. The local Veterans of Foreign Wars Post No. 1922, and community leaders, initiated the project to help recognize these men of valor and to give the citizens of Gainesville the chance to hear, first-hand, their amazing stories.

The Congressional Medal of Honor Society announced the project to its members at its October annual reunion. Two Medal of Honor recipients visited Gainesville on Veterans Day.

This program was organized before the tragedies of September 11, but in light of recent events, projects like the Gainesville Medal of Honor City Program highlight the sacrifice, patriotism and sense of duty that have been a foundation of our great nation. Our Medal of Honor recipients are living examples of those values and are the best messengers to tell the price of freedom. While in Gainesville, these extraordinary individuals will meet with school classes, speak to civic groups and others who would like to hear about their experiences. It gives the honorees a forum for their thoughts and gives Gainesville the chance to thank them for all that they have done for their country.

Mr. Speaker, I want to commend Mayor Kenneth Kaden for his leadership in promoting this project. It is an honor to recognize such a unique and special program—The Medal of Honor Host City Program—and I look forward to seeing it succeed in Gainesville.

PERSONAL EXPLANATION

HON. SOLOMON P. ORTIZ
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. ORTIZ. Mr. Speaker, I was unavoidably detained in my district during the following rollcall votes. Had I been present, I would have voted as indicated below. Rollcall No. 499: Yes; 500: Yes.

IN MEMORY OF HONORABLE R. LAWRENCE COUGHLIN
HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. RANGEL. Mr. Speaker, today is a bitter-sweet day. It is with both great sadness and immense pride that I rise today in honor and celebration of the life of my friend, the Honorable R. Lawrence Coughlin.

Robert Lawrence Coughlin was born on April 11, 1929 in Wilkes-Barre, PA, and grew up on his father’s farm near Scranton, PA. He served distinguishably as a Republican Member of the United States Congress for 24 years, from January 1969—January 1993 representing a portion of Philadelphia, PA and its surrounding suburban Main Line area.

Lawrence’s accomplishments were great during his tenure in Congress. He was a man of great honor and truly a gentleman. I had the pleasure of serving with him while I was Chairman of the Select Committee on Narcotics Abuse and Control and he served as the Ranking Republican Member.

At first glance, one would perceive our relationship as that of the “Odd Couple” as Lawrence and I strolled side by side through the Capitol as he donned his signature bow tie and me wearing a more conventional necktie. He represented the wealthy suburban Main Line area of Philadelphia and I represent the vibrant Harlem area of New York City. However, we had many shared interests and experiences.

Lawrence Coughlin served in the Marine Corps during the Korean War. His military training was evident in the way he conducted himself in the Congress. He was a very disciplined man who took a dogged approach to tackling the difficult problems that faced the nation and the Congress. I remember his passion for the youth of our great nation. This passion was the source of his drive to do whatever was necessary during his tenure on the Select Committee on Narcotics Abuse and Control to rid our communities of the scourge of drugs. Although some would say, Lawrence had a Patrician air about him I would say he had the air of a proud ex-marine who viewed the war on drugs as a series of unending battles to be confronted head on until the war was won and proclaimed. As a man of great consciousness, I will forever remember his stamina and commitment in his efforts to eliminate drugs from our communities, making the world a better place for our youth.

Mr. Speaker, I ask that all my colleagues join me in celebrating the life and the political accomplishments of my great friend, the Honorable R. Lawrence Coughlin.

INTRODUCTION OF FEDERAL INDIAN RECOGNITION REFORM LEGISLATION

HON. ROB SIMMONS
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SIMMONS. Mr. Speaker, our Federal Indian recognition process is broken. Recognition decisions don’t take months to decide, they take years—and sometimes decades. Towns and other interested parties—sometimes forced to spend millions because of federal recognition policies—rightfully believe their concerns and comments are often ignored. Criteria for recognition has been overlooked rather than upheld under previous BIA administrators. In short, the public and Indian tribes have lost faith in the current recognition process.

A new administration has brought some hope in fixing this important process. To this end, I am rising today to introduce legislation that lays out a seven-point plan for reforming the federal Indian recognition process.

Specifically, my bill would first require the BIA to notify states whenever a tribe within them files for federal recognition. The state must in turn ensure that notice is given to tribes adjacent to that tribe.

Second, the legislation would require the BIA to accept and consider any testimony—including from surrounding towns and others—that bears on whether or not BIA recognizes a tribe.

Third, under my measure, the BIA would be required to find affirmatively that all recognition criteria are met in order to confer federal recognition and any decision conferring recognition must be accompanied by a written set of findings as to how all criteria have been satisfied.

Fourth, I put forth language that would double—from $900,000 to $1.8 million—the resources for the BIA’s Branch of Acknowledgment and Research Division to upgrade its recognition process.

To help locally adversely affected by federally recognized tribes, my bill provides $8 million in grants to local governments to assist such governments in participating in certain decisions related to certain Indian groups and Indian tribes. These grants could be applied retroactively to any local government that has spent money on decisions related to certain Indian groups and/or tribes.

In addition, my legislation also creates a grant program of $10 million to be made available to federally impacted towns for relevant infrastructure, public safety and social service needs directly related to tribal activities.

And lastly, the measure would institute a “cooling off period” of one year, in which any high-level BIA official could not appear before their former agency.

Mr. Speaker, I am proud to introduce this bill with three of my colleagues from Connecticut—Mrs. Johnson and Messrs. Shays and Maloney—and the gentleman from Wisconsin, Mr. Green. I urge others who care about federal Indian recognition issues to join us in working toward a recognition process that is fair, open and respectful to all parties involved.

STUDIES ENDORSE PROJECT LABOR AGREEMENTS

HON. GEORGE MILLER
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. GEORGE MILLER of California. Mr. Speaker, I wish to bring the results of two recent studies on the value of project labor agreements (PLAs) to the attention of my colleagues.

The California Research Bureau, a non-partisan confidential research arm of the Governor’s office and the state legislature concluded that project labor agreements are “valued by owners and construction firms alike [because of] the role PLAs play in resolving disputes over roles contractors and subcontractors play in large and complex projects.” The CRB report also credited PLAs for promoting local economic development, workforce training, and employment goals for women and minorities.

The UCLA Institute for Labor and Employment has also recently released a study that found that PLAs do not increase labor costs, do not exclude non-union workers, encourage competition, promote stability, cooperation and productivity, and reduce the likelihood of work stoppages or delays.

Mr. Speaker, these studies merely confirm what has long been understood by those involved in private and public sector construction who are not otherwise driven by ideology: Project labor agreements promote the timely completion of construction projects and increase productivity. They are good for business. They also promote apprenticeship training and help secure better working conditions. They are good for workers.
Unfortunately, among those who are most driven by ideology is the Bush Administration. According to the December 13, 2001 issue of The Washington Post, Maryland has been forced by the Bush Administration to proceed with the enormous Wilson Bridge construction project without the authority to use a project labor agreement. I am sure that my colleagues recall that last February, shortly after taking office, President Bush tried to ban project labor agreements for any construction project receiving federal money. In a decision that specifically involved the Wilson Bridge project, a federal judge ruled in November that the ban issued by President Bush violated federal law and the Constitution. Following the decision, the Maryland State Highway Administration again sought permission from the Federal Highway Administration to implement a project labor agreement. But according to the Post, the Federal Highway Administration rejected Maryland’s request saying the state had not proved the need for a PLA.

By effectively prohibiting the use of a project labor agreement on the Wilson Bridge project, the Bush Administration continues to thwart good business practice and good labor policy to the detriment of taxpayers and continues to deny working Americans the protections they are entitled to under law. I commend to my colleagues and the administration’s attention the reports concerning project labor agreements for Maryland State Highway Administration issued by President Bush violated federal law and a federal judge ruled in November that the ban placed by the Bush Administration on project labor agreements is illegal.

I sincerely hope that the Administration reconsiders its unwarranted hostility for these proven agreements that benefit business, taxpayers, workers and the public in general.

HONORING THE 150TH ANNIVERSARY OF POLK COUNTY, GA

HON. BOB BARR
OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. BARR of Georgia. Mr. Speaker, formed in 1851 by an act of the Georgia Legislature, Polk County, Georgia, was named for James Knox Polk, a former governor of Tennessee and the 11th President of the United States. With a population of 38,127 people and a land area of 311 square miles, Polk County is located in northwest Georgia.

For more than a hundred years the Cherokee and Creek Indians reigned supreme in north Georgia. The southernmost village in the Cherokee Nation was on Cedar Creek, which is located just off Main Street in present-day Cedartown, the county seat of Polk County. In 1826, two white men, Linton Walthall and Hampton Whately, visited the area. They returned in 1832 to establish stores, and the community began to develop. In 1838, the Cherokee were moved into small forts, and the tribe began the process of establishing farms and the town of Cedartown, now called “Cedar Grove.” In 1836, the town was incorporated, and the War Between the States was not kind to Cedar Town; however, after the war, in 1867 the area began to grow and the town of Cedartown prospered, as did much of the surrounding area, including the towns of Rockmart and Aragon.

The residents of Polk County are preparing for Polk County’s 150th birthday celebration. Tentative plans include special music, recognition of the oldest living person in the County, the oldest married couple, the youngest citizen, and the oldest church in the County. Commemorative coins and Christmas ornaments have been designed, cedar trees have been requisitioned to be presented to schools, and a game of Polk historical trivia is being compiled and will be distributed to students. Students in Polk County schools are being asked to follow specific guidelines and to share the stories of our past with our children and grandchildren. The term “home town USA” truly describes the people of Polk Country. They are kind, generous, caring folks and I am pleased to call many of them my friends. Happy Birthday Polk County!!

JUDGE GERARD DEVLIN

HON. STENY H. HOYER
OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. HOYER. Mr. Speaker, I rise today to pay tribute to a great Irish-American success story. Judge Gerard Devlin of Prince George’s County, Maryland. Judge Devlin is called Jerry by his friends of which I am fortunate to be one. I have known Jerry for over thirty years, since I was an intern in Senator Brewster’s office and Jerry was an elevator operator in the Capitol.

I have valued Jerry’s friendship over those three decades and have always enjoyed his boisterous and comic Irish sensibility. We have also shared a close professional relationship and Jerry was always a faithful ally through our days in the Young Democrats, the Maryland General Assembly and beyond.

I pay tribute to Jerry today not simply because he is a good and old friend but to thank him upon the occasion of his retirement. His distinguished career in public service is not matched by many and his even-handedness and courteous manner is appreciated by all.

Jerry was born in Dorchester, Massachusetts, on May 29, 1933. He attended public schools in Dorchester and Boston, and served in U.S. Marine Corps from 1955 to 1957. He went on to Boston College and Suffolk University and graduated from the University of Baltimore School of Law in 1969. He also earned his masters from the University of Maryland in 1970.

Jerry began his career in public service as a staff attorney in the United States House of Representatives in 1959 and later worked in the United States Senate. His service was not limited to the national level however. He served his local community for five years as a member of the Prince George’s County Board of Election Supervisors from 1964 to 1969, and as a member of the Charter Review Commission of the city of Bowie.

Jerry also served his community as a teacher to Prince George’s County’s youth at Gonzaga High School, Bowie State University, and Prince George’s Community College.

In 1975, Jerry took his talent to the Maryland General Assembly where I had the pleasure of serving with him for six years. He was a member of the House of Delegates for eleven years and was named freshman Legislator of the Year by the Maryland Young Democrats in 1975. He was also named Legislator of the Year by the Prince George’s Municipal Association in 1983, 1985, and 1986.

Jerry stepped down from his position as Associate Judge in the 5th District Court of Maryland this past September and retired from a long and praiseworthy career in civic affairs. During his tenure as a judge, Jerry was well-liked and respected by both bench and bar for his even-handedness and wisdom. He had a good feel for fundamental fairness and through it all his Irish wit and humor shone through.

Judge Bob Sweeney, the former Chief Judge of the Maryland District Court, said this of Jerry, “One of the ten things that a good judge needs is courage. For a judge that means doing the right thing even if it is not the popular thing. Jerry Devlin personifies that type of courage.”

Mr. Speaker, I would like to repeat today an Irish Blessing for my dear friend Jerry Devlin to thank him for his years of service and to wish him well in retirement: May your blessings outnumber the shamrocks that grow, and may trouble avoid you wherever you go. May the road rise up to meet you, may the wind be always at your back, may the sun shine down upon your face, and the rain fall soft upon your fields, until we meet again. May God hold you in the hollow of his hand.

I ask my colleagues to join me in honoring this great Irish American who gave forty years of public service to Prince George’s County and the state of Maryland.

TRIBUTE TO AMBASSADOR ULRIK FEDERSPIEL

HON. TOM LANTOS
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. LANTOS. Mr. Speaker, I invite my colleagues to join me in commending Ambassador Ulrik Federspiel, who was sworn in as Denmark’s Ambassador to the United States in May of 2000, for his record of achievement in fostering transatlantic ties. Throughout his remarkable career, Ambassador Federspiel has worked tirelessly to strengthen the already close relationship between the United States and Denmark. Indeed, the Danes are fortunate to have such an illustrious representative in Washington, and the United States has no better friend and ally in the Diplomatic Corps here in Washington than Ambassador Federspiel.

Mr. Federspiel began his career in the Danish Foreign Service in 1971, and was immediately assigned to the prestigious European Community office within the Foreign Ministry.
His outstanding contributions on E.C. matters earned him a tenure in London as First Secretary of Political Affairs from 1973 to 1977. During this time he worked in cooperation with several African states in the process of decolonizing countries including Zimbabwe, Angola and Namibia. Mr. Federspiel was especially active in supporting the anti-apartheid movement in South Africa. As a result, he was personally invited to the inauguration of President Nelson Mandela in 1993 and became a consultant to the modern integrated South African administration.

In 1993 Ambassador Federspiel returned to Copenhagen to become Special Assistant to the Permanent Secretary of State for Foreign Affairs. A post he held until he arrived in Washington to serve as Deputy Chief of Mission at the Danish Embassy in 1994. He quickly developed a reputation in Washington as a quick study with an imposing intellect combined with a personable, friendly demeanor. Ambassador Federspiel came to understand that not only does Denmark have a critical role to play in European matters, but, for a small country, Denmark could “punch above its weight” on transatlantic economic and political issues.

As State Secretary for Foreign Affairs from 1991–93, Ulrik Federspiel worked to support independence for the Baltic states, which were emerging from years of Soviet occupation. Denmark was the first country in the world to recognize the three former Soviet countries of Estonia, Latvia and Lithuania.

From 1993 to 1997 Ambassador Federspiel’s outstanding record brought the notice of the most senior members of the Danish government and was asked to serve as Chief of Staff to the Prime Minister. At the EU summit in June 1993 under the Danish presidency, Mr. Federspiel drafted the portion of the Copenhagen Criteria that set standards for EU membership. Ambassador Federspiel became a staunch proponent of NATO expansion and has since taken a leading role in the process. Among his other accomplishments while in the Prime Minister’s Office, he played an important role in the Danish decision to play a peace role in Bosnia, having the largest contingent of ground troops there, in the capital, and the only country to have heavy armor, namely ten tanks.

Mr. Speaker, since Ambassador Federspiel arrived in the United States last May, he has been actively engaged in solving trade disputes between the EU, Denmark, and the United States. His diplomatic skills were evident while working with both the Congressional leadership and the Administration in resolving several high-profile trade disputes, including the Russian sanctions and the pork export ban on pork. Mutually beneficial trade has been expanded between the U.S. and Denmark through close cooperation between the former U.S. Ambassador in Copenhagen Richard S. Swift and Ulrik Federspiel.

Mr. Speaker, Ambassador Federspiel has brought his dynamism and passion to so many political and humanitarian issues. Since completing his military service in the Royal Danish Navy in Greenland in 1970–71, Ulrik Federspiel has taken a keen interest in Greenland and its population. In 1994, which became the Decade of Greenland Mission to the Danish Embassy in Washington, D.C., the relationship between Greenland, the United States and Denmark became one of his priorities. The Ambassador has played an instrumental role in furthering the interests of the Home Rule Government and that of the Danish realm and has worked in close cooperation with the U.S. government, especially Thule Air Base. The island and the base are strategic elements of defense and security preparedness of both the United States and Denmark.

Ambassador Federspiel is also an accomplished academic. He graduated from the University of Aarhus in political science in 1970, and completed a year of post-graduate studies at the University of Pennsylvania, earning an M.A. in international relations. He is a visiting lecturer at George Washington University and frequently lectured on international relations at the University of Copenhagen as well as served as a governing board of the university.

His interest in supporting academic excellence continues today. He is an Honorary Trustee of the Crown Prince Frederick Fund for Harvard University that supports two scholarship awards annually for exemplary Danish university students. Ambassador Federspiel currently sits on the advisory board member of Human Rights Action (HIA), a unique educational program between Denmark, the United States, the Netherlands and Germany. HIA offers a number of competent university students an intensive study of human rights and democratic values each year. This summer the program was expanded to include internships on Capitol Hill.

Ambassador Federspiel’s commitment to working for others is undoubtedly a result of his and his family’s experiences growing up in war torn Europe. During the Nazi occupation of Denmark, Ambassador Federspiel’s father, Per Federspiel, was imprisoned for a year due to his involvement in the rescue of the jews in October 1943. Needless to say, Ambassador Federspiel has proven himself to be a strong and consistent supporter of the State of Israel.

After the horrible events of September 11th, Ambassador Federspiel and the Danish people were among the first to support the American people and the cause of freedom. As a NATO member, Denmark is one of the strongest supporters of the United States in its campaign against terrorism. And a recent poll of the Danish population showed 80% of the Danish people as the America’s strongest supporters in Europe in our war on terrorism.

Mr. Speaker, it is a great honor and privilege for me to have the opportunity to thank Ambassador Federspiel for his uncompromising dedication to furthering the friendship between our two great countries.

ADMITTED TITLE XVIII OF THE SOCIAL SECURITY ACT

HON. GEORGE W. GEKAS
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. GEKAS. Mr. Speaker, until the early 1980s, Medicare was always the primary payor in all situations to employer health plans for both disabled and retired employees. However, effective with the Omnibus Budget Reconciliation Act of 1981 ("OBRA"), for the first time Medicare became the secondary payor for one group of American employees who were specifically singled out—the "working aged". The "working aged" were defined as American employees over the age of 65 who were provided both Medicare and employer health plan coverage and continued to actively work. As a result of this legislative change, Medicare would now only provide secondary coverage to the "working aged" after their employer health plan. But even with this "working aged" provision, not making contributions to our society, Medicare would again become the primary insurance and payor of claims for these good people.

Then in 1986 the Congress again acted by passing the Omnibus Reconciliation Act of 1986 which singled out yet another group of American workers—this group of individuals was identified as "disabled active individuals". A "disabled active individual" was defined in the statute as an "employee (as may be defined in regulations)": The OBRA Amendments of 1986 also mandated that Medicare become secondary insurance coverage to the employer health plans for the "disabled active individual". The Health Care Financing Administration (HCFA), the responsible federal government agency charged with implementing the 1986 OBRA Amendments, crafted a definition of employee by Agency directive—a policy which was never subjected to the rigors of the Administrative Procedure Act and which was never promulgated into a regulation published in the Federal Register.

The policy is based on an interpretation by the Administrator of HCFA contradicted the very definition of employee already existing within the body of the Social Security Act and the Internal Revenue Code. HCFA’s definition effectively said that if an employer continued to have a disabled employee on their books in "employee status" after a disability began (which all employers did for employee benefit purposes), the employer health plan, not Medicare, would become the primary payor for that employee if he or she was unfortunate enough to be classified as the "disabled active individual." According to the new HCFA policy, which remains the policy of the Agency, the fact that the disabled employee was not actually working was irrelevant. However, the common law definition of employee used by Social Security and the IRS states that an individual may be actively performing services for remuneration in order to be considered an employee. This ad hoc action by HCFA has already directly and negatively affected numerous companies throughout Pennsylvania, Illinois and other states involving employees that work for these companies.

Due to HCFA’s departure from the commonly accepted definition of employee, and existing definitions within federal law, many employer health plans reacted to this unjustified policy making of HCFA by simply taking the easiest course of action—their employer health plans reacted to this unjustified policy making of HCFA by simply taking the best course of action—terminating health coverage for their disabled employees. In effect, HCFA’s policy forced employers to begin discriminating against their disabled employees.

Upon hearing this, the HCFA stated that an employer would be primary payor to Medicare for their "working aged", as soon as these individuals quit working. Medicare would become primary payor. However, to these same employers, HCFA said that for your disabled employees you will be the primary payor to Medicare regardless of whether these individuals are working or not.

Due to this contradicting treatment between retirees and disabled employees, clarifying
TRIBUTE TO GERALD MAYO

HON. BOB SCHAFER
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SCHAFER. Mr. Speaker, it is an honor to rise today to congratulate Mr. Gerald Mayo of Estes Park, Colorado, who was recently named honorary-chairman of the National Small Business Advisory Council. For this, Mr. Speaker, the United States Congress should commend him.

The National Small Business-Advisory Council provides a link between small business owners and Members of Congress. The purpose of the council is to give input on economic and tax issues while also participating in private surveys and policy briefings. The council achieves this through participation in strategy sessions and national meetings with local, state and national leaders. I applaud the National Small Business Advisory Council and its new chairman Gerald Mayo, for creating an alliance between the nation’s leadership and the small business community.

A broker for Prudential Team Realty, Gerald Mayo has first-hand experience with small businesses. His leadership and dedication to small businesses across the nation is commendable and greatly appreciated. Gerald is truly a shining example for all Americans. A constituent of Colorado’s Fort Congress- sional District, Gerald not only makes his community proud, but also his state and country. It is a true honor to have such an extraor-dinary citizen in Colorado. I ask the House to join me in extending wholehearted congratulations to Mr. Gerald Mayo.

IN RECOGNITION OF MARGARET PARK HAYS

HON. RALPH M. HALL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. HALL of Texas. Mr. Speaker, I rise today to speak in recognition of Margaret Park Hays, a devoted community servant and former Mayor who initiated a drive to restore The Santa Fe Depot in the city of Gainesville, Texas. Margaret is a distinguished native of Gainesville and has devoted considerable energy, drive, and creativity to bringing this project to fruition. Her efforts not only saved an historically significant building but helped make the community aware of an important part of their history. This particular station, constructed in 1902, was Gainesville’s second depot. The city, itself, received its first passenger train on January 2, 1887. The depot is an elegant redbrick building that served the Santa Fe line when it was originally constructed. Without Margaret’s devotion to her community, though, the station would have remained an abandoned relic. Now it plays host to many community gath-erings.

Mr. Speaker, it is with great thanks and appre-ciation that I recognize the energy and ef-forts of Margaret Park Hayes, who organized the effort to return the Santa Fe Depot in Gainesville, Texas to its original beauty. I have had the pleasure of knowing—and working with Margaret—for many years. This would be a better world, with more kindness and caring, and more successes in the healthy growth of a city or area, if we had Margaret Park Hays in each of our cities. She is, other than being a wonderful person, a great asset to the city of Gainesville—and all who live there who want and expect to have gracious living. Margaret brings this to the table of public service because she cares.

Let us close this House of Representatives on this day, December 18, 2001, in loving re-spect and eternal gratitude, to this kind, loving and generous woman.

TRIBUTE TO THE HONORABLE MARY ALICE SALIZAR

HON. SOLOMON P. ORTIZ
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. ORTIZ. Mr. Speaker, I rise today to pay tribute to an American patriot, Mary Alice Salizar, who is retiring the end of this turbulent year.

A native of Corpus Christi, Texas, Ms. Salizar has served in the judicial branch of our government since the early 1970s. She spent the early part of her career working for local attorneys and as a court reporter.

She wanted to be part of the federal court system, and in 1973, she became part of the U.S. District Clerk’s office. She has been an integral part of the office since then. Likewise, she has been an integral part of our community, working with children and young people from low-income families and communities through her volunteer work. In doing so, she is part of a tradition of doing the most funda-mentally work Jesus instructed Christians to do: help the poor.

While she intends on spending a great deal of time on her crafts, quilting and others pas-times, she nevertheless intends to continue her tradition of service to community through volunteering at a public school or as a senior Candy Stripper at a local hospital.

Mary Alice Salizar is the example for others to follow, both in the course of her life’s work and her desire to continue that service by vol-unteering in the fields of health and education. She will now also be spending more time with her family, the people who supported her during her service to the community including: her husband Pedro Salizar; their children Mark, Rick and David; and their grandchildren Annaliza and Estevan Marcos.

I ask my colleagues to join me in commending the life’s work of Mary Alice Salizar, who has spent the better part of her profes-sional life as part of the federal judicial sys-tem.

HONORING THE ENLISTED MEN AND WOMEN OF THE UNITED STATES NAVY

HON. ROB SIMMONS
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SIMMONS. Mr. Speaker, I rise today to announce legislation that I have introduced to request that the Secretary of the Navy name a U.S. Navy warship the “U.S.S. Bluejacket” in honor of the courageous Americans who have served as enlisted members in the United States Navy.

My resolution also requests that this vessel bear the hull designation number “1776” to re-reflect the freedom and independence protected and preserved by the millions of enlisted men and women who have proudly served in the United States Navy. Our Navy, as well as for the nation, would be well served to have a ship bearing the hull number 1776.
Mr. Speaker, the Second District of Connecticut, which I have the privilege of representing, has a long and proud Naval and seafaring history. We are home to the “The First and Finest,” the Naval Submarine Base New London, homeport to Submarine Squadron Two, Four, and Development Squadron Twelve, the Naval Submarine School, and Naval Submarine Support Facility. Thousands of men and women in my district are part of the “silent service” and its support and training structure. They are dedicating their lives, risking their lives everyday in our great Navy. I believe that we should honor their service and sacrifice by naming a ship the “U.S.S. Bluejacket.”

I urge all of my colleagues to join me in this effort to forever honor the bravery, dedication and service of the millions of men and women who have fought to defend this country in our Navy.

Finally, I would like to thank the efforts of Mr. John Thor Newlander of Gales Ferry, Connecticut. Mr. Newlander has served this country in several of our military services, both active and reserve, and has worked tirelessly on behalf of our enlisted military personnel and on this resolution. I thank him for his service and his commitment to this worthy endeavor.

INTRODUCTION OF CHILD DEVELOPMENT AND FAMILY EMPLOYMENT ACT OF 2002

HON. GEORGE MILLER
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. GEORGE MILLER of California. Mr. Speaker, I am pleased to join my colleagues Mr. ANDREWS, Mr. OWENS, Mr. MORAN, Mr. HINOJOSA, Ms. LEE, Mr. FRANK, Ms. WOOLSEY, Mr. GREEN, Mr. KILDEE, Ms. MCCOLLUM, Mr. ABERCROMBIE, Mr. MCGOVERN, Ms. DELAURA, and Mr. NADLER in introducing the Child Development and Family Employment Act. This legislation prioritizes the Child Care and Development Block Grant to better meet the child care and after-school care needs of low-income children and families.

Science conclusively demonstrates that children’s experiences in their first 5 years of life have major and lasting effects on learning and academic success. Parents undoubtedly are the most significant and important influence on a child’s growth. But with 65% of mothers in the labor force raising children under age 6, child care often provides important secondary influences that also greatly affect a child’s development. Child care simply is not just baby-sitting. Early care is an important early learning period and if parents cannot afford to provide their children with high quality care, it is a missed opportunity to help develop a child’s school-readiness. Kindergarten teachers report many of their students begin kindergarten cognitively and behaviorally unprepared to learn. For all our youth to achieve in school, we must ensure that they arrive at kindergarten ready to learn, reducing staff turnover, and attract and retain staff—all key goals in improving child care quality. And this bill allocates additional resources so that CCBGD can be expanded to reach one-third of the families for which it was intended.

In conclusion, Mr. Speaker, until we have a quality and affordable child care program, we will continue to miss the opportunity to maximize the early development of young children and get them ready for learning in school. Child care assistance can make the difference in a child’s reaching school age ready to learn, and it can make the difference in a family remaining employed and off welfare. The reauthorization of CCBGD provides Congress with a timely opportunity to achieve this urgent goal and to focus our commitment to help meet the needs of all American children.

Mr. Speaker, I urge Members of the House to join me and co-sponsor the Child Development and Family Employment Act.

TRIBUTE TO CAROL ELISE BENNETT

HON. TERRY EVERETT
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. EVERETT. Mr. Speaker, with the U.S. House of Representatives set to conclude its work for the First Session of the 107th Congress, I would like to add a final contribution to the Record as we close the Congressional history book on 2001.

The last twelve months have been so dramatic in their significance upon this body and the nation that it is easy to overlook the many vital human elements of this institution. I choose to honor one here today.

I rise to pay tribute to a player on the Congressional stage who said farewell to this House of Democracy earlier this year; Carol Elise Bennett. For two decades, Carol has been a part of the lives of those who served our nation in the House and Senate.

In 1981, she began covering the Congress for the Washington-Alabama News Report, dutifully informing her statewide radio audience of the efforts of the Alabama Congressional Delegation. She was the longest-serving of all the press assigned to cover Alabama’s congressmen and she always performed her work with professionalism and a particularly keen attention to accuracy.

Carol had good reason to be at home around the spotlight, having received formal training in the theatre at the University of British Columbia followed by acting roles on the stage and in film. However, Carol’s work and many interests never kept her from helping others. She served as a volunteer reader for recordings for the blind here in Washington for more than a decade.

Since I came to Congress in 1993, I have personally valued my friendship with Carol, and I wish to thank her for her fairness and dedication to pursuing the truth. This institution is a better place because of the hard work of reporters like Carol, I think I can speak for all the Alabama Delegation, past and present, in wishing Carol Bennett a happy and equally rewarding retirement.

MEDICAL RURAL AMBULANCE SERVICE IMPROVEMENT ACT OF 2001

HON. JOHN P. MURTHA
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. MURTHA. Mr. Speaker, across America, Americans have come to expect and rely on our health care system, especially, emergency ambulance service. All to often, for many of us, our first exposure to health care is the local EMS unit that responds to a call for help. Unfortunately, for millions of Americans living in a rural setting, this cornerstone of medical care is on the verge of collapse.

I, for one, am a strong believer in the importance and the necessity of maintaining a present effective EMS component within our health care system. The question that we must answer, as we debate health care, is, how prepared do we want and expect our
health care system to be. In an emergency, at that critical moment, the EMS unit is that critical link to our health care system that makes the difference between life and death.

Unfortunately, be it ground or air, EMS for communities throughout America is under enormous financial pressure. For many rural communities, EMS is on the verge of a financial crisis. Typically, rural EMS is a small one or two unit service, staffed by volunteers, not affiliated with a hospital or medical facility, that responds to 300 to 500 calls per year within a large radius (37 miles average) who’s greatest danger of existence comes from Medicare. In a growing number of instances, unrealistic and unresponsive Medicare reimbursement fee schedules have done more to erode EMS in America than any other threat to medical care in this country. Because Medicare fees fail to accurately define or reflect the rural medical environment, EMS is facing grave danger of being put out of business by fee schedules that fail to recognize and reflect the actual costs confronting rural ambulance/EMS service.

Therefore, I am introducing the “Medical Rural Ambulance Service Improvement Act of 2001”. This legislation will increase by 20 percent the payment under the Medicare program for ambulance services furnished to Medicare beneficiaries in rural areas, require CMS to define rural areas on population density by postal zone codes, increase mileage rates for the first 50 miles and require the use of most recent data by CMS in determining payment adjustments.

For rural ambulance and EMS, the majority of their revenue comes from Medicare reimbursement. Yet existing Medicare fee schedules are not accurate, nor do they reflect real-world costs confronting rural services. Due to their low-volume of calls and transfers, rural EMS providers will remain the hardest hit under CMS fee schedules unless decisive and corrective action takes place now.

Timely and accurate reimbursement and fee schedules for ambulance/EMS services will be critical to seeing that rural America continues to receive emergency medical services. Citing financial loss as the number one contributing factor for services closing down, the “Medical Rural Ambulance Service Improvement Act of 2001” will level the playing field for rural EMS.

Good health requires an effective and thorough health care system. We all have something to lose by not putting a halt to the erosion of EMS care in rural America. Therefore I am calling on all Members to join with me and sponsor passage of this important and effective bill, and I am proud to support it.
graduate of Sarasota High School and trained at the Art Institute of Pittsburgh. He was a U.S. Army Air Corps veteran of World War II.

In 1950, he rejoined V.T. Hamlin, the creator of the comic strip “Alley Oop,” whom he had briefly worked with prior to the war. He took over sole production of the cartoon in 1970 and continued the art and continuity for the strip until entering semi-retirement in 1991. Upon retirement he turned his attention to the fine arts and painting, working mostly with oils, and won several awards for his work.

Dave Graue will be dearly missed by his family, friends, members of the community, and countless “Alley Oop” fans around the country. Dave will be remembered for the special Christmas cards he sent to all his friends, cards that showcased his artistic talents. His last one commemorated the September 11th terrorist attacks on America.

I know my colleagues join me in expressing sympathy to Dave’s family: his loving wife, Eliza B. Graue, sons Jeff and Dan, daughter Karin Dowdy, seven grandchildren: Jordan, Mi Kyong, his children Cristina and Jesse, his parents Lon and Linda, and the rest of his family and friends who are grieving during this difficult time.

When the terrorists struck our country, our President made the difficult but appropriate decision to respond with our military. Throughout history, in any conflict involving American troops, Tennesseans have volunteered to serve. They have fought and died in every corner of the world to protect freedom. Master Sgt. Davis answered the call of his country, and his death will forever inscribe his name on the roll of heroes who have made the ultimate sacrifice to ensure the lives of others. His efforts should remind us all that the liberties we enjoy do not come without a price. Let us always remember these costs, and always remember Master Sgt. Jefferson Donald Davis.

COMMENDING ST. CHARLES SCHOOL IN LIMA

HON. MICHAEL G. OXLEY
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. OXLEY. Mr. Speaker, I would like to bring to your attention the care and concern that students at St. Charles School in Lima, Ohio are showing for children in Afghanistan. The students in Lima learned about the desperate condition of Afghanistan’s children. Through no fault of their own, the children of this war-ravaged nation are facing a hard winter without many of the basic necessities of life. Their families often must struggle just to find their daily food. St. Charles School students took the initiative and collected $1000 to donate to the Afghan Children’s Fund at the White House. They presented the check to my office during a school assembly. I, in turn, will make sure that the donation is delivered to President George W. Bush.

Since the events of September 11th, the President has said many times that the United States is at war with terrorists—not with the country of Afghanistan, and certainly not with its innocent children. It is my hope that Afghanistan’s new government will devote itself to building a peaceful society where children are able to lead normal lives free of war and hunger. The donation by the students at St. Charles School will bring comfort to needy children all over the world. I commend them for the generous spirit that they have shown during this season of peace and goodwill.

HONORING THE BARBARA MASHBURN SCHOLARSHIP FUND AND THE BARBARA MASHBURN SCHOLARSHIP SINGERS

HON. JOHN BOOZMAN
OF ARKANSAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. BOOZMAN. Mr. Speaker, I rise today to honor the Barbara Mashburn Scholarship Fund and the Barbara Mashburn Scholarship Singers.

Recently, the Barbara Mashburn Singers gave three very patriotic and festive holiday performances in the Third District of Arkansas. These singers and their foundation have traditionally been special invited guests of the White House in several previous Christmas seasons. However, the events of September 11th and the recent Executive Order closing the White House to public events this Christmastime made it impossible to bring their vocal talents back home in Arkansas instead by performing at three different Northwest Arkansas locations to honor the victims of September 11th and our nation.

The Barbara Mashburn Foundation, as the only vocal music scholarship program of its kind in the nation, was formed in 1993 by Dr. James and Barbara Mashburn of Fayetteville. The Foundation, funded entirely through donations, fundraising events, grants and an annual gift by the founders, the Mashburns themselves. Patrons of these events have told me of the excellent job these young people have done in promoting patriotism during this holiday season.

On this day, when we remember the importance of the holidays before us and the resurgence of patriotism in this country, I would like to salute the Barbara Mashburn Singers for their efforts to promote the well-being of our nation. We don’t often see individuals with foresight and personal sacrifices as the Mashburns have displayed. They continue to invest their personal time and finances to mentor a new generation of contemporary musicians, vocalists and performers. Each of the Barbara Mashburn Foundation Scholarship students gains much more than a musical scholarship, these students take part in leadership conferences; attend financial seminars and luncheons on manners; prepare and meet budgets and they become goodwill ambassadors through the promotion of their positive lifestyles and the role music can play in everyday life.

Mr. Speaker, I ask my colleagues to join me today in honoring the great tradition of the Barbara Mashburn Scholarship Foundation and its talented singers. Their usual performance at the White House this Christmas season will certainly be missed. May they soon return to Washington, DC and the White House for Christmas celebrations of future years, and may they continue to serve as role models for the young people of America.
which are, in effect, controlled by the EPA, in their role of resolving claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). This uncertainty may prevent taxpayers from entering into prompt settlement agreements in such situations. The bill resolves these uncertainties and expedites the cleanup of Superfund hazardous waste sites. This goal is being frustrated by the existing uncertainty in the tax laws.

Due to the uncertainty as to the proper Federal income tax treatment of such government-controlled funds, taxpayers may be hesitant to promptly resolve their claims under CERCLA by contributing to the settlement funds. One of the underlying purposes of CERCLA is to ensure prompt and efficient cleanup of Superfund hazardous waste sites. This goal is being frustrated by the existing uncertainty in the tax laws. The bill resolves these uncertainties and expedites the cleanup of Superfund hazardous waste sites by creating escrow accounts as being beneficially owned by the U.S. government and not subject to tax. We urge our colleagues to join us in cosponsoring this legislation.

**COMMEMORATING THE RETIREMENT OF SUE GALBREATH-SLY**

**HON. MICHAEL M. HONDA OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES**

Wednesday, December 19, 2001

Mr. HONDA. Mr. Speaker, I rise today to recognize the outstanding career of Principal Sue Galbreath-Sly. She is set to retire at the end of this academic year from a long and distinguished field of education. Currently serving in her eighth year as principal of Baldwin Elementary School, Mrs. Sly, as the students call her, started teaching in 1960, and the spirit of teaching has remained strong in her to this day. Mrs. Sly has been recognized for her excellence not only by her students, but also by her fellow professionals. She has received numerous awards, both as a teacher and a principal. In fact, just last year, her school won the 2000 California Distinguished School Award, a true testament to her excellence.

Not only does Mrs. Sly help develop and educate our youth, but she also works to develop her fellow educators. For example, she currently serves as a mentor for new principals and an advisor to the teacher credentialing program. She is also active in community outreach, expressing her philosophy constantly. "We must expand the four walls of our school site and guide children to take advantage of every learning opportunity."

As a teacher at Baldwin Elementary, my wife, Jeanne, has benefited from Mrs. Sly's holistic approach to education. As a fellow long-time educator myself, I express my deep respect and sincere admiration for Sue Galbreath-Sly and her life's work.

**HON. JOHN M. PICKLER, U.S. ARMY**

**Lt. Gen. John M. Pickler, U.S. Army**

**IN THE HOUSE OF REPRESENTATIVES**

Wednesday, December 19, 2001

Mr. HFELEY, Mr. Speaker, I attended the retirement parade for Lieutenant General John Pickler. It was a sad day for the Army as they were losing one of their best to the retired roles. It was also a sad day for me personally as over the years John and his wife Karen have become close friends. I rise today not, however, to remark on the retirement of a great soldier but to thank him for a lifetime of service to our country.

General Pickler leaves the Army after over 36 years of dedicated service to our Nation and the soldiers that he loves. His biography is distinguished. Lieutenant General John M. Pickler assumed the duties of the Director of the Army Staff on 17 August 1999. A native of Chattanooga, Tennessee, General Pickler was graduated from the United States Military Academy, West Point, and commissioned in the Field Artillery on 9 June 1965. He was awarded a Master of Science in Physics from the University of Virginia in 1971.

Prior to assuming duties as the Director of the Army Staff, he served as Chief of Staff, United States Army Forces Command, Fort McPherson, Georgia; Commander, Fort Carson, Colorado and Deputy Commanding General, III Corps; Deputy Commanding General, XVIII Airborne Corps and Fort Bragg, North Carolina; Commanding General of Joint Task Force Six, Fort Bliss, Texas; and Assistant Division Commander (Support), 4th Infantry Division (Mechanized), Fort Carson, Colorado.

General Pickler has held a wide variety of Field Artillery positions from battery through corps, culminating as the Chief of Staff, III Corps Artillery and the Director of Plans, Training and Mobilization, Fort Sill, Oklahoma.
Other key assignments include Instructor and Assistant Professor in the Department of Physics at West Point; Executive Officer to the Director, Defense Nuclear Agency; Commander of 2d Battalion, 81st Field Artillery, 8th Infantry Division (Mechanized) with concurrent duty as Commanding General of the Idaho National Guard (National Guard Sub-community). For second command, he was assigned as the 8th Infantry Division Inspector General. In 1987, he returned to Germany as Commander, 8th Infantry Division Artillery in Baumholder, and then became the Executive Officer to the Chief of Staff of the Army, Washington, DC, in 1989. In addition to Germany, his overseas assignments include Vietnam and Turkey.

General Pickler is a graduate of both the Command and General Staff College, Fort Leavenworth, Kansas, and also the Army War College with duty as an Advanced Operational Studies Fellow at the Combined Arms Center, Fort Leavenworth. His awards and decorations include the Distinguished Service Medal; the Defense Superior Service Medal with Oak Leaf Clusters; the Legion of Merit with Three Oak Leaf Clusters; the Distinguished Flying Cross; the Bronze Star with "V" Device; and the Meritorious Service Medal with Three Oak Leaf Clusters.

General Pickler and his wife, Karen, have one daughter, Nevelyn, and two sons, Andy and Jeff.

General Pickler attended his last parade as a soldier on Monday, 29 October 2001. I am proud to have had the opportunity to attend it and witness the retirement of a friend.

PERSONAL EXPLANATION

HON. BOB RILEY
OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. RILEY. Mr. Speaker, I was unavoidably detained for rollcall No. 499, H.R. 3379, to designate the facility of the United States Postal Service located at 375 Carlis Path in Deer Park, New York, as the “Raymond M. Downey Post Office Building.” Had I been present I would have voted “yea.”

I was also unavoidably detained for rollcall No. 500, H.R. 3054, to award congressional gold medals on behalf of the officers, emergency workers, and other employees of the Federal Government and any State or local government, including any interstate governmental entity, who responded to the attacks on the World Trade Center in New York City and perished in the tragic events of September 11, 2001. Had I been present I would have voted “yea.”

HON. MICHAEL N. CASTLE
OF DELAWARE
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. CASTLE. Mr. Speaker, it is with great pleasure that I rise today as a member of the Congressional Fire Service Caucus to honor and pay tribute to a leader in the firefighting community—Clifton Armstead outgoing Chief of the Wilmington Fire Department. Clifton Armstead is an outstanding, dedicated, and caring Delawarean with an abundance of accomplishments in this field. On behalf of myself and the citizens of the First State, I would like to honor this individual and extend to him our congratulations on his 36 years in the fire department.

Today, I recognize Clifton Armstead for his long and distinguished career in the Wilmington Fire Department. On January 4th 2002 Mr. Armstead is scheduled to retire from a post that he has held since 2000, but from a fire department that he has been part of for over three decades. He has provided service in a manner that has brought distinction not only to himself but to the entire Wilmington Fire Department.

Family, friends and fellow firefighters can now take a moment to truly appreciate the world of difference Clifton Armstead has brought to the firefighting community. He has served for many years as a member of Engines, Ladders and Rescue Companies as well as the Training Unit. Mr. Armstead was promoted to Lieutenant in 1983 and appointed Deputy Chief of Operations in 1993 where he served for seven years before being appointed Chief of Fire in January of 2000.

Clifton E. Armstead has spent all of his life helping the community of Wilmington and all of Delaware. Mr. Armstead graduated with the Class of 1962 from Wilmington High School. He also attended Delaware Technical and Community College, the National Fire Academy and the Delaware State Fire School. Of particular interest are the many supervisory and management classes that have helped him to become such a successful and important leader to the City of Wilmington.

Mr. Speaker, with his wife Dawn at his side, and his daughter Jaye, the Armstead family proudly and unselfishly contributes every day to the quality of life at home in their community and our entire state.

Mr. Clifton E. Armstead’s contributions cannot be commended enough. As he retires from the Wilmington Fire Department we can be sure that his contributions will not end. His commitment to fighting fires and saving lives has earned him a permanent place in Delaware’s fire service history.

HON. KEN CALVERT
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. CALVERT. Mr. Speaker, I rise today to pay tribute to a most exceptional California Inland Empire community leader, friend and great American—Mr. James Rees.

Calvin Coolidge once said, “No person was ever honored for what he received; honor has been the reward for what he gave.” And Jim Rees gave much during his years of military service and banking career.

With true valor and love of country, Mr. Rees voluntarily enlisted in the United States Army in 1942 and became an Officer in 1944. Like many other members of the Greatest Generation he served in World War II in both the European and North African/Middle East theaters. After the war, Jim returned to the United States and in 1948 enlisted in the Air Force. He quickly rose among the ranks and in 1957 achieved the rank of Major. Jim served in both the Korean and Vietnam wars, and in 1968 voluntarily retired as a Lieutenant Colonel. He has received with numerous medals ranging from the WWII victory medal to the National Defense Service Medal as well as the Air Force Longevity Service Award with four Oak Leaf Clusters.

After a distinguished career in the Air Force, Mr. Rees established himself in Riverside and went into the banking business. He served the community with the same care and dedication he had served our country. An avid golfer, Jim was instrumental in the revitalization of the March Air Force Base golf course. Jim has also been active in the Strategic Air Command Group of Veterans and has always been proud to call himself a team player.

A love of country can only be matched by a love of family. Mr. Rees has four children, Christine, Susan, Laura, and David, five grandchildren, Amy, Jennifer, Jim, Ian, and Susan and great-grandchild, Samuel who all refer to him as their hero. No greater honor can be bestowed on a man who has selflessly and wholeheartedly served our great nation.

Mr. Speaker, looking back at Jim’s life, we see a man dedicated to military service and community—an American whose gifts to the Inland Empire and California led to the betterment of those who have the privilege to come in contact or work with Jim. Honoring him today is the least that we can do for all that he has given over the past 80 years of his life.

RAYMOND M. DOWNEY POST OFFICE BUILDING

SPEECH OF
HON. JAMES T. WALSH
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, December 18, 2001

Mr. WALSH. Mr. Speaker, as an original co-sponsor of H.R. 3379 introduced by Congressman ISRAEL, I also rise in strong support of the Raymond M. Downey Post Office Building Designation Act. This legislation is a small, but fitting, tribute to one of New York City’s bravest fire chiefs.

Chief Downey was the most decorated member of the New York City Fire Department and leader of the department’s special operations unit. At age 63 with 39 years on the job, Chief Downey was a “firemen’s fireman” as they say in the fire service. He was a national expert on urban search and rescue and led a team of New York City firefighters who responded to the 1995 Oklahoma City bombing. Chief Downey even testified before a House committee in 1998 on the topic of weapons of mass destruction, sharing his invaluable knowledge with our colleagues. He truly defined what is meant by calling New York City firefighters the “world’s bravest.”

As I watched the events of September 11th unfold in my Washington office with my staff, I remember thinking, God be with the firefighters who are going to save lives. As a true leader Chief Downey was on the front lines with his personnel directing the rescue efforts. As he had done in the first World
Trade Center bombing in 1993, Chief Downey's efforts saved thousands of lives. Sadly, with 343 of his men, Chief Downey made the ultimate sacrifice on that tragic day.

It is said that a firefighter's first act of heroism is taking the oath to become a firefighter. From there on, the rest is just part of the job. As we recognize Chief Downey today, it is important to remember not only his heroic deeds of September 11th, but his extraordinary fire-fighting career as well. His wife Rosalie commented, "He never complimented himself. He always did what he had to do." We as a nation are forever grateful for what Chief Downey and his fellow firefighters did on September 11th. We are also grateful for what our nation's firefighters continue to do everyday in this country, saving lives and property. The spirit of Chief Downey will continue to live on through this post office in Deer Park and in the fire service forever.

JESSICA CAROLINE AITON (1983–2001), 2000–01 YOUTH LEADERSHIP COUNCIL REPRESENTATIVE (LOUISIANA NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION)

HON. RICHARD H. BAKER OF LOUISIANA, IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. BAKER. Mr. Speaker, Jessica Caroline Aiton of Greenwell Springs, LA died on Monday, December 17, 2001, at the age of 18, following a tragic car accident. Jessica served as the 2000–2001 Youth Leadership Council Representative from her state for the National Rural Electric Cooperative Association. This means that she was one of the best and brightest students from rural America and from Louisiana.

Every year, the National Rural Electric Cooperative Association (NRECA), through its nearly one thousand member cooperatives, hosts a national DC Youth Tour. This program brings 1,300 high school students from across rural America to visit their Nation's Capital to learn about their heritage, and about their electric cooperatives. On average, Louisiana brings 25 students each year. From this group, the state association selects one outstanding individual to be its youth spokesperson for the year and to serve on the NRECA national Youth Leadership Council. Jessica was selected as the representative for the 2000–2001 school year. She was one of just 41 nationally appointed to this honor.

Jessica had been an honor student at Central High School where she graduated third in her class. This past fall, she started her freshman year at LSU. She began as an Accounting major and then changed to Chemical Engineering. Next spring, she had planned to take some political science classes, with an eye toward law school and politics. As she once said of her future in an email to one of her former YLC counselors, "All I know is that I want to go to law school and eventually become a Senator. That much is clear." Jessica was also an active member of the Denham Springs Church of Christ, a Missionary of Latter-day Saints, loved to run and ride horses, and had just recently joined the College Republicans. With a heart for God, an incredible desire to serve, and the poise, charisma, and dedication rarely seen in a young woman of her age, Jessica was well on her way to being a great Senator. The State of Louisiana, her electric cooperative family, and America will miss her.

As her high school graduating class motto said:

"The past is but the beginning of a beginning, and all that is and has been is but the twilight of the dawn."

(H.G. Wells)

May the light of that dawn shine upon Jessica Caroline Aiton forever more.

IN TRIBUTE TO MARYLIN HUGHES GASTON, MD

HON. DONNA M. CHRISTENSEN OF THE VIRGIN ISLANDS, IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mrs. CHRISTENSEN. Mr. Speaker, after a twenty-five year career in the U.S. Public Health Service, Marilyn Hughes Gaston, MD, Director of the Bureau of Primary Health Care, within the Health Resources and Services Administration, is resigning and making her transition into the private sector.

Dr. Gaston began her career as a physician. She received her medical degree from the University of Cincinnati College of Medicine and completed a residency training in pediatrics.

Her work over the years has been marked by staunch advocacy for the betterment of the health status of minorities, women and children. Dr. Gaston is an internationally recognized leader in sickle cell research and her contributions to the field have resulted in significant changes in the way the disease is treated and managed in children.

She is the first African American woman to direct a U.S. Public Health Service Bureau and she commands a primary health care budget that reaches $5 billion. Under her leadership millions of vulnerable and disadvantaged populations nationwide are assured access to quality, culturally and linguistically competent, primary and preventive health care. Along with her numerous other accolades, she is a Former Assistant Surgeon General and the second African American woman to reach Rear Admiral, the highest rank in the U.S. Public Health Service.

Recently, Dr. Gaston co-authored "Prime Time," a health and wellness book for African American women in the midyears. She is a phenomenal leader and mentor. Her work has touched the lives of many and her presence in the Public Health Service will be genuinely missed!

NEED FOR ECONOMIC STIMULUS

HON. HILDA L. SOLIS OF CALIFORNIA, IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Ms. SOLIS. Mr. Speaker, there's been a lot of talk here about the need to get our economy jump-started and about the best way to get that done.

We've heard talk of tax cuts for big business that will eventually trickle down to the rest of America.

We've heard talk of tax breaks for wealthy individuals.

Well, I'm here to tell you that won't work for the community I represent!

Some of the cities in my congressional district are facing unemployment levels as high as 11.7 percent. Nine percent! People who are being laid off need help now—not in the future.

They need to make sure their unemployment benefits last long enough to help their family make it through the new year.

They need to make sure the health care doesn't disappear, leaving their families in the lurch.

I urge the leadership of this House to do the right thing for American families and pass a real economic stimulus plan which gives hard-working families a real boost!

HONORING EMERGENCY SERVICE WORKERS DURING LOCAL HEROES WEEK

HON. CHET EDWARDS OF TEXAS, IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. EDWARDS. Mr. Speaker, it is particularly fitting, in the wake of the tragic events of September 11th, 2001 and the courageous and selfless acts of heroism by New York's police, firefighters and rescue workers which were witnessed and acclaimed by the world, that we extend our gratitude to police, fire and emergency service workers in all of America's communities.

The citizens of Bell County and Copperas Cove, Texas in my congressional district are honoring these public servants, from November 18-24, during the 10th observance of Local Heroes Week.

This expression of appreciation to our local public safety workers for their service to Central Texas, which has grown every year since its inception in 1992, raises funds from area businesses and organizations to endow scholarships at Central Texas College for their immediate families.

As a community, we owe a special thanks to the police officers, fire fighters and emergency workers who honor and rescue our sincere appreciation to those who organize Local Heroes Week. The recent tragedies at the World Trade Center in New York and at the Pentagon in Arlington, Virginia remind us that every day, in every city and county in the country, these men and women put their lives on the line to protect us from harm.

Mr. Speaker, I ask the Members of the House of Representatives to join me in honoring these local heroes, in Copperas Cove and Bell County, and across the nation. They define the spirit of public service and we are grateful.

TRIBUTE TO ARMY SPECIALIST JONN JOSEPH EDMUNDS

HON. BARBARA CUBIN OF WYOMING, IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mrs. CUBIN. Mr. Speaker, I am honored to represent the great state of Wyoming in this House of Representatives.
HONORING MARINE CPL. CHRISTOPHER T. CHANDLER

HON. THOMAS G. TANCREDO
OF COLORADO

IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. TANCREDO. Mr. Speaker, I rise today to pay tribute to Marine Cpl. Christopher Chandler—who is without a doubt one of America’s finest soldiers who fought in Operation Enduring Freedom.

On Sunday, December 16th, our nation learned that Marine Cpl. Christopher Chandler—of the 1st Light Armored Reconnaissance Battalion, 1st Marine Division—lost his leg in a land mine explosion while guarding explosive-clearing teams at the Kandahar International airport in Afghanistan—his mission—to clear unexploded munitions and mines to help launch international humanitarian efforts and other military operations in the area. Injured with Cpl. Chandler were Sgt. Adrian Aranda and Lance Cpl. Nicholas Sovlene, who suffered serious shrapnel wounds in the explosion.

Chandler, a 21-year-old soldier from Aurora, Colorado, entered the Marine Corp. in June 1998, immediately after graduating from Gatewood High School.

Mr. Speaker, I am honored to represent Cpl. Chandler, his parents Kenneth and Rumi, and sister Stephanie in the U.S. House of Representatives. Our nation is forever indebted to Chandler for his self-sacrifice and admirable actions taken on Sunday, December 16, 2001—for they will be etched in the memory of America’s new war against terrorism and never forgotten.

WARREN HIGH SCHOOL’S TRIUMPHANT SEASON

HON. MIKE ROSS
OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. ROSS. Mr. Speaker, educating our young people is arguably as important as any other aspect of the school experience that will prepare them for the days and years ahead, and we must make sure that they are given the tools they need to compete in the 21st Century.

In addition to work in the classroom, another important aspect of the school experience that can play a valuable role in the academic as well as social development of a young person is athletics, teaching the values of teamwork, leadership, dedication and perseverance. In that spirit, I would like to recognize and congratulate a high school football team in my congressional district that exemplified those characteristics of leaders and champions that they will be able to draw from for the rest of their lives.

These students and their success are a tribute to their parents, their school, and the entire Warren community. Not only the coaches and players, but also the band, cheerleaders, students, teachers, and all those who supported this team can take pride in their role in bringing about this accomplishment. I congratulate Warren High School and the city of Warren as they celebrate this momentous achievement.

A TRIBUTE TO COMMANDER WILLIAM EBBs

HON. JERRY LEWIS
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. LEWIS of California. Mr. Speaker, I rise today to pay tribute to Commander William Ebb, who provided invaluable service to Congress on national security issues for two years as a congressional liaison in the Office of the Navy’s Director of Budget, and who will soon be on the front lines of our nation’s defense as commander of a submarine.

Originally from Atlanta, Georgia, CDR Ebb enlisted in the Navy in May 1976. He completed boot camp at the Naval Training Center, San Diego and attended Nuclear Power Training at the Naval Training Center, Orlando, Florida. At the completion of his qualification as a nuclear propulsion plant operator, he was assigned to USS Von Steuben SSBN 632, a Lafayette class fleet ballistic missile submarine. After four strategic patrols on Von Steuben, he was detailed in 1979 as a member of the ship’s refueling/overhaul crew. It was during this time that CDR Ebb applied for and was accepted to participate in the Navy Enlisted Commissioning Program. Under this program, CDR Ebb attended Auburn University and graduated with honors with a bachelor’s degree in Electrical Engineering.

Commissioned an Ensign after attending Officer Candidate School in Newport, Rhode Island, CDR Ebb was designated a submarine officer and assigned to the USN Key West SSN 722, then the Navy’s newest Los Angeles Class Fast Attack submarine. During this time, the Commander, Submarine Squadron Eight, recognized him as the “1989 Junior Officer of the Year.”

After a tour in the Manpower division on the Staff of the Commander, Submarine Force, US Atlantic Fleet, he attended the Submarine
Office Advanced Course and was assigned as the Chief Engineer on USS Atlanta SSN 712, a Los Angeles class submarine stationed in Norfolk, Virginia.

Following a tour as the submarine special operations officer at the United States Atlantic Command, CDR Ebbs was assigned as Executive Officer USS West Virginia SSGN 736, a Trident class Fleet Ballistic Missile submarine stationed in Kings Bay, Georgia.

In the spring of 1999, CDR Ebbs was assigned to the Office of the Navy’s Director of Budget as a Congressional Liaison. During his time as a Congressional Liaison, CDR Ebbs provided invaluable support to me, the Appropriations Committee, and the various Members and personal staff of the Subcommittee on Defense. He displayed a unique ability to explain complex military requirements in the context of an appropriations framework, serving this Committee well and reflecting great credit on the Department of the Navy. CDR Ebbs left the Office of the Navy’s Director of Budget earlier this year for a new assignment.

Mr. Speaker, I have the great honor to inform the Members of the Committee and the Congress that on January 11, 2002, CDR William Ebbs will take Command of the Fleet Ballistic Missile Submarine USS Louisiana stationed in Kings Bay, Georgia. We thank him, his wife Patricia, and their boys Arthur and Parker, for their years of service and sacrifice. We wish William God’s speed and protection.

Mr. Speaker, I am proud to be here, as a member of the House Veterans Affairs Committee to share my strong support for H.R. 3423.

In the days that followed September 11th, the depth of our loss was expressed in the thousands of testimonies of families and friends who lost loved ones in the World Trade Center, Pentagon and plane crash in Pennsylvania. We struggled as a nation to comprehend what had happened and collectively rose to pay tribute to the lives that were ended. And as stories of these people’s lives turned to stories of these people’s funerals, we learned of an injustice that had been occurring for years. We learned of Captain Charles Bulingame, the pilot of Flight 77, who served a full reserve career in the Navy. We learned that if he had lived his full God Given life, one not destroyed by terrorist action, he would have been eligible for burial at Arlington National Cemetery—with all the rights and respect from the U.S. Government he had served so proudly. And yet, because his life ended, before he turned 60, he was denied this honor, an honor for which he surely earned up till the last moment of his life. Today we change this.

We respect the sanctity of Arlington Cemetery’s grounds and the special honor it offers those who served our nation with distinction. We recognize the limited burial grounds of the cemetery and so deserve change to their rules with care. Having done this, we determined that service to one’s nation, not age of one’s life, should be the ultimate criterion for the limited burial grounds.
interment at Arlington. And so, in this bill we move forward in expanding our ability to pro-
vide appropriate tribute and reverence to more
servicemen who have passed. We eliminate
today the age requirement for retired reserv-
ists who would otherwise be eligible for in
ground burial, and we grant families of reserv-
ists who are under-42 service members the right
to have their loved ones buried at Arlington.

This Holiday season, as we give thanks for
our families and the strength of our nation, we
recognize more than ever that our veterans are
our heroes. They have shaped and sus-
tained our nation with courage, sacrifice and
faith. They have earned our respect and de-
serve our gratitude. Let us join together and
do something meaningful by passing this leg-
islation. It is the right thing to do.

PERSONAL EXPLANATION

HON. LORETTA SANCHEZ
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Ms. SANCHEZ. Mr. Speaker, on December
13, I was in Washington D.C. conducting offi-
cial government business. It was my intention
to vote on H.R. 498, H. Res. 314, which
would have suspended the rules and al-
lowed suspension bills on Wednesday Decem-
ber 19. However, the electronic voting ma-
icine did not properly record my vote. I re-
quest that the CONGRESSIONAL RECORD reflect
that my vote was properly recorded. I would
have voted “nay” on Rollcall No. 498.

CONFERENCE REPORT ON H.R. 1
NO CHILD LEFT BEHIND ACT OF 2001

SPEECH OF

HON. SILVESTRE REYES
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 13, 2001

Mr. REYES. Mr. Speaker, as Chair of the
Congressional Hispanic Caucus (CHC), I am
proud to support the Conference Report on
H.R. 1, which reauthorizes the Elementary and
Secondary Education Act (ESEA). I am
pleased that the conferences included most of
the CHC’s priorities in the final bill, which
will now go a long way to reduce the disparities in
educational achievement between Hispanic
and non-Hispanic children.

The Census Bureau projects that by the
year 2050, Hispanic children will represent 25
percent of the total student population, and
even the most recent Census figures show that Hispanics are now on pace to become the
nation’s largest minority sooner than expected.
Given these statistics, and the likelihood that
two years. If the results of this test will
have no direct highstakes effects on individual
students, but instead will be used to measure
a school’s progress and hold it accountable. If
the school fails to meet performance objec-
tives, it will be required to implement improve-
m ents including professional development and
curriculum changes. These accountability
measures promise to ensure that schools main-
tain effective bilingual programs.

The second issue the Conference Report
addresses education services for migrant students by increasing the
authorized funding level of migrant education
by $30 million, from $380 million to $410 mil-
ion for fiscal year 2002. While this funding
level would fall short of meeting all existing
needs, it is a significant step toward reversing
the 11 percent decline in dollars spent per mi-
grant pupil over the past two years.

This bill also helps migrant students by im-
proving the way their academic and health
records are transferred from one school to an-
other. Although some developed and
implemented their own student records
systems, current failures and interruptions in
records transfer result in delays in school en-
rollment and academic services for migrant
students, discrepancies in student placement,
and repeat immunizations of migrant children.

Ultimately, the Conference Committee’s agreement
that the Secretary of Education is directed to assist states in linking existing systems of interstate
citizen student records transfer. This will help
eliminate two serious problems faced by mi-
grant students: (1) multiple unnecessary vac-
cations which create a hazard, and (2) denial of
high school graduation because high school credit records are miss-
ing.

Finally, the third issue area addressed by
the Conference Report is high school dropout
prevention. Addressing the dropout problem
during this ESEA reauthorization has been of
paramount importance to the CHC. Statistics
show the dropout rate for Hispanic students is
approximately 30 percent compared to only 10
percent for non-Hispanic white students. For
LEP students, the dropout rate is approxi-
mately 50 percent. At this rate, the economic
and social potential of an entire generation of
Americans is at risk. Students cite a variety of reasons for drop-
ning out, such as the lack of qualified teach-
ers, lowered expectations of minority students’ academic potential, classes that fail to chal-
lenge them intellectually and the threat of
“tracking.” Currently, there are a variety of
programs which offer only piecemeal and in-
adequate solutions to the problem. The Con-
ference Report takes a more comprehensive
approach to addressing the Hispanic dropout crisis by launch-
ing an innovative dropout prevention program
that will comprehensively support proven
measures to reduce high school dropout rates
in schools predominantly serving low-income
students. I would like to express my thanks to
Senator Jeff Bingaman, who Introduced the
program in the Senate, and all the conferees,
for including this dropout prevention program
in the final conference report.

In conclusion, Mr. Speaker, I believe we are
taking a great step for our children and our
nation’s future by passing this education re-
form bill. As President John F. Kennedy said,
“Our progress as a nation can be no swifter
than our progress in education.” While we
have more work to do to improve education, let us now appropriate sufficient funds to make the promise of H.R. 1 a reality, and be proud of what we have accomplished for our children’s education in this session of Congress.

IN HONOR OF THE STUDENTS OF CANYON CREST ELEMENTARY SCHOOL

HON. CHRIS CANNON
OF UTAH
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. CANNON. Mr. Speaker, many of us have been dramatically affected by the tragic events of September 11th. As we have all learned to cope and express our feelings regarding this tragedy, there have been some shining stars that have risen beyond themselves in an effort to help others. One such group of people is the fifth and sixth grade students of Canyon Crest Elementary School in Provo, Utah.

These wonderful students felt overcome by the events witnessed that day. As the heroes of New York’s police and fire departments bravely sacrificed many of their own to save the lives of those trapped in the towers and while many others worked at the Pentagon, these children all wished they could help but felt only helplessness as they watched over 3, 100 miles away. As their determination grew to assist in the recovery effort, these children felt that the best way for them to assist was to express their appreciation for the sacrifices of the heroes and their desire to comfort the many who lost loved ones through writing.

Their writings have been compiled in a book titled From the Mountains… . These touching and heartfelt accounts relate many of the feelings that all of us experienced during the attacks as well as during the weeks following.

Mr. Speaker, today I ask that you and our colleagues join me in honoring the students of Canyon Crest Elementary for their own heroic efforts to help us all to recover and rebuild in this great nation by showing us true patriotism and the meaning of freedom.

FAIR DEBT COLLECTION PRACTICES TECHNICAL AMENDMENT ACT OF 2001

HON. JUDY BIGGERT
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mrs. BIGGERT. Mr. Speaker, I rise to introduce a common-sense technical amendment to the Fair Debt Collection Practices Act. I am pleased that this bipartisan legislation is being cosponsored by my colleagues, Mr. SANDLIN of Texas, Mr. MOORE of Kansas, and CANTOR of Virginia.

For more than two decades, the Fair Debt Collection Practices Act of 1978 has successfully regulated and promoted ethical practices on the part of debt collectors throughout the United States. The Act prohibits abusive or harassing methods of debt collection, and it requires that debt collectors treat consumers fairly.

In 1986, the law was amended to include standards for attorneys who engage in debt collection, and in general, these new rules have worked well to protect consumers. But there is one small provision in the Fair Debt Collection Practices Act that inadvertently has made it more difficult—if not impossible—for an attorney to act as a debt collector and file documents with a court of law.

Under current law, the attorneys face a “Catch-22” when they file a lawsuit against a debtor, and here’s why.

The Fair Debt Collection Practices Act requires the inclusion of a specific warning notice in every document related to the debtor, including those filed with a court. This warning notice makes good sense; it provides the debtor with information about his or her rights and responsibilities.

But the inclusion of the information required by the Act often renders the document non-compliant with the rules of the court. As a result, attorneys are caught between a rock and hard place. They can include the warning on court documents and risk being in violation of the rules of the court, or they can exclude the warning and be in violation of the Fair Debt Collection Practices Act.

Even the agency responsible for enforcement of the Fair Debt Collection Practices Act, the Federal Trade Commission, has repeatedly acknowledged this dilemma. But the FTC cannot fix the problem administratively. The agency should recommend a narrowly tailored technical amendment to remedy the conflict between Federal law and the rules of the court. It is this technical amendment that I offer the House today.

Under my bill, attorneys no longer will be forced to choose between violating the rules of the court or violating the Fair Debt Collection Practices Act. They still will be required to include warning notices on all correspondence with debtors, but they will be allowed to omit the warning notices only on documents presented to the court. This simple and straightforward solution maintains the spirit and the intent of the Fair Debt Collection Practices Act while allowing attorneys to remain in compliance with the law and their professional standards.

I urge my colleagues to support this legislation.

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I urge my colleagues to support this legislation.

FINAL DECLARATION OF THE CONFERENCE ON FACILITATING THE ENTRY INTO FORCE OF THE COMPREHENSIVE NUCLEAR-TEST-BAN TREATY

HON. EDWARD J. MARKEY
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. MARKEY. Mr. Speaker, I would like to call to my colleagues’ attention the Final Declaration of the Conference on Facilitating the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The document follows.

ANNEX—CONFERENCE ON FACILITATING THE ENTRY INTO FORCE OF THE COMPREHENSIVE NUCLEAR-TEST-BAN TREATY (NEW YORK, 2001)

FINAL DECLARATION

1. Fully conscious of the responsibilities which we assumed by signing the comprehensive Nuclear-Test-Ban-Treaty, pursuant to article XIV of that Treaty, and recalling the Final Declaration adopted by the Conference, held in Vienna, from 6 to 8 October 1999, we the ratifiers, together with the Signatories, met from 11 to 13 November 2001 to promote the entry into force of the Treaty at the earliest possible date. We welcomed the presence of representatives of non-state international organizations and non-governmental organizations.

2. We reaffirmed our strong determination to enhance international peace and security throughout the world and stressed the importance of a universal and internationally effective and verifiably verified nuclear-test-ban treaty as a major instrument in the field of nuclear disarmament and non-proliferation in all its aspects. We reiterated the cessation of all nuclear-weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and non-proliferation in all its aspects and thus is a significant step to a systematic process to achieve nuclear disarmament. We therefore renewed our commitment to work for universal ratification of the Treaty, and its early entry into force as provided for in article XIV.

3. We reviewed the overall progress made since the opening for signature of the Treaty and, in particular, the progress made after the Conference held in Vienna from 6 to 8 October 1999. We noted with appreciation the overwhelming support for the Treaty that has been expressed: the United Nations General Assembly and other multilateral organs have called for signatures and ratifications of the Treaty as soon as possible. We have urged all States to remain seized of the issue at the highest political level. We highlighted the importance of the Treaty and its entry into force for the practical steps for systematic and progressive efforts towards nuclear disarmament and non-proliferation, which were identified in 2000 at international fora dealing with nuclear disarmament and non-proliferation. We believe that the cessation of all nuclear-weapon test explosions or any other nuclear explosions will contribute to the accomplishment of those efforts.

4. In accordance with the provisions of article XIV of the Treaty, we examined the extent to which the requirements set out in paragraph 1 had been met and decided by consensus what measures consistent with international law may be undertaken to accelerate the ratification process in order to facilitate the early entry into force of the Treaty.

5. Since the Treaty was adopted by the United Nations General Assembly and opened for signature five years ago, progress has been made in the ratification process. As of today 162 States have signed and 14 States have deposited their instruments of ratification, an increase of over 70 per cent compared with the number of ratifications at the time of the Conference held in 1999. Of the 44 States listed in Annex 2 to the Treaty whose ratification is required for the entry into force of the Treaty, 41 have signed, and of these, 31 have also ratified the Treaty. A list of those States is provided in the appendix.

Progress in ratification has been sustained. We welcomed this as evidence of the strong determination of States to prohibit any nuclear-weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under their jurisdiction.

6. Despite the progress made and our strong support for the Treaty, we noted with
 concern that it has not entered into force five years after its opening for signature. We therefore stressed our determination to strengthen efforts aimed at promoting its entry into force at the earliest possible date in accordance with the provisions of the Treaty.

7. After the opening for signature of the CTBT and its provisional provisions were carried out, the countries concerned subsequently declared that they would not conduct further nuclear explosions and indicated their willingness not to delay the entry into force of the Treaty.

8. In the light of the CTBT and bearing in mind the objectives formulated therein that the conduct of nuclear-weapon test explosions or any other nuclear explosion constitutes a serious threat to global efforts towards nuclear disarmament and non-proliferation.

9. We call upon all States to maintain a moratorium on nuclear-weapon test explosions or any other nuclear explosions and underlines the importance of signature and ratification of the Treaty.

10. We noted with satisfaction the report of the Executive Secretary of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) to the Conference on progress made by the Preparatory Commission and its Provisional Technical Secretariat since November 1996 in fulfillment of the requirement to take all necessary measures to ensure the effective establishment of CTBTO.

11. In this connection, we welcomed the momentum which has been developed by the Preparatory Commission and its Provisional Technical Secretariat across the major Programmes of the Commission, as identified by the Executive Secretary in his report. We also welcomed the progress in building the global International Monitoring System, including the International Monitoring System, with a view to ensuring that the verification regime shall be capable of meeting the verification requirements of the Treaty at entry into force. We further welcomed the conclusion of a significant number of related agreements and arrangements with States and with international organizations.

12. Convinced of the importance of achieving as early as possible the Treaty's entry into force, we call upon the Preparatory Commission and the CTBTO to facilitate the processes of signature, ratification and implementation by the States concerned, and upon their request. We encourage the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the Secretary-General of the United Nations to continue supporting actively these efforts consistent with their respective mandates.

13. We reaffirm our energy and commitment to the Treaty's basic obligations and our undertaking to refrain from acts which would defeat the object and purpose of the Treaty pending its entry into force.

14. We remain steadfast in our commitment to pursue the efforts to ensure that the Treaty's verification regime shall be capable of meeting the verification requirements of the Treaty at entry into force, in accordance with the provisions of article XIV of the Treaty.

15. The Conference addressed the issue of possible future conferences, expressed the determination of its participants to continue working towards entry into force of the Treaty and took note of bilateral initiatives contained in paragraph 3 of article XIV of the Treaty.

PERSONAL EXPLANATION

HON. CHARLES A. GONZALEZ
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

MR. GONZALEZ. Mr. Speaker, on rollcall No. 483, 484, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498.

Had I been present I would have voted 483—yes, 484—yes, 485—yes, 486—yes, 487—no, 488—yes, 489—no, 490—yes, 491—yes, 492—yes, 493—yes, 494—yes, 495—yes, 496—yes, 497—yes, 498—yes.

HON. JOE BARTON
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. BARTON. Mr. Speaker, I commend to my colleagues the following article:

[From the Washington Times, Dec. 3, 2001]

CASPIAN PIPELINE OPENS

(December 19, 2001)

ALMATY, KAZAKHSTAN—The first pipeline built to bring Kazakhstan’s oil to world markets was dedicated Wednesday in Tengiz, four months late and minus the president of the two countries through which it passed.

Speeches delivered near the Russian port of Novorossiski called the 940-mile steel tube a symbol of international cooperation, and that it is indeed: The Russian Federation and American and Russian oil companies have provided most of the $2.6 billion cost, and Russia stands to earn $20 billion over the 40-year life of the pipeline.

But the pipeline is also:

The first step to Kazakhstan’s ambitious plan to deliver 3 million barrels a day in 15 years to world markets and become one of the top three oil exporters in the world.

The largest one-billlion-dollar pipeline ever, Transneft Corp., in 1993 that is now set to pay off handsomely.

An example of the difficulty of doing business in Russia.

Proof that with perseverance, it can be done.

The pipeline, built by the 11-member Caspian Pipeline Consortium, known as CPC, starts off the desert about 300 miles northeast of the Caspian Sea at Tengiz, Kazakhstan, the world’s sixth-largest oil field.

The longest 40-inch pipe in the world then curls around the Caspian before striking west across the broad plains north of the Caucasus range and ends at a tanker terminal 18 miles west of Novorossiski.

When completed, at a final cost of $4 billion, it will be able to carry up to 1.3 million barrels per day (bpd), more than double its initial capacity.

PEAK A DECADE OFF

Output at the Tengiz field, now 270,000 bpd, is not expected to rise to a peak of 700,000 bpd until the end of the decade, said Tom Winterton, head of the Tengizchevroil consortium, exploiting the world’s penultimate oilfield.

Thus, the pipe has plenty of room for oil from other fields—and there lies one of the major disputes that have delayed the opening.

When Chevron took over Tengiz from its post-Soviet managers, it created one consortium for the oil field and a second one to build a pipeline to the Black Sea.

For the first few years, Tengizchevroil, in which Chevron owns 50 percent, diligently overcame such obstacles as the extreme depth of the reservoir (2% miles below the surface), its high content of poisonous sulfur dioxide and the high pressure at which the oil was flowing. Pressure has climbed from 25,000 bpd and the jinx that gave Tengiz the longest uncontrolled blowout in Soviet history was overcome.

But in those years, the pipeline consortium got strictly nowhere in its efforts to persuade Russia and its pipeline monopoly Transneft to allow an outlet to Russia to the Black Sea.

It was not until 1996 that two newly created Russian oil giants, Lukoil and Rosneft, bought into the consortium while the Russian government took a 24 percent share. Then things started moving.

Construction took less than three years.
Transneft Director Semyon Vainshtock tried to fight a rear-guard battle, insisting that what was bad for Transneft was bad for Russia, but the pipeline consortium, headed by Rustam Serdyuchenko and assisted by Cheyvon’s Fred Nelson, the consortium’s deputy general director for projects, argued that Russia stood to gain from the added products to the game.

That was just the beginning.

ROCKY ROAD SO FAR

“We had to go through five Russian local governments,” Mr. Nelson said recently, “It wasn’t always easy.”

Twice, customs disputes halted the flow of the oil at the Russia-Kazakhstan border.

Russia’s biggest dispute with CPC members relented only three days before the loading of the first tanker.

Instituting what is called a quality bank is mixed along the way with less desirable Russian crude to make “Ural Blend,” which trades at nearly a dollar below Brent.

But for the pipeline, Chevron insisted on instituting what is called a quality bank—a system penalizing those who would add low-quality crude to the mostly Tengiz CPC Blend.

Quality banks are used in most places in the world where low- and high-quality crude oils are blended in pipelines, but the Russian partners relented only three days before the planned inauguration date, which was to coincide with the loading of the first tanker. The ceremony already had been canceled.

Then, the port authority of Novorossiski extended its jurisdiction to the deserted piece of coast where holding tanks are buried near the end of the pipeline. There is no port: floating hoses are used to fill tankers moored offshore.

The move allowed the port authorities to demand a hefty port tax. Negotiations caused further delays. Eventually, said oil analyst Ivan Mazalov at Troika Dialog in Moscow, “They were bargained down quite a bit.”

Other delays pushed back the date of the opening ceremony that had been scheduled for Aug. 6 with the Russian and Kazakh presidents in attendance.

Tengiz oil, until the pipeline was built, was exported entirely through Russia and mostly by rail.

Part of its highly prized light “sweet” crude (which sells for up to a dollar a barrel more than Brent, the benchmark crude oil) was mixed along the way with less desirable Russian crude to make “Ural Blend,” which trades at nearly a dollar below Brent.

The same day, his budget director warns us not to expect another surplus until 2005, after the president’s first term is over. If this is fiscal discipline, it has an odd bottom line.

President Bush took office with an advantage no president in recent times has enjoyed: a budget in surplus. Ten days after his inaugural, the Congressional Budget Office projected a surplus of $313 billion in fiscal 2002, and a cumulative surplus of $5.6 trillion. More than half of that has vanished.

The Director of the Office of Management and Budget, Mitchell Daniels, blames the economy, extra spending, the fight against terrorism—everything but tax cuts.

Last month, economists on the House and Senate Budget Committees updated their estimates of the economy and budget. Their analysis is as close as you can get to a consensus on where we stand now. They show that over ten years the tax cut takes a toll of $1.7 trillion on the budget, 55 percent of the depletion in the surplus. Spending related to the war on terrorism, initiated after September 11, takes another 11 percent. Other spending increases take 11 percent, and of that, the President’s request for defense constitutes two-thirds. The remaining 23 percent is due to the economy.

The economy is a major factor over the next two years. But as the economy recovers, its drag on the budget tapers off. The President’s tax cuts get bigger.

Budget estimates show a remaining surplus over ten years of $2.6 trillion, but virtually all comes from the Social Security Trust Fund, which everyone has sworn not to touch; and most of that is concentrated in future years where the outlook is very uncertain.

When the President submits next year’s budget in February, an updated forecast of the economy will come with it, and the $2.6 trillion surplus will surely shrink again. Mr. Daniels no doubt had that forecast in hand when he warned of the vanishing surplus.

The Budget Committees were put together as part of a bipartisan search for common ground. Leaders on Budget, Finance, and Ways and Means met to settle on policies to stimulate the economy. We settled instead for a statement of principles. We agreed that stimulus was needed but that it should be short-lived, to avoid converting a cyclical downsweep into a structural deficit. We wanted the budget to recover as the economy recovers.

The stimulus bill reported by Ways and Means forsook these principles and proposed more permanent tax cuts, with revenue losses continuing long after the recession ends.

More than half of the surplus is gone, and the plan to save the Social Security surpluses and buy back government bonds is in grave doubt. But the administration seems to find no lesson in these results.

STRATEGIC ARMAMENTS

President Bush made his gloomy prediction, the White House renewed discussions on a stimulus plan, and afterwards told the media that repeal of the corporate alternative minimum tax had to be part of any stimulus plan the President signed. In the short run, this will not help the economy; in the long run, it will not help the budget. In all events, it begs the question: How will we pay for the war on terrorism, for homeland defense, for reinsurance of terrorist damages, for victims’ compensation, and for that matter, for the baby boomers’ retirement?

No one is blaming the administration for the recession, but it can be faulted for ignoring the clouds and betting the budget on a blue-sky forecast. We warned that its budget had no margin for error if the projections it was based upon failed to pan out. We warned that the tax cuts left little room for other priorities, like Medicare drug coverage or the solvency of Social Security. The administration acted as if we could have it all. Now that it’s clear we can’t, it seems as unwilling as ever to recast its budget. This is not fiscal discipline; this fiscal denial.

If the administration wants to put the economy and the budget back on path, it has to heed the lessons of the last ten months and acknowledge that the underpinnings of its budget no longer hold.

CHEVRON GAMBLED, WON

While Russia and the United States ended up representing both deputy ministers—Chevron’s David O’Reily and the incoming and outgoing vice chairmen of the world’s fourth-largest oil company.

That was not surprising: Both the pipeline and the giant oil field it serves are Chevron’s babies, multibillion-dollar gambles that finally are paying off. As the foreign biggest investment in the former Soviet Union, oil field and pipeline are testimony that with perseverance, Westerners and Russians can work togeter.

“CPC is a bellwether project for successful international cooperation.” Mr. O’Reily reportedly said at the ceremony. “It demonstrates that the international business community has to invest in Russia and Kazakhstan.”

But if Russia, Kazakhstan and world consumers can join Chevron in rejoicing at the pipeline’s completion, Turkey has exhibited mostly concern.

The extra tankers carrying Tengiz oil, which eventually will number three a week, will further clog the Bosphorus Strait that bisects Istanbul and increase the chances that the city of 12 million people some day will have to cope with a major oil spill or even a fire.

But turkey is committed to upholding the 1996 Montreux Agreement and, barring a catastrophe, Caspian oil will be able to navigate the strait to reach European markets for the foreseeable future, analysts say.

UNDERPINNINGS OF ADMINISTRATIONS’ BUDGET NO LONGER HOLD

HON. JOHN M. SPRATT, JR.
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SPRATT. Mr. Speaker, President Bush claims that his administration has “brought sorely needed fiscal discipline to Washington.” The same day, his budget director warns us not to expect another surplus until 2005, after the president’s first term is over. If this is fiscal discipline, it has an odd bottom line.

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The economy is a major factor over the next two years. But as the economy recovers, its drag on the budget tapers off. The President’s tax cuts get bigger.

Budget estimates show a remaining surplus over ten years of $2.6 trillion, but virtually all comes from the Social Security Trust Fund, which everyone has sworn not to touch; and most of that is concentrated in future years where the outlook is very uncertain.

When the President submits next year’s budget in February, an updated forecast of the economy will come with it, and the $2.6 trillion surplus will surely shrink again. Mr. Daniels no doubt had that forecast in hand when he warned of the vanishing surplus.

The Budget Committees were put together as part of a bipartisan search for common ground. Leaders on Budget, Finance, and Ways and Means met to settle on policies to stimulate the economy. We settled instead for a statement of principles. We agreed that stimulus was needed but that it should be short-lived, to avoid converting a cyclical downsweep into a structural deficit. We wanted the budget to recover as the economy recovers.

The stimulus bill reported by Ways and Means forsook these principles and proposed more permanent tax cuts, with revenue losses continuing long after the recession ends.

More than half of the surplus is gone, and the plan to save the Social Security surpluses and buy back government bonds is in grave doubt. But the administration seems to find no lesson in these results.

STRATEGIC ARMAMENTS

President Bush made his gloomy prediction, the White House renewed discussions on a stimulus plan, and afterwards told the media that repeal of the corporate alternative minimum tax had to be part of any stimulus plan the President signed. In the short run, this will not help the economy; in the long run, it will not help the budget. In all events, it begs the question: How will we pay for the war on terrorism, for homeland defense, for reinsurance of terrorist damages, for victims’ compensation, and for that matter, for the baby boomers’ retirement?

No one is blaming the administration for the recession, but it can be faulted for ignoring the clouds and betting the budget on a blue-sky forecast. We warned that its budget had no margin for error if the projections it was based upon failed to pan out. We warned that the tax cuts left little room for other priorities, like Medicare drug coverage or the solvency of Social Security. The administration acted as if we could have it all. Now that it’s clear we can’t, it seems as unwilling as ever to recast its budget. This is not fiscal discipline; this fiscal denial.

If the administration wants to put the economy and the budget back on path, it has to heed the lessons of the last ten months and acknowledge that the underpinnings of its budget no longer hold.

MARSHALL UNIVERSITY MARTIN LUTHER KING DAY OF SERVICE GRANT

HON. NICK J. RAHALL II
OF WEST VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. RAHALL. Mr. Speaker, the Rev. Martin Luther King Jr., once declared, “A nation or civilization that continues to produce soft-minded men purchases its own spiritual death on the installment plan.” Dr. King devoted his life to improving the minds—and the hearts and souls—of all Americans. That work continues today at Marshall University.

For the fourth time in five years, the Corporation of National Service has awarded Marshall the May Luddy’s Belief in Service Grant. It testifies to the energy and efficacy of their efforts. Their work endows children and adults of all creeds and races with a sense of social justice and a commitment of civil rights.

Their January celebration of Dr. King’s life and legacy epitomizes the purpose of this national holiday embodied in public service. But just as Dr. King’s teaching was not bounded by the walls of his church, Marshall’s work in his spirit is not restricted to only
Ms. LEE. Mr. Speaker, I rise today to salute Martin Hardy of Glendale, Arizona, who began his career with the FAA in 1971, as an Air Traffic Controller at Sky Harbor Airport in Phoenix, Arizona.

With over 30 years of air traffic experience in the Phoenix and Los Angeles areas, Martin has served in a variety of capacities, including Air Traffic Controller (Sky Harbor & Burbank Airports); Operational Supervisor (Burbank TRACON, Phoenix TRACON and Phoenix Approach Control Facility); Assistant Training Manager (Phoenix Approach Control Facility); Assistant Air Traffic Manager (Phoenix TRACON, Phoenix Tower, Phoenix TRACON and Tower); Air Traffic Manager (Tucson TRACON & Phoenix Tower); and Staff Specialist (National Headquarters—Washington, DC, and Regional Headquarters—Los Angeles, CA). He has retained in a supervisory or management role since 1984 and has been committed to providing safe air traffic service to the nation.

Throughout the past 10 years, Martin has been involved in all stages of change and progress during the tremendous growth period in the Phoenix region. He established exceptional working relationships with many airline representatives in the industry and has maintained involved in the coordination of air traffic control procedures for the third runway and north runway construction projects at Sky Harbor Airport.

Martin’s extensive knowledge of the intergovernmental Agreement between the cities of Phoenix and Tempe has allowed him to work closely with the City of Phoenix and with the community in mitigating the noise concerns around Sky Harbor Airport. He has represented the FAA on the following state and local committees: City of Phoenix Sky Harbor Part 150 Study; City of Peoria Airport Master Plan Advisory Committee; State of Arizona Committee for the Preservation of Military Airports; Maricopa Association of Governments; Williams Gateway Airport Part 150 Study; and Phoenix Airspace user Workgroup (PAUWG). He has also served as a member of NBBCFAE (National Black Coalition of Federal Aviation Employees).

Martin attended San Fernando Valley State College in San Fernando, CA. Throughout his career he has completed a multitude of courses at the FAA Center for Management Development, Palm Coast, Florida. He is a native of Eunice, Louisiana, he and his wife, Beverly, of 31 years, reside in Glendale, AZ. They are the proud parents of 3 children—Nicole, Nichelle and Martin II.

Martin is retiring from his current position of Assistant Air Traffic Manager at the FAA Terminal Radar Approach Control (TRACON) facility located at Sky Harbor Airport, where he has directed a staff of approximately 80 personnel, and maintained responsibility for the radar operations, procedures, automation, and administration of functions of the facility for the past 3 years.

I applaud his great achievements and hard work during his noteworthy career. FAA employees have long guarded the safety and security of our airways, and Martin Hardy has had an exceptional career in this country in this way. Congratulations on your retirement and best wishes as you enter a new chapter in your life.

IN RECOGNITION OF ‘CAMP UNITY’ DISTRICT OF COLUMBIA VOLUNTEERS AT PENTAGON CRASH SITE

HON. ELEANOR HOLMES NORTON
OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Ms. NORTON. Mr. Speaker, I would like to call attention to the efforts of “Camp Unity,” the group of business people and other residents from the District of Columbia, who provided on-site support for relief and rescue workers at the Pentagon crash site following the terrorist attacks on September 11, 2001. Led by Advisory Board Commission 8D Chair, Robin Denise Ijames, the volunteers of Camp Unity offered a variety of services, including meals, chiropractic therapy, and haircuts to hundreds of workers who came from all over the country to assist in rescue and recovery efforts at the Pentagon.

Through September 28th, Camp Unity maintained a tent at what came to be known as “Comfort City,” a collection of tents organized to aid emergency medical staff, federal law enforcement officials, police and fire officials, Red Cross volunteers, and countless others assigned to the crash site. Indeed, the District residents at Camp Unity extended great comfort to these workers, many of whom were separated from their families for many days. The services of Camp Unity volunteers proved so essential that they were officially deemed part of the D.C. Fire and Rescue team for the two weeks they spent at the Pentagon.

Mr. Speaker, the District of Columbia takes particular pride in the work of the volunteers of Camp Unity. I ask the House also to join me in recognizing the charitable and patriotic response of these District residents to the tragedy of September 11th.

IN HONOR OF THE LATE BISHOP WILLIE B. McNIEL

HON. EDOLPHUS TOWNS
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. TOWNS. Mr. Speaker, I rise in honor of a very special man of God who has recently left us, Bishop Willie B. McNiel.

After a rich and full life serving his community, his church, and his God, Bishop Willie B. McNiel passed away on December 11, 2001. He was born September 10, 1919, the second of nine children to the late John and Mary McNeil in Pritchard, Alabama. He completed his early education at the St. James Catholic School. His formal education came from the “old man to the new man” program. In 1944, he met and began a courtship with Dora James. On February 18, 1945 they were married and had seven children.

Bishop McNeil was saved and received the gift of the Holy Ghost at the Old Holiness Church in Pritchard. After he moved to New York and God found favor with him and called him to the ministry of the Apostolic Faith. He became Assistant Pastor of the Old Truth Church of the Lord Jesus Christ, in Brooklyn, NY, where the late Elder D. Freeman was Pastor.

In 1963, Bishop McNeil established his own church, The House of the Lord and Savior Christ Jesus of the Apostolic Faith. He later changed the name of that church to Holy Cross Remnant Church of Jesus of the Apostolic Faith.

For 54 years, Bishop W.B. McNeil has been and continues to be a source of wisdom and inspiration. Through his teaching and preaching about God, Bishop McNeil inspired Pastor Clarence Keaton, who loved him like a father; and the Bishop became the grandfather of the True Worship Church Worldwide Ministries.

Left to cherish his memory are his loving wife, Mother Dora McNeil, and his seven children, Catherine McNeil, Frances McNeil, Willie McNeil, Jr., Anthony McNeil, Michael McNeil, Crystal McNeil, Stephen McNeil and his spiritual son, Rev. Dr. Clarence Keaton. Preceding him in death were two brothers, the late Rufus McNeil, the late Melvin McNeil, and two sisters, the late Mable Peterson and the late Catherine Richardson. He is also mourned by one of his brothers, John McNeil, and two sisters, Dorothy Pease and Mattie Reed as well as a host of grandchildren, nieces, nephews and his church family, and all the members of the Holy Cross Remnant Church of Jesus of the Apostolic Faith.

The late Bishop McNeil is one of the greatest servants that God has placed on this earth and will truly be missed. As such his family is more than worthy of receiving this recognition today and I urge my colleagues to join me in honoring the life of this truly remarkable man of God.

KAZAKHSTAN’S DICTATOR UNDERMINES U.S. INTERESTS

HON. DANA ROHRABACHER
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. ROHRABACHER. Mr. Speaker, I understand that the corrupt and repressive dictator of oil-rich Kazakhstan, Nursultan Nazarbayev, plans to visit Washington soon. He is looking for a White House Good Housekeeping Seal of Approval and a consequent dampening of the Administration’s criticism of the Nazarbayev regime’s deplorable human rights record. He thinks that the United States’ policy concerning such repression and corruption as is found in Kazakhstan. That
would be a tragic mistake. We cannot permit the war against terrorism to be manipulated into an affirmation of the status quo in countries that are ruled by tyrants. In the long run, that would pit the United States against those struggling for honest and democratic government, which would lose whatever goodwill our country has in this regard.

Nazarbayev, as with his fellow dictators in other former Soviet republics of Central Asia, assumed the title of president through sham elections. He is so repressive and corrupt that his regime will eventually collapse of its own weight. Islamic extremists—already active in the area—as well as China, will be scrambling to pick up the pieces when these gangster regimes fall apart. But we need not let that dismal scenario come to be. Now is the time to press Nazarbayev, as well as other Central Asian strongmen, to hold early free and fair elections monitored by international observers. If he needs to save face, Nazarbayev could simply confirm the many rumors that he plans to step down and retire to one of the countries where he stashed his ill-gotten financial gains.

Of course the Nazarbayev regime, like other human rights abusers, threaten more than their own people. Moscow’s Centre TV on February 17, 2001, accused the Nazarbayev regime of illegally selling weapons, like advanced Russian-made S-300 air defense system and heavy tanks, to rogue regions. The United States has had many run-ins with the Nazarbayev regime over arms sales. Early last year, for example, Kazakhstan sold forty MIG fighters to North Korea. And on June 4, 1997, the Washington Times reported that the U.S. had protested plans by Kazakhstan to sell advanced air defense missiles to Iran. This pattern of weapons trafficking must stop. Clearly, this is a policy endorsed by Nazarbayev himself.

Finally, on September 14, 2001, the Swiss Federal Department of Justice made available to the U.S. Department of Justice the findings of a lengthy investigation of corruption involving President Nursultan Nazarbayev of Kazakhstan. These issues raised by this report need to be addressed. What have we here—a regime condemned by leading human rights organizations, that has trafficked in arms with the dregs of the world, that has been ambiguous in its support of the war on terrorism, and is under investigation for corruption by both Swiss and U.S law enforcement agencies.

Maybe our message to Mr. Nazarbayev is that it is time for him to go. At the very least, he should not be allowed to leave Washington thinking that the U.S. will acquiesce to the status quo in exchange for platitudes about joining President Nursultan Nazarbayev of Kazakhstan. These issues raised by this report need to be addressed. What have we here—a regime condemned by leading human rights organizations, that has trafficked in arms with the dregs of the world, that has been ambiguous in its support of the war on terrorism, and is under investigation for corruption by both Swiss and U.S law enforcement agencies.

Maybe our message to Mr. Nazarbayev is that it is time for him to go. At the very least, he should not be allowed to leave Washington thinking that the U.S. will acquiesce to the status quo in exchange for platitudes about joining us in the war against terrorism. Kazakhstan is a country rich in natural resources. Its people should be enjoying prosperity, peace and yes, freedom. Instead, the iron grip of despotism is strangling the democratic alternative, and with it the hopes of economic progress for the country as a whole.

Let us be on the side of the people of countries like Kazakhstan. Let us use our influence with those in power in such repressed societies to show them a graceful way of exiting from the chains when giving them, and their repressed populations, the mistaken notion that we are the friends of such corrupt and tyrannical regimes.

TRAGEDY THAT HIT AMERICA

HON. JAMES A. TRAFICANT, JR. OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. TRAFICANT. Mr. Speaker, the events of September 11, 2001 in New York, Washington, and Pennsylvania have struck the hearts and minds of Americans everywhere. I am especially touched by the thoughts of the young people who are the future of this great nation. Shanleigh Hart is a 6th grade student in Miss Shiver’s class at Southeast School in Salem, Ohio, and she has written a poem remembering “The Tragedy That Hit America”. Shanleigh’s words are inspiring and should all make us proud to be Americans.

TRAGEDY THAT HIT AMERICA

A threat to America
Brave Country
Count on us
Depend on our army
Extreme explosives
Foreign countries deny
Greatly upset
Hope shines through
Interviewing all over
Just not fair
Killing
Learning to work together
Maybe there will be a war
Never will be forgotten
Obviously not expected
Prepare for war
Quietly they did it
Respectfully we work
Sad as can be
Terrifying
Unfair to us
Very disrespectful
World War three
Extremely unbelievable
Young and old
Zealous people

In memory of all the victims and their families, we are not letting this one go! We are America.

CHAMORRO FIREFIGHTER ASSISTS IN PENTAGON RESCUE OPERATIONS

HON. ROBERT A. UNDERWOOD OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. UNDERWOOD. Mr. Speaker, as the Nation is undergoing the recovery process from the terror and destruction brought about by the September 11 attack on America, I would like to take this opportunity to share the experiences of a former resident of Guam who was called upon to assist in the rescue efforts at the Pentagon.

Born and raised on the island of Guam, Mark Anderson moved to the state of Virginia in 1999 to pursue his dream to become a firefighter. Having been employed by the Fairfax County Fire and Rescue Department for the past couple of years, Mark and his colleagues were called to respond to the Pentagon attack that fateful day. Mark assisted in fighting fires, locating survivors and recovering bodies, working 10 grueling hours without any breaks.

The image of charred rubble and scorched equipment all over the site of the crash will remain with Mark for years to come. To describe the magnitude of the destruction, he conveyed a scene of embers, ashes and heaps of office equipment strewn all over the place. While performing his duties that day, Mark confessed to having been concerned for his own and his colleagues’ safety, since they were informed that another hijacked plane may be heading for Washington, D.C. His duty, however, dictated that he push and attend to the task at hand. This, he did without any hesitation.

Although Mark’s fire company was on the site for only 1 day, they were placed on a “call back” status for several days afterward. If given the chance to do it over again, Mark says that he would have no hesitation in doing his part once more. Attention and honors have been heaped upon him and his colleagues for their performance but Mark feels that he only did what was expected and required of him. He is grateful for having been given the chance to actively take part of an effort that will forever be remembered in history.

The tragedy of September 11 has touched every aspect of American society. Although located half a world away, the people of Guam have felt the effects and have made contributions towards our Nation’s efforts to recover from the effects of these attacks. Individuals such as Mark Anderson typify the best of our island and I am proud of his patriotism and call to duty exhibited on September 11.

Mr. Speaker, I commend Mark Anderson and his colleagues for their contributions. We recognize the value of their service and commitments. By working together as these people have, we will be able to overcome any adversity that comes our way.

A SPECIAL TRIBUTE TO MR. MICHAEL ANTHONY GRANDILLO ON HIS RETIREMENT AS PRESIDENT OF THE TIFFIN CITY COUNCIL

HON. PAUL E. GILLMOR OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. GILLMOR. Mr. Speaker, it is with great pride that I rise today to recognize a great man who has dedicated much of his life to his community. At the end of the year, Mr. Michael Anthony Grandillo will retire as President of the Tiffin City Council. For the past 14 years, he has served as Councilman of the 4th Ward of the City of Tiffin in the Fifth Congressional District of Ohio.

Mike has had a long and distinguished career on the Tiffin City Council. He was appointed to the seat in 1985 and was re-elected to every four-year term since then. He served as Chairman of the Parks and Recreation Committee when the city of Tiffin experienced tremendous growth. He was also Chairman of the Law and Community Planning Committee who has oversight responsibility for economic development in Tiffin. Under his leadership, Tiffin recognized as having one of the top three municipal economic development programs in the State of Ohio.

His dedicated service to this community does not stop with the Tiffin City Council. He is currently Secretary and Director of the Friedman Village, a non-profit corporation which developed and manages an 18 acre assisted and independent living facility. He is an
Thank you for your attention to this important matter.

Sincerely,

JAMES V. HANSEN,
Chairman—Committee on Resources,

DON YOUNG,
Chairman, Committee on Resources, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN: Thank you for the opportunity to address the Committee on Transportation and Infrastructure, the amendment to H.R. 3299, the ‘Homestake Mine Conveyance Act of 2001,’ that the Committee on Resources plans to bring to the floor under suspension of the rules.

The Committee on Transportation and Infrastructure recognizes the importance of this legislation. In view of your desire to move H.R. 3299 to the floor in an expedient fashion, I do not intend to seek a sequential referral of H.R. 3299. However, this should in no way be viewed as a waiver of jurisdiction. I would appreciate your acknowledgement of the jurisdiction of the Committee on Transportation and Infrastructure over sections 104 and 106 of the amendment and an acknowledgment of the Transportation and Infrastructure Committee’s right to seek conferences in the event that this legislation is considered in a House-Senate conference.

I look forward to working with you on this bill.

Sincerely,

DON YOUNG,
Chairman.
for many years. We particularly applaud Coach Thompson and the John Thompson Foundation for their emphasis on the educational success of inner city youth. The Basketball Classic serves as an inspiration for those interested in expanding educational opportunities for the District’s African American youth.

Mr. Speaker, I ask the House to join me in saluting Coach John Thompson, the John Thompson Foundation, and all those associated with the John Thompson Foundation, whose dedicated and creative energy make a significant impact on the progress and the lives of African American youth.

49TH ANNUAL ANDERSEN AIR FORCE BASE CHRISTMAS DROP IN MICRONESIA

HON. ROBERT A. UNDERWOOD
OF GUAM
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. UNDERWOOD. Mr. Speaker, 49 years ago in 1952, over the tiny island of Kapingamarangi in Micronesia, the crew of an Air Force WB–50 aircraft assigned to the 54th Weather Reconnaissance Squadron in Guam quickly gathered a box of goodies they had on the plane upon seeing a number of islanders waving at them. Thus began the five-decade-old tradition.

For years, the residents of Kapingamarangi, Nukuoro and other remote islands have been receiving a variety of gifts such as macheets, hoes, snookers, coloring books, soccer balls and toiletries—items they probably would not have been able to obtain otherwise due to their remote location in the Pacific. This year, four C–130 Hercules aircraft from the 36th Airlift Squadron based out of Yokota Air Base in Japan dropped 60 boxes of holiday gift items on the 54 islands and atolls in the Micronesia area. The operation lasted six days and entailed cargo planes descending upon sparsely populated islands and atolls. In addition to the goodwill spread among these communities, the military personnel also benefit from the opportunity of having their navigation and flight skills tested as they search out unfamiliar drop zones on remote and isolated island locations.

This year’s organizers had a bit of difficulty in raising the necessary funding for this project due to Guam’s current economic situation. However, the community has somehow managed to get together and, in the true spirit of this season of sharing, allow for another successful year. For the past several months the Christmas Drop committee has raised funds through a variety of efforts, including door-to-door boat trips, a 5k run/walk, a golf tournament along with T-shirt and commemorative coin sales generated a substantial part of the funds used for this year’s operation. Despite a recent drop in tourism arrivals on Guam, donations steadily flowed from island residents and the local business community. Also worth mentioning is the effort initiated by Jacob Jensen as part of his community service project in his effort to attain the rank of Eagle Scout. Through Jacob’s efforts, a canned food drive was held at Andersen Air Force Base’s middle and elementary schools as well as at Guam High School.

During these times of uncertainty and hardship, it is very gratifying to see that worthwhile projects such as the annual Christmas drop remains alive. This is a testament to our capacity to unite as a community and as a nation in the face of adversity. There is no better way to demonstrate our compassion and generosity than worthwhile projects such as this. I take this occasion to commend all those who participate towards the success of this year’s Christmas drop. Let us keep this tradition going for many more years to come.

TERRORIST ATTACK ON INDIAN PARLIAMENT CONDEMNED—ATTACK IS INEVITABLE CONSEQUENCE OF REPRESION IN INDIA

HON. EDOLPHUS TOWNS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. TOWNS. Mr. Speaker, I join with my colleagues and all decent people of the world in condemning the terrorist attack on the Indian Parliament. I extend my sympathies to the victims and their families. Terrorism is never acceptable. We are currently at war against terrorism.

However, India is a country that has practiced terrorism against the peoples living within its borders. It has a pattern of terrorism. Remember that two government officials there were quoted last year as saying that Pakistan should be isolated. It is clear that India seeks hegemony over all the peoples and nations of South Asia.

In May, Indian troops were overwhelmed by villagers, both Sikhs and Muslims, while they were trying to set fire to a Sikh Gurudwara and some Sikh houses in Kashmir. Independent investigations by the International Human Rights Organization and jointly by the Punjab Human Rights Organization and the Movement Against State Repression have conclusively shown that the Indian government carried out the massacre of 35 Sikhs in Chithisgihora in March 2000 while former President Clinton was visiting India. Its police broke up a Christian religious festival with gunfire. According to the excellent book Soft Target, written by two Canadian journalists, the Indian government blew up its own airliner in 1985 to generate more repression against minorities. In November 1994, the newspaper Hitavada reported that the government paid the late governor of Punjab, Suresh Nath, $1.5 billion to generate terrorist activity in Punjab and Kashmir.

We must work to stop terrorism wherever it occurs. India’s terrorism is no exception. We should stop our aid to India until it stops its repression of the Christians, Sikhs, Muslims, and other minorities, and we should declare our public support for self-determination for all the people of South Asia in the form of a free and fair plebiscite on the question of independence.

A report published this past May by the Movement Against State Repression showed that the Indian government admitted that 52,268 Sikh political prisoners are rotting in Indian jails without charge or trial. Many have been innocent. The Indian government has murdered over 250,000 Sikhs since 1984, according to the Politics of Genocide by Inderjit Singh Jaijee. Over 75,000 Kashmiri Muslims and over 200,000 Christians have been killed.

Mr. Speaker, the Council of Khalistan has published an excellent press release on this attack. I would like to share it with my colleagues by inserting it into the RECORD now.

[From the Council of Khalistan, Dec. 14, 2001.]

COUNCIL OF KHALISTAN CONDEMNS ALL TERRORISM—TERRORIST ATTACK ON INDIAN PARLIAMENT IS A PRODUCT OF INDIAN REPRESION

(By Guru Gobind Singh Ji, Tenth Master)

India Must End Its Repression Instead of Blaming Pakistan—Newspaper Says Indian Government Knew of Attack in Advance

Washington, DC—The Council of Khalistan today condemned the terrorist attack on the Indian Parliament, but called on the Indian government to join the fight against terrorism worldwide and to end its own terrorism against minorities.

“We condemn terrorism in all forms, wherever it comes from,” said Dr. Gurmeet Singh Aulakh, President of the Council of Khalistan, the government pro tem of Khalistan, the Sikh homeland, which declared its independence from India on October 7, 1987. “We strongly condemn this terrorist action and we condemn the Indian government’s terrorism that gave rise to this act,” he said. “When you repress people long enough, they strike back. India’s represssion of minorities made this incident inevitable.”

The Deccan Chronicle reported today that the Indian government knew of the attack in advance and did nothing to stop it. This shows government involvement in the incident, yet the Indian government has blamed Pakistan for the attack.

“We must work to stop terrorism wherever it occurs. India’s terrorism is no exception. We should stop our aid to India until it stops its repression of minorities. It is time for India to release more than 52,000 Sikh political prisoners and the tens of thousands of other political prisoners and end its repression,” he said. The book “Soft Target,” written by two Canadian journalists, proves that the Indian government blew up its own airliner in 1985 to generate more repression against minorities.

India must stop blaming Pakistan for everything that goes wrong in India and end its own terrorism against the Sikhs, Christians, Muslims, and other minorities,” said Dr. Aulakh. “It is time for India to release more than 52,000 Sikh political prisoners and the tens of thousands of other political prisoners and end its repression.”

I take this occasion to commend all those who participated and contributed towards the success of this year’s Christmas drop. Let us way to demonstrate our compassion and generosity than worthwhile projects such as this.

Mr. Speaker, I ask the House to join me in saluting Coach John Thompson, the John Thompson Foundation, and all those associated with the John Thompson Foundation, whose dedicated and creative energy make a significant impact on the progress and the lives of African American youth.
than a genocide." In May, Indian troops were caught red-handed trying to set fire to a Gurdwara (a Sikh temple) and some Sikh houses in Kashmir. Two independent investigations have proven that the Indian government carried out the March 2000 massacre of 35 Sikhs in Chithisinghpora. U.S. Congresswoman Dana Rohrabacher has said that for Sikhs, India, and all the other nationalities, "India might as well be Nazi Germany."

India has also repressed Christians. Two leaders of the ruling BJP said that everyone who lives in India must either be a Hindu or be subservient to Hinduism. Priests have been murdered, temples have been razed, churches have been burned, Christian schools and prayer halls have been destroyed, and no one has been punished for these acts. Militant Hindu fundamentalists allied with the RSS, the pro-Fascist parent organization of the ruling BJP, burned missionary Graham Staines and his two young sons to death. In 1997, police broke up a Christian religious festival with gunfire. "Nations that do not have political power vanish," Dr. Aulakh said. "Sikhs are a separate nation and ruled Punjab up to 1849 when the British annexed Punjab. The nations and people of South Asia must have self-determination now.

CONGRATULATING BURLINGTON CITY HIGH SCHOOL ON ITS GRAMMY AWARD

HON. CHRISTOPHER H. SMITH OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. SMITH of New Jersey. Mr. Speaker, I rise today to honor and congratulate the students and faculty of the Burlington City High School Music Department in Burlington City, New Jersey for their recognition by the national GRAMMY Foundation as a GRAMMY Signature School.

Burlington City is now one of 100 high schools from across the country to receive a certificate of recognition based on its high level of commitment to music education. The GRAMMY Signature School Program honors high school music students, teachers, principals, and school districts that promote and preserve music education—both performing and studying music—as a key part of their curriculum.

The importance of music education in the overall educational experience of students is becoming clearer every day. In fact, several studies have shown a quantifiable value of the arts in improving overall academic performance. According to the College Entrance Examination Board, students who study the arts continue to outperform their non-arts peers on the Scholastic Assessment Test (SAT). In 1995, for example, SAT scores for students who studied the arts for four or more years were 59 points higher on the verbal, and 44 points higher on the math portion of the exam, than students with no course work on experience in the arts.

Moreover, most teachers know that music appreciation and performance can often provide a critical mechanism to engage, and stimulate interest in, other school activities. Students who otherwise would have dropped out of school, and put their long term economic futures at risk, have been re-engaged through music and the arts.

The GRAMMY Signature School Program is developed through the GRAMMY Foundation, a non-profit arm of the Recording Academy that is dedicated to advancing music and arts-based education across the country. Through educational, cultural and professional initiatives, the Foundation aims to strengthen our education curriculum.

What makes Burlington City’s accomplishments so special is that the knowledge that it successfully competed against 18,000 public high schools nationwide. In the end, Burlington City’s program was chosen by an independent screening committee of 12 music professors, and representatives from professional music organizations to receive the Signature School Award for their exceptional job of cultivating their arts program.

Mr. Speaker, I commend the faculty and students in the music department for their commitment to furthering music education. I would like to thank the school and the local school board for their hard work and dedication to providing an outstanding music educational program that superbly serves the students of Burlington City.

PERSONAL EXPLANATION

HON. JOHN BOOZMAN OF ARKANSAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. BOOZMAN of Arkansas. Mr. Speaker, yesterday, December 18, 2001, I was unavoidably delayed on my return to Washington, DC because of a security breach at Charlotte Douglas Airport, where I was scheduled to transfer flights, and a security delay at Reagan National Airport.

For this reason, I missed votes on the final passage of H.R. 3334, the "Richard J. Guadagno Headquarters and Visitors Center Designation Act" and H.R. 3054, "A bill to award congressional gold medals on behalf of government workers who responded to the attacks on the World Trade Center and Pentagon and on behalf of people aboard United Airlines Flight 93 who helped prevent the hijackers and caused the plane to crash."

Had I been present, I would have voted in the affirmative for both of these bills.

WALTER H. MALONEY
HON. STENY H. HOYER OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. HOYER of Maryland. Mr. Speaker, I rise today to pay tribute to the late Walter H. Maloney, known to his friends as Mike. Mike represented the First District on the Prince George’s County Council at the time of his death and he was a leading figure in County politics for four decades. He was legendary for his political independence, perseverance and his remarkable commitment to public service.

Mike was born in Kansas City, Missouri in 1920 and came to Washington, DC in 1957 when his father became a member in the Roosevelt Administration. Mike’s mother taught music at the Sidwell Friends School in Washington, DC where Mike also attended school. Mike went on to graduate from Georgetown University and its law school. He also received a LLM degree from the University of Michigan Law School before joining the U.S. Army. Mike was commissioned as a first lieutenant and served in the Judge Advocate General’s Corps in Laferla’s Chapel.

After serving in the Army, Mike embarked upon his impressive career as assistant counsel to the United States Senate Subcommittee on Constitutional Rights chaired by Senator Sam Ervin. He then moved on to the National Labor Relations Board as a trial attorney in the Washington, DC office. Mike was appointed a Federal administrative law judge at the NLRB in 1973. Mike worked at the NLRB until his retirement in 1994. He also taught labor law on the adjunct faculty of the University of Maryland University College from 1955 to 1971.

Mike prided himself on fighting for the little guy and his work at NLRB is proof of that dedication. As an administrative law judge, he won national acclaim from the nation’s editorial pages and from Congresswoman Bella Abzug on the Floor of this House for his decision in the landmark Farrah slacks case in which he detailed the mistreatment of factory workers in a Texas textile shop.

Mike and his wife, Cecelia, moved to Prince George’s County in 1958. He quickly immersed himself in civic activism and was elected a delegate to the statewide Democratic convention in 1962. He also began forty years of involvement in County public affairs by joining efforts to adopt a home rule charter for the County and reform zoning practices.

In 1968, Mike was elected to the Charter Board, which was created by the voters to draft a proposed home rule charter for Prince George’s County. Mike chaired the five member board and is widely regarded as the author of the County’s modern form of government.

Mike’s efforts helped bring about a sweeping reform of the County’s government. The County Commissioner system was abolished and replaced by an elected County Executive and council with home rule powers. Prince George’s County had previously been run by the Maryland General Assembly in Annapolis.

Mike’s reform efforts did not stop with the adoption of the new Charter. He led the way in the election of a bipartisan slate in 1971 and was appointed as the first County Attorney under the new Charter.

Mike helped guide the new County government during his time as Attorney General until he resigned to become a Federal administrative law judge. The incisive and hard-hitting nature of his legal opinions as Attorney General amazed him the nickname "Iron Mike."

Mike’s demanding career at NLRB did not prevent him from being active in local affairs or from working extensively on local bond and zoning issues over the years. In 1994, following his retirement from the Federal Government, Mike ran a successful grassroots campaign for the Prince George’s County Council. He was re-elected in 1998.

As a member of the Council, Mike continued to assert his political independence and to use his sharp mind to challenge land use and spending policies, and fight for the best interests of more community. At the time of his death, Mike was ineligible to run for the Council again thanks to term limits that he helped put in place.
Mr. Speaker, I rise today in remembrance of one of music's greatest icons, Rufus Thomas, who passed away in Memphis, TN, on December 15, 2001, at the age of 84. His friends and family mourn his passing, it is appropriate that we pay tribute to him and his legacy.

Rufus Thomas was known as one of Memphis' most colorful, influential, and beloved entertainers during a career that spanned more than seventy years. As a pioneering disc jockey at WDIA, an accomplished recording artist, and a prolific performer throughout his long career, Mr. Thomas made invaluable contributions to Memphis' storied musical heritage.

Rufus Thomas became widely known for songs such as “Walking the Dog,” “Do the Funky Chicken,” “Can You Monkey Do the Dog?,” “Push and Pull,” “Breakdown,” and “Do the Funky Penguin.” But Mr. Thomas’s musical contributions went far beyond commercial success. A true musical pioneer, he opened the door for many young musicians and helped catalyze African American music into the limelight as a cornerstone of popular culture and entertainment. Mr. Thomas helped launch the careers of many musical legends, including B.B. King, Otis Redding, Isaac Hayes, and Elvis Presley.

In recognition of his great contributions, Rufus Thomas was honored by the Rock and Roll Hall of Fame in 1998, one of many accolades he received throughout his career. His songs have remained popular since their release and have been re-recorded by groups such as Aerosmith and The Rolling Stones. He was featured as a performer at the 1996 Olympic Games in Atlanta. Yet, even with all of his successes, Rufus Thomas remained an integral part of the community—always accessible and willing to perform for his many devoted fans. Until he became ill in November of this year, he never spoke of retiring and referred to himself as the “World’s Oldest Teenager.” He explained, “I ain’t old. You don’t get old when you’re doing what you love and enjoying every minute of it.”

Rufus Thomas made a life of doing what he loved and for that he was loved by all who knew him. A true symbol of undying youth and optimism, Mr. Thomas will be remembered for the kind heart and boundless energy that he displayed in all aspects of his life, and for the mark he left on musical history.

Mr. Speaker, it is with profound reverence that we honor Rufus Thomas. He will be missed and remembered fondly by his family and friends, an entire community, and musicians and music lovers everywhere.

CONGRRESSIONAL RECORD — Extensions of Remarks

HON. HAROLD E. FORD, JR.
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. FORD. Mr. Speaker, I rise today in remembrance of one of music's greatest icons, Rufus Thomas, who passed away in Memphis, TN, on December 15, 2001, at the age of 84. As his family and friends mourn his passing, it is appropriate that we pay tribute to him and his legacy.

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CONGRASSIONAL RECORD — Extensions of Remarks

HON. BART STUPAK
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. STUPAK. Mr. Speaker, I rise today to pay tribute to the girls’ basketball team of Carney-Nadeau High School, a Class D school in the Upper Peninsula of Michigan in my congressional district. With only 86 students, Carney-Nadeau is one of the smallest schools in its division, but the Carney-Nadeau Wolves proved once again on December 1 that it only takes a big heart, not a big school, to win a state division championship. I say “once again,” Mr. Speaker, because the Wolves won State titles under their same coach, Paul Pollius, in 1989 and 1990.

In our own version of “Rocky,” look behind the numbers, and any sports fan will plenty of exciting statistics associated with this gysy team, such as their season record of 26–1 and their coach’s 410–115 career record. In the 54–32 championship game against McBain Northern Michigan Christian, starter Tara Benson, a senior, led the Wolves with 16 points and snagged six rebounds and six steals, while her sister Carly, a freshman, went seven of eight in her shooting. Starter Bany Pipkorn hit four 3-pointers.

Peel away those numbers, however, and you will find enough stories of real people to make a movie equal to any classic “underdog” story. You will learn that Coach Paul Pollius, who has worked at Carney-Nadeau for 26 years, was once a basketball player at this same school, coached by the current superintendent Ron Solberg. Inducted into the U.P. Sports Hall of Fame in 1996, Paul celebrates his third girls’ championship with his wife Colleen and their sons Jacob, Michael and Matt.

In our own version of “Rocky,” look behind the numbers to find 5-foot, 1-inch starter Tracy Hernandez, who vowed after the team’s loss in the finals last year that the team would win the title this year. Tracy kept her vow by re-attending the gymn every morning at 5:30 to lift weights and work toward that goal.

The story of this championship season is also revealed in the story of the Benson sisters, daughters of Nancy (Janofski) Pugh, a member of the first All-U.P. girls team picked in 1975, and Ed Benson, All-U.P. in 1971 and 1972. Tara credits both parents for their help in shaping her game, but perhaps her greatest accomplishment is a personal one—Tara returned to top-form play this year after sitting out the 2000 season recovering from ACL surgery.

The sacrifice and the hurdles met and overcome by each player are part of the story, as well as the home community itself. Carney. This is a community that has faced great economic adversity. Mr. Speaker, but, like the rest of the Upper Peninsula, hope and optimism are characteristics of its people. And the school proving that education and sports go hand in hand, was honored this week in the Michigan Golden Apple Awards program as one of the state’s most improved schools in performance on Michigan Educational Assessment Program tests.

In light of the great challenges facing this team, the championship run of the Carney-
Michigan Class D basketball champions.

While I appreciate recent words of support from the Indian Government regarding America’s war against terrorism, it is important that we do not forget some recent actions by the very same government. For example, in May 1999, the Indian Express reported that the Indian Defense Minister convened a meeting with the ambassadors from Cuba, Communist China, Russia, Serbia, Libya, and Iraq—the latter two known terrorist nations and potential targets in the ongoing effort to eradicate terror—so set up a security alliance “to stop the U.S.”

It is also important to re-examine India’s own human rights record in a number of areas. It has been reported that India represses its Christian minority. Specifically, it has been reported that hundreds have been raped, priests have been murdered, and a missionary and his two sons were burned to death. The media reports that numerous churches have been burned. A few years ago, police gunfire closed a Christian religious festival. In addition, the pro-Fascist RSS, the parent organization of the ruling party, published a booklet detailing how to bring false criminal complaints against Christians and other minorities. Press reports indicate that Prime Minister Vajpayee promised a New York audience that he would “always be” a member this organization.

Since 1984, certain human rights organizations have reported that the Indian government has murdered over 250,000 Sikhs. Since 1984, over 200,000 Christians have been killed, and since 1988, over 75,000 Kashmiri Muslims have been killed. In addition, tens of thousands of other minorities, such as Dalit “untouchables,” Tamil, Assamese, Manipuris, and others have been killed.

A May report issued by the Movement Against State Repression cited the Indian government’s admission that 52,268 Sikh political prisoners are rotting in Indian jails without charge or trial. It further claims that many have been in illegal custody since 1984. Tens of thousands of other minorities are also being held as political prisoners in the country that proudly proclaims itself “the world’s largest democracy.”

Also in May, Indian troops set fire to Gurdwara (a Sikh temple) and burned some Sikh homes in a village in Kashmir. Two independent investigations have shown that the Indian government carried out the massacre of 35 Sikhs in Chithisinghpura. These incidents are just the tip of the iceberg of Indian terror against its minorities and its neighbors. Again, while I am grateful for recent words of support from the Indian Government regarding America’s war against terrorists, the U.S. Government and the American public should not forget about these recent acts of repression. Democratic nations have to be consistent.

While we can take that will help influence India to end its reign of terror in South Asia. We must end our aid to India until they denounce a belligerent on human rights. The hard-earned dollars of the American people should not be going to support countries that practice terrorism. We should also show our support for freedom rather than terrorism by supporting a free and fair plebiscite on the question of independence in Khalistan, Kashmir, Nagalim, and all the nations of South Asia that seek freedom from repressive occupation. Let us strike a blow for freedom, not terrorism.

Mr. Speaker, I would like to place the Dec.

NEWSPAPER SAYS INDIAN GOVERNMENT KNEW OF PARLIAMENT ATTACK

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. BURTON of Indiana. Mr. Speaker, the recent attack on India’s Parliament by terrorists must be condemned. While there are many legitimate grievances against the Indian government, terrorism is never acceptable. Nevertheless, the Deccan Chronicle, an Indian newspaper, reported something very interesting about the recent attack. It reported that the Indian government knew about the attack in advance and did nothing. Thirteen people, including the terrorists, lost their lives as a result of the attack.

Mr. Speaker, India has a history of supporting terrorism and making it look like the work of others in order to condemn people who oppose the actions of the Indian government and to justify their own attacks on these targets. According to Soft Target, published in 1992 by two Canadian journalists, the Indian government blew up its own airliner in 1985, killing 329 innocent people, including some Americans, to create the impression of “Sikh terrorism” and enhance its repression of the Sikhs. In November 1994, the Hitavada newspaper reported that the Indian government paid Surendra Nath, who was then the governor of Punjab, the equivalent of $1.5 billion to generate and support terrorist activity in Kashmir and Punjab, Khalistan.

Mr. Speaker, I would like to place the Dec.

[From the Deccan Chronicle, Dec. 14, 2001]

DELHI KNEW BUT ADVANI SLEPT

NEW DELHI, Dec. 13. Union Home Minister L K Advani had full intelligence information of the terrorist attack on India’s Parliament. But despite this, no measures were taken to tighten security in and around the Parliament House with the five terrorists driving in past two security parameters manner by the Delhi police and the CRPF, unchallenged.

In his first reaction to the terrorist attack, Advani claimed, “There has been no breach of security.” He said there was “no intelligence lapse.” He said on television that there could be no protection against fidayeen attacks maintaining that they even “had the temerity to attack Parliament.” The Home Minister said it was not possible to provide fool-proof security cover in a democracy “where everything was open.” The Union Home Ministry has been flooded with intelligence information about a possible attack on Parliament by terrorists. The other two targets were identified as Rashtrapati Bhavan and the Prime Minister’s residence.

Intelligence reports have also suggested that women suicide squads. These have also spoken of terrorists using State vehicles to launch the attack, similar to the modus operandi of the terrorist groups in Kashmir for over a decade now.

Despite this, the security agencies were not alerted. The terrorists used a white ambassador car with a red light, the symbol of government officialdom.

They were dressed Black Cat commandos, and were detected only after they got out of the car and displayed their weapons in full public view. Advani, who had been full of praise for the Delhi police, did not explain how the two security rings manned by the police outside Parliament were penetrated with such ease.

In fact defence minister George Fernandes stepped out of line by admitting before the cameras that the government had full information about a possible terrorist attack on Parliament.

He said, “We had intelligence information of this news, that we knew that the fidayeen could attack Parliament. Even so, the home minister claimed there had been an intelligence lapse while briefing reporters after the meeting of the Cabinet committee on security.

Najma Heptullah, who was in her room in Parliament when it was attacked, said, “The Home Minister knew of the Al Qaeda threat, he should have increased the security in Parliament.”

She said she had herself asked for measures to be taken to beef up Parliament security. “There are all these people roaming around all over the building” but nothing had been done.

Interestingly Advani himself spoke of a threat to Parliament at a Border Security Force function a few days ago. Officials point out that despite the security threat little was done to take stock of the entire situation and work out a comprehensive strategy to deal with it.

“It was all in the realm of talk, we have always known that the terrorists have been using and would use the cover of the government-like vehicles and uniforms to penetrate our security layers. These means were unable to get this across to our people,” a senior official said.
Mr. BARR of Georgia. Mr. Speaker, a 20-year-old student at Hunter College in Manhattan, Ben Strok wrote this poem reflecting on the September 11th terrorist attacks. It was recently read at one of my town hall meetings in Holly Springs, Georgia, by my constituent, Becky Babcock. As we enter this holiday season, let us remember how invaluable life is and make the most of each and every moment.

**THE MOMENT**

(By Ben Strok)

The smoke rises, and the ashes fall on someone you know. Someone you have not recently told how dear they are to you. Your last chance, may have been a minute ago. Your last chance, might be one minute from now. One precious minute, one precious moment. What does that moment mean to you? I’ll tell you what it means to me. That moment, right now, is all that matters. What good is the moment if it is not lived for? What is life? If it is not being relished for all that it is? It is not life, it is a wasted moment you will never recapture. It is an emotion, you will never again have the opportunity to express. It is a person you will never again be able to see, to hold, and tell them how much you love them.

It is true, made up of endless moments, the only differentiating factor being how you lived from one to the next.

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**IMMIGRANTS AND THE NATIONAL INSECURITY**

HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. RANGEL. Mr. Speaker, I rise today to bring the Congress’s attention to a recent article in the Carib News entitled “Immigrants and the National Insecurity” by Dr. Basil Wilson. His opinion editorial cogently details our Nation’s current struggle with ensuring our personal security while continuing to uphold the founding principles of this country. The article highlights some of our past reactions to times of strife and their dramatic impact on our immigrant community. Most notably, the passage of the 1996 Anti-Terrorist Act and the 1996 Immigration and Responsibilities Act, spurred in part by the World Trade Center attack in 1993 and the Oklahoma City federal building bombing in 1995, have conveyed the anti-immigrant sentiment in the United States and have sought to reduce the rights and benefits available to immigrants.

Since 1996, many of us have worked to undo the damage done to this community. But our overreaction to September 11th’s attack stand to prevent us from advancing our efforts. As Americans we pride ourselves in our historical knowledge in looking at the past and learning from our successes and failures. Impeccably, we strove to respond in an unconventional manner, both here and abroad. Yet, just four months later, we sit by and allow the Attorney General to indefinitely detain aliens, the use of military tribunals to try those suspected of terrorism, and interviews by law enforcement agencies based on ethnic and religious identities. The echoes of Japanese internment camps and McCarthyism are ringing in the halls of Congress and I know I am not the only one who hears them.

Dr. Wilson cautions, “in a global society, there is a danger that America will project to the world that it only values the life of its own citizens. The constitution and life will be preserved for Americans but different standards will be used to measure those who are not citizens of Rome.”

More critically than the projection to the world, we will tell our fellow countrymen and teach our children that the immigrant life should be valued less than the citizen’s life that the immigrants who have been the building blocks of our pluralistic society generation after generation should stand at the bottom. Dr. Wilson warns that this treatment is a slippery slope that can lead to the dehumanization of others. “More than ‘can lead’, it does lead, perpetuating an environment of inequality.”

If we sacrifice the constitutional liberties that we are asking our armed services to defend, then I ask what are we fighting for? Each time we give up one of our precious freedoms, we open the door to surrender more. It does not matter if we give up these rights for our citizens versus our immigrants because one day these immigrants will be citizens. They will not forget that from the inception they were told they were less than the people their children will attend school with.

Our enemy is not the immigrant. Do we honestly believe that if we harshly punish the immigrant community we are now secure, that we are now safe? By condoning a society that devalues the immigrants’ contributions and vital role in our community, we degrade ourselves and our history and we endanger the stability of the present in the United States and in the world. If there is one history lesson we should all remember it is our treatment of the most vulnerable of our citizens that defines our national character. We are only as strong as our weakest link and if we truly want a country where all are equal and prosper, we must empower each part of it to succeed.

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**IMMIGRANTS AND THE NATIONAL INSECURITY**

(Carib News, Week Ending Dec. 11, 2001)

(By Dr. Basil Wilson)

The planning and executing of the bombing of the Pentagon in Washington, D.C., and the explosion of the USS Cole in Yemen have forced us to believe that the United States was confronted with a formidable foe. The henchmen of Osama bin Laden had managed to pull together jihadi warriors from Muslim counties in Bosnia, Algeria, Egypt and Pakistan. This fierce band of warriors with the capacity to kill civilians along with the Taliban in Afghanistan has manifested the world’s incapacity to fight against the United States military. The Al Qaeda and Taliban warriors have shown an inability to wage modern warfare.

That prompts the question, what is left of the Al Qaeda international network? As bin Laden forces disintegrate in Afghanistan, does Al Qaeda remain a formidable terrorist network capable of threatening American national security? The extra-constitutional measures that Attorney General Ashcroft claims that is necessary to save American lives is based on the assumption that the remnants of bin Laden are still capable of additional savagery.

The 1993 attack on the World Trade Center and the destruction of the Federal building in Oklahoma in 1995, prompted the Clinton Administration and Congress to pass the 1996 Anti-Terrorist Act. That Act and the Immigration and Responsibilities Act reduced measurably the rights of permanent residents and foreigners living in the United States. Even the Acts passed since September 11, 2001 respects the constitutional rights of citizens but run roughshod over those who are domiciled in the United States and are not citizens. The Patriot Act is similar to the Walter-McCarran Act passed in 1952. Then the war was communist organizations and the law allowed the Immigration and Naturalization Service to bar those who sought to enter the United States who were members of communist or organizations sympathetic to communism.

With the Patriot Act, the attempt is to interdict or deport non-citizens who are members of a terrorist organization or who seek to raise or to give funds to any terrorist organization. The Attorney General does not need to bring the defendants to trial and the non-citizen can be immediately deported.

The Attorney General has now assumed powers to indefinitely detain aliens. This amounts to a suspension of habeas corpus and the Attorney General has been given the power to supersede the rights of INS judges to release a detainee providing that detainee is suspected to be linked to terrorist activity. No evidence has to be presented in court. Such powers exercised by the state are troubling to constitutional scholars. The rationale given is national security but there are no checks or balances to ensure that the rights of the defendants are duly protected.

Officials at the Justice Department are investigating the investigation must cast an extensive net. Thus far the Attorney General has indicated after probing from Congress that 93 persons have been charged with military, visa or criminal violations unconnected to events of September 11, 2001. The files of 11 have been sealed and 22 Middle Eastern men who were engaged in obtaining licenses to transport hazardous materials across state lines, all but one, have been released. Approximately 548 are in custody, mostly comprised of Middle Eastern males.

The extend the dragnet, the Justice Department is asking state and city policy to cooperate with them to interview 5,000 Middle Eastern men between the ages of 18 and 33 who entered the United States from January 2000. They are not necessarily suspected of any crime but the Justice Department wants...
to conduct voluntary interviews with the expectation it might produce leads to determine the state of the Al Qaeda network in the United States.

This amounts to a vulgar form of racial profiling. Racial profiling as it was aimed at African Americans on the New Jersey Turnpike or the unconstitutional search and seizures conducted in Black and Latino neighborhoods in New York City are examples of the might of state power being used against the powerless to maximize domestic security. Events of September 11, 2001 necessitate additional vigilance on the part of law enforcement but it is dangerous to pass legislation oblivious to the rights of non-citizens since such legislation jeopardizes the rights of all American citizens.

President Bush announced on November 13, in his capacity as Commander-in-Chief of the Armed Forces that the government would reserve the right of trying foreigners during the course of the war in military tribunals. Military tribunals were used during the American Civil War and in World War II. Military tribunals do not require the preponderance of evidence necessary for conviction in a civilian court or in military courts used for court martial cases. Conviction in the Military Tribunal would not require the same rules of evidence and a two-thirds vote of the commissioners could lead to a conviction even in the case of a death penalty.

As the New York Times editorial on Sunday, December 2, 2001 stated, it is very difficult to criticize a President when the nation is at war but the editorial board felt compelled to speak out against the extensive extra-judicial powers assumed by the Bush administration. A conservative columnist like William Safire, who writes for the New York Times has condemned the Military Tribunals.

We need to explore a new politics and to construct a new global system to make the world safe for Christians, Jews, Muslims and non-believers.

A liberal columnist like Thomas Freedman equivocates. He recognizes the danger of the extra-constitutional decrees but his position is that the nation is up against an enemy with no love for life and cannot carry out business as usual.

In a global society, there is a danger that America will project to the world that it only values the life of its own citizens. The constitution and life will be preserved for Americans but different standards will be used to measure those who are not citizens of Rome. It is a slippery slope that can readily lead to the dehumanization of others.

The New York Times has condemned the Military Tribunals. Some emergency measures are sorely necessary in light of the holocaust of September 11, 2001. But one of the strangest phenomenon of the latter twentieth and the beginning of the twenty-first century is the increasing insecurity of human life and the proposed solutions to enhance safety which seem to augment the quasi-incarcerated nature of our lives. It has prompted the expansion of the penal state with millions in prison and hundreds of thousands leaving prison to be reintegrated into an economy that is jettisoning those who are presently employed.

The military reserve now provides additional security on our streets. Airport security has been federalized and new legislation has been passed by Congress to counter terrorism. The Attorney General is convinced that expanded powers will make us more secure. This should be seen as a temporary holding action. We fought a war in yester-year to make the world safe for democracy. We need to explore a new politics and to construct a new global system to make the world safe for Christians, Jews, Muslims and non-believers.

**DUTY SUSPENSIONS**

**HON. BENJAMIN A. GILMAN**

**OF NEW YORK**

**IN THE HOUSE OF REPRESENTATIVES**

**Wednesday, December 19, 2001**

Mr. GILMAN. Mr. Speaker, today I am introducing three bills H.R. 3526, H.R. 3527, and H.R. 3528, which would suspend duty on three chemicals imported into the United States.

These chemicals are used in the manufacture of corrosion inhibitors that protect metal coatings, as well as solvent-based coatings for a variety of industrial and consumer products. I understand these products are also "environmentally friendly" because they use organic molecules, instead of heavy metals, to prevent corrosion.

I have been advised that these chemicals are not domestically produced. Thus, enactment of this legislation would allow businesses in this country to reduce their costs and thereby make U.S. industries more competitive in world trade markets.

Copies of these bills are set out below.

H.R. 3526

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. TEMPORARY SUSPENSION OF DUTY ON (2-BENZOTHIAZOLOYTHIO) BUTANEODIC ACID.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

<table>
<thead>
<tr>
<th>Description</th>
<th>Duty</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, H.R. 3526</td>
<td>No change</td>
<td>On or before 12/31/2004</td>
</tr>
</tbody>
</table>

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

H.R. 3527

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. TEMPORARY SUSPENSION OF DUTY ON 60-70% AMINE SALTS OF 2-BENZOTHIAZOLOYTHIO SUCCINIC ACID IN SOLVENT.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

<table>
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<tr>
<th>Description</th>
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<th>Effective Date</th>
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<tr>
<td>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, H.R. 3528</td>
<td>No change</td>
<td>On or before 12/31/2004</td>
</tr>
</tbody>
</table>

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

H.R. 3528

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. TEMPORARY SUSPENSION OF DUTY ON 4-METHYL-3-OXO-BENZENEBUTANOIC ACID COMPOUNDED WITH 4-ETHYLPHENYLPHOSPHONIC ACID.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

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<tr>
<th>Description</th>
<th>Duty</th>
<th>Effective Date</th>
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<tbody>
<tr>
<td>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, H.R. 3529</td>
<td>No change</td>
<td>On or before 12/31/2004</td>
</tr>
</tbody>
</table>

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.
CONFERENCE REPORT ON H.R. 1, NO CHILD LEFT BEHIND ACT OF 2001

SPEECH OF
HON. RUSH D. HOLT
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 13, 2001

Mr. HOLT. Mr. Speaker, I rise today to address my colleagues regarding H.R. 1, No Child Left Behind.

Although we passed this important legislation last week, I must express my reservations about certain language included in the conference report:

The conferees recognize that a quality science education should prepare students to distinguish the data and testable theories of science from the religious or philosophical claims that are made in the name of science. Where topics are taught that may generate controversy (such as biological evolution), the curriculum should help students to understand the full range of scientific views that exist, why such topics may generate controversy, and how scientific discoveries can profoundly affect society.

Outside of the scientific community, the word "theory" is used to refer to a speculation or guess that is based on limited information or knowledge. Among scientists, however, a theory is not a speculation or guess, but a logical explanation of a collection of experimental data. Thus, the theory of evolution is not controversial among scientists. It is an experimentally tested theory that is accepted by an overwhelming majority of scientists, both in the life sciences and the physical sciences.

The implication in this language that there are other scientific alternatives to evolution represents a veiled attempt to introduce creationism—and thus, religion—into our schools. Why else would the language be included at all? In fact, this objectionable language was written by proponents of an idea known as "intelligent design." This concept, which could also be called "stealth creationism," suggests that the only plausible explanation for complex life forms is design by an intelligent agent. This concept is religion masquerading as science. Scientific concepts can be tested; intelligent design can never be tested. This is not science, and it should not be taught in our public schools.

Mr. Speaker, I am a religious person. I take my religion seriously and feel it deeply. My point here is not to attack or diminish religion in any way. My point is to make clear that religion is not science and science is not religion. The language in this bill can result in diminishing both science and religion.

FIFTIETH ANNIVERSARY OF THE GUAM WOMEN’S CLUB

HON. ROBERT A. UNDERWOOD
OF GUAM
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. UNDERWOOD. Mr. Speaker, in February 1952, a group of women set out to establish a non-profit organization designed to help improve the general education, health and welfare of the people of Guam. For the past five decades the Guam Women’s Club, working on its own and with the support of other civic and service organizations, has made great contributions towards the betterment of the island of Guam. The club was under the wing of the Federation of American Women’s Associations (FAWA) since 1958. Due mainly to the Guam Women’s Club’s efforts, this international organization has since held four conferences on Guam.

Education was one of the Guam Women’s Club’s paramount concerns. The club has awarded high school, college, and university scholarships since its inception. Since 1991, three full time scholarships have been put in place—awarded annually to deserving students of the University of Guam. To acknowledge the value of the teaching profession and to honor the island’s teachers in both public and private schools, the club has held numerous gatherings which came to be known as "Teachers Teas."

The club has also been very active in beautification and facility improvement campaigns. A GWG project in 1954 initiated the establishment of the Guam Museum and was instrumental in the construction of facilities such as the public pool in Hagatña. The construction of the Padre Palomo Park, for which the club received national recognition, the Lalahita Park overlooking the village on Umatac, and the beautification of San Ramon Hill were made possible through their efforts. The post office petition project they initiated culminated to the opening of a post office in Dededo, the island’s most populous village.

Additionally, through both individual and group efforts, GWG has been working closely with community and civic undertakings. In 1963, the club received national recognition from the General Federation of Women’s Clubs for their islandwide clean-up campaign. The GWG Hospital Committee donates an average 150 hours of volunteer work at the Guam Memorial hospital. GWG made significant contributions towards the transition of Guam Youth, Inc. to the Guam Recreation Commission—another project that gained them national recognition.

GWG additionally actively participates and contributes toward several local civic programs and institutions. From support organizations and facilities such as the Alee Shelter, Eric’s House, Child Care Co-op, the Guam Lycido and Bodig Association, St. Dominic’s Nursing facility and Rainbows for all Children to national organizations such as Crime Stoppers, the Salvation Army, the Guam Chapter of the American Red Cross, and the American Cancer Society’s Guam Unit, the range of GWG’s efforts and interest seems boundless. GWG is a great contributor to local organizations such as Sugar Plum Tree and the annual Air Force Christmas Drop to sparsely populated outlying islands. A benefactor of the Guam Symphony Society, GWG is also a major contributor to the local public broadcasting stations KPRG and KGTF.

As the Guam Women’s Club—the island’s oldest women’s club—celebrates its fiftieth anniversary, I would like to take this opportunity to recognize the organization and its members. For 50 years, GWG has made substantial contributions towards the transformation of Guam and its people. I am confident that the island of Guam will continue to reap the benefits of GWG’s endeavors for many more years to come.
HOME OWNERSHIP EXPANSION AND OPPORTUNITIES

HON. RUBÉN HINOJOSA
OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. HINOJOSA. Mr. Speaker, I rise today to express concerns over the introduction of H.R. 3206, the Home Ownership Expansion and Opportunities Act of 2001. The legislation would allow Ginny Mae to alter its current role from guaranteeing federally backed mortgage securities to guaranteeing first-time conventional mortgage securities. In short, this legislation transforms this entity into a full functioning Government Sponsored Enterprise.

While I am not necessarily opposed to the creation of an additional Government Sponsored Enterprise, I am opposed to the creation of an entity that draws from Federal capital and is not subject to government guidelines and goals geared toward increasing home ownership and improving the American economy.

This legislation would allow Ginny Mae to operate with equal flexibility and larger security than current Government Sponsored Enterprises in the housing mortgage market, including Fannie Mae and Freddie Mac. However, it would not require that Ginny Mae meet the housing goals established by the U.S. Department of Housing and Urban Development. These goals are designed to ensure that every American has access to fair and affordable housing. While these ideals have made organizations like Fannie Mae and Freddie Mac an attractive and worthy government sponsored enterprise and prompted them to create new ways to expand the number of first-time borrowers or break down barriers to homeownership.

Therefore, it is unclear how this legislation would help consumers or expand homeowner opportunities for minorities, low- to moderate-income families, and other traditionally underserved markets. The legislation that expands the role and scope of Ginny Mae does not make them subject to mandatory affordable housing goals, borrower income caps, or limit their business to first-time buyers. These ideals have made organizations like Fannie Mae and Freddie Mac an attractive and worthy government sponsored enterprise and prompted them to create new ways to expand the number of first-time borrowers or break down barriers to homeownership.

What this legislation does is make this government entity function like a private corporation, allowing Ginny Mae to guarantee loans not just to people who need the extra help, but also to those who can and should be using the private market. Under these rules, I see no need to provide federal support for an organization that will perform a function in the housing market that can be executed by a private banking organization.

Mr. Speaker, our nation’s housing finance system is the model of the world. We should be concentrating our resources, time and effort in closing the gap of homeownership rates between minority families and the larger homeownership rate. We have the tools necessary to improve homeownership numbers, let’s use what we have to successfully meet our laudable goals.

RESIST A BILL WITH TAX CUTS THAT WOULD DRAIN THE SURPLUS

HON. JOHN M. SPRATT, JR.
OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. SPRATT. Mr. Speaker, a year ago, economists surveyed the future and saw nothing but surpluses: $5.6 trillion over the next ten years. Today, the ten-year surplus is at $2.6 trillion and falling, and virtually all that’s left comes from Social Security. When the President submits next year’s budget, an updated economic forecast will come with it, and the surplus will officially shrink again.

The Director of the Office of Management and Budget, Mitchell Daniels, blames the economy, extra spending, the fight against terrorism—everything but tax cuts. All of these have an impact, but over ten years, the Bush tax cuts take a toll of $1.7 trillion on the budget, and accumulate a $1.4 trillion in the surplus—and this is just the toll of tax cuts already paid. Marking time is a little-noticed agenda of highly probable, politically compelling tax cuts that could wipe out much of the remaining surplus.

At the top of this agenda, awaiting a fix, is the alternative minimum tax (AMT). Last year only 1.5 million individual taxpayers had to deal with the AMT, but due to inflation, rising incomes, and an unindexed exemption, the AMT will become a household acronym to millions of middle-income families.

Before enactment of the Bush tax cuts, the number of individual taxpayers affected by the AMT was expected to mushroom to 17.5 million by 2010. The Bush tax act created new tax benefits without corresponding adjustments to the AMT, at least not after 2004. As a result, the number of taxpayers affected by the AMT will double by 2010, grow to 35.5 million—or to one in every three individual taxpayers. When these folks find that tax benefits are extended in one part of the code only to be retracted in another, they will protest bitterly, and in time Congress is certain to fix the AMT so that it does not come down on middle-income taxpayers.

The cost of confining the AMT to its ambit before the Bush tax cuts would be about $268 billion over 2003-12. But this would leave more than 17 million taxpayers facing the AMT. If taxable income exempt from the AMT were indexed at last year’s level, those affected in 2010 could be limited to about 8 million, but at a heavy cost, an additional tax revenues forgo $241 billion.

Just as probable as some fix to the AMT is the extension of tax benefits set to expire. The tax code is full of short-lived benefits. CBO and OMB do not try to divine what Congress will do when these deductions and credits reach the end of their legislated lives. They simply assume that expiring provisions will not be renewed. But these are popular tax benefits, and they are almost always renewed. The revenues forgone by renewing the most prominent tax benefits from 2003 through 2012 would be about $174 billion.

This, however, omits the largest expiring provision. In an effort to shoehorn as many tax cuts as possible into a package limited to $1.35 trillion, congressional Republicans put a “sunset” in their tax bill, terminating all of the cuts by the end of 2010. They obviously do not intend for the sun to set on their tax cuts. They stuck in a “repealer” to diminish the apparent size of the tax bill, knowing that Congress will be hard-pressed to repeal tax cuts already in place. In time, the “repealer” itself will probably be repealed. If so, the revenue loss will be $373 billion over 2003-2012.

When each of these actions is taken into account, an additional $1 trillion in revenue losses has to be deducted from the budget between 2003 and 2012, along with an additional $143 billion in debt service. The impact on the budget, all told, comes to $1.2 trillion.

This dashes any hope that the nation can repay its publicly held debt before the baby boomers retire. It also puts the “stimulus package” in context. Disclaiming the vanishing surplus and the agenda of tax cuts to come, Republicans on the Ways and Means Committee brought forth a stimulus package full of tax cuts with doubtful effects on the economy, but with a clear impact on the surplus, reducing it by $250 billion over the next ten years. If this bill became law, it would push the overall price of the pending tax-cut agenda to almost $3.5 trillion and wipe out what remains of the surplus.

The projection of ten-year surpluses soaring toward $6 trillion left in its wake a sense of euphoria, a feeling that we could have it all. It’s clear now that we can’t, but in the meantime, out-sized tax cuts have overridden other priorities, like prescription drug coverage under Medicare. If we want to put the economy and the budget back on path, there is an axiom worth recalling from the days of intractable deficits: When you find yourself in a hole, the first rule is to quit digging. That’s why we should resit a bill with tax cuts that would drain the surplus without stimulating the economy.

PERSONAL EXPLANATION

HON. MIKE McIntyre
OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. McIntyre. Mr. Speaker, on rollcall Nos. 499 and 500, I was absent since I was unavoidably detained because of a security breach at the Charlotte Douglas Airport, which caused me to be unexpectedly re-routed through another airport on a later flight.

This occurred on Tuesday, December 18, 2001. Had I been present, I would have voted “yea.”

COMMENDING THE CANTON JUNIOR-SENIOR HIGH SCHOOL’S SEPTEMBER 11 REMEMBRANCE PROGRAM

HON. NANCY L. Johnson
OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mrs. JOHNSON of Connecticut. Mr. Speaker, I rise today to honor the students and faculty at Canton Junior-Senior High School in Connecticut’s Sixth Congressional District for their beautifully touching remembrance program held in honor of the victims of the September 11th terrorist attacks.
The students took the initiative to plan and run the entire program, in which stories, poems and songs were shared, honoring those who so unexpectedly and tragically lost their lives. They also created a chain of 6,000 circles, which was looped around the auditorium, to provide a dramatic reminder of the number of lives that were thought to have died on that terrible day. The chain captured both the enormity of the tragedy and the value of each individual life. But ever optimistic, the chain, as one student eloquently said, was a reminder that after the attacks, “the great chain of America did not die; the chain that links every single citizen of our country—strengthened ten thousand fold.”

That vital and heartfelt presentation captured the spirit of America’s journey as we watched the unfolding events in horror and disbelief and then as we grieved with great sorrow at the lives and dreams shattered by evil. Despite the anger and hatred that has touched all our hearts, these students demonstrated the power of love for others. It is that power that will make our free and caring country able to defeat the hatred of those whose poverty made them easy prey for the preachers of death and destruction. I commend the students of Canton Junior/ Senior High for expressing in words and actions the thoughts and feelings of Americans everywhere.

MEMORIAL SERVICE
(Patriotic Paper by Lauren Schwartzman)

September 11th. Do you feel what I feel when you hear that date? Can you feel the death in that date? The tears cried by three hundred million eyes for six thousand people. People whose lives were so brutally, so cruelly cut short that day. We are crying for those dreams shattered and lost, dreams of life that will never be fulfilled. Can you feel the hatred in that date? The awful, black hate these terrorists must feel toward us to have done such unbelievable things.

Can you feel the shock in that date? The shock of a fact we have ignored for so long. That fact that maybe we are taking the safety of our freedom for granted. That maybe taking it for granted has left it not so safe any longer. That fact that maybe we are taking the safety of our freedom for granted has left it not so safe any longer.

Tragedies don’t always bring bad. Look back to the one’s we’ve already had. “Always for the best.” I say All I can think about is that day. The one where the towers fell, that day felt as if we went to hell. As one whole, the tragedy was a form of defeat, but not for America we hadn’t been beat. As everyone fumbled to find a loved one In New York City there was no sun. No sun to shine or gleam or burn. Those fires did burn, but who did this to us will take their turn.

As one whole, we share one soul.
We all pray and hope.
As a nation we drown.

Reflection
(By Louise Eich)

September 11th, 2001 was a day when the clock stood still. Loved ones ran to each other, crying, embracing as the ground shook from the buildings crumbling. Firefighters and police officers showed bravness needed in a war, to fight and die for other’s happiness. The black scorching their helmets, made their throats dry and itchy, but they marched on.

Everything stopped at that moment again, as they watched the second tower fall. Silence struck the air, and the first scream and siren pierced through the stillness.
The country went through a breakdown, a cry for help as everything turned to chaos. Planes were brought down, schools canceled, as the city of New York shut down. But America stayed strong. We stopped right there. We don’t come in, we don’t go. We’re here, for as long as we are here. We made New York open up again, our flags wave high, and we promised to fight the evil that possessed the planes to crash on us.

We will stand strong. America. We will rebuild a nation of togetherness, and we will come out victorious. They can destroy our towers, but they can never destroy the foundations of our hearts.

IN TRIBUTE TO CLARENCE LINCOLN ROBERTSON

HON. NANCY PELOSI
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Ms. PELOSI. Mr. Speaker, many of us in the U.S. House of Representatives have had our lives enriched and our spirits strengthened through the work of Rev. Doug Tanner, President of the Faith & Politics Institute. His teacher and mentor, Clarene Lincoln Robertson taught American History to Doug at Rutherford-Spindale Central High School in North Carolina in 1962–1963. Doug Tanner was one of the students who was deeply influenced by her. I rise today to pay tribute to Clarene Lincoln Robertson who will be 100 years old on January 11, 2002.

Clarence Lincoln and her twin brother were born in the Shenandoah Valley of Virginia, near the town of Tenth Legion on January 11, 1902. Clarene rode horseback to elementary school and went by sleigh in the winter. When she entered high school, she went to live during the week in Harrisonburg, and came home on the weekends. She graduated from Elion College in North Carolina in 1925. After teaching at Huntington Girls’ College in Montgomery, Alabama, she went to Duke University for a Master’s Degree and met W.B. Robertson. Their courtship lasted 65 years. They married in 1936 and moved to Rutherfordton, North Carolina, where Clarene began her 30-year teaching career at Central High School. She initially taught both English and American History, but she moved to history when one of her students said, “Oh, Mrs. Robertson, you learned me all the English I ever knew.”

Mrs. Robertson gave birth to her only natural child, daughter Mary Ella in January 1938. Southern at the time, Miss Robertson’s previous marriage, died at age 65. Clarene and “Robby” have five grandchildren and eight great grandchildren. Only a year or so ago, they moved from Rutherfordton to Blanco, Texas, where they live with Mary Ella and her husband David.

Clarence Robertson taught high school American History like a college course. Some students opted to take the required course in summer school to avoid the rigor of her class. Others—some willingly, some reluctantly—submitted to her demanding academic standards. Those students often completed the course with both a deeper knowledge of and appreciation for our Nation’s history and an eagerness to follow current events and engage in civic and political life.

Doug Tanner graduated from high school in 1964, having taken her history class in 1962–1963. Both he and Mrs. Robertson recall that Doug entered the class reflecting and embracing the strong racial prejudice typical of white Southerners at the time. Miss Robertson was not about to let him continue to carry that attitude without her having challenged it as thoroughly and effectively as she possibly could.

The civil rights movement was nearing its height in the spring of 1963, and current events were a regular part of the curriculum. In addition, Mrs. Robertson required Doug to read John Howard Griffin’s “Black Like Me” and, in spite of resistance, assigned him to a select group of students to make a presentation on African-American history to the rest of the class. Although several other students readily volunteered for the project, Mrs. Robertson assigned some of them to other topics. She insisted that Doug be among those who would learn and wrestle with all the issues of race in America. Mrs. Robertson served as advisor to the student government, and worked closely with Doug in his capacity as junior class president.

The following summer, when the civil rights movement touched Doug’s heart more directly through experiences in his southeastern Methodist Youth Fellowship, his mind was prepared to embrace the monumental change that racial desegregation was bringing throughout the South. It was in that notable historical context that Doug received his calling into a ministry combining faith, racial justice, and politics.

Today, Clarene Robertson’s influence on Doug has helped him to lead the Institute’s
TRIBUTE TO ROBERT LAWRENCE COUGHLIN, JR.

HON. F. JAMES SENSENBRENNER, JR.
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SENSENBRENNER. Mr. Speaker, it is with sadness that I note the death of a former colleague and a great Pennsylvanian, Mr. Robert Lawrence Coughlin, Jr., who passed away last month.

Larry grew up on his father’s farm near Scranton, Pennsylvania. But he was no farmhand. Making the most of his opportunities, Larry graduated from the Hotchkiss School in Connecticut in 1946, he received an Economics degree from Yale in 1950, a Masters degree in Business Administration from Harvard, and a law degree from Temple University’s law school in 1958. While at Temple, Larry attended classes at night, and was a foreman on a steel assembly line during the day.

This “steel”y resolve served him well throughout his career. As a Marine, Larry fought in the Korean War, and was aide-de-camp to Lt. General Lewis B. “Chesty” Puller. When he was elected to Congress, he was Chairman of the Capitol Hill Marines, which represented Members who had been in the Marine Corps.

Larry was first elected to the U.S. House of Representatives in 1968. He came from a family that had some experience in the field of public service as his uncle, Clarence Coughlin, was a former Republican Representative. Representing a wealthy suburb of Philadelphia from 1969 to 1993, Larry was so popular personally and politically, that he was almost always easily elected. It wasn’t until after he retired that Democrats were able to field significant competitors for that seat.

A tall and authoritative man, Larry always had a way with people. With his military background and penchant for bow ties, Larry came across—rightfully so—as a gentleman and a scholar. While he briefly served on the House Judiciary Committee, he spent most of his career on the Appropriations Committee. Although I never had the opportunity to directly work with him on the Judiciary Committee, I did work with him on several issues. The nation lost a good legislator when Larry resigned, and on November 30, the world lost a good man.

It is with a heavy heart that I say good-bye to Larry. My wife Cheryl and I would like to express our condolences to his wife Susan, and the entire family, in this time of sorrow and sadness. They will be in our prayers.

HONORING R. LAWRENCE COUGHLIN, JR.
HON. WILLIAM J. COYNE
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. COYNE. Mr. Speaker, I rise today to join in this special order honoring our former colleague, R. Lawrence Coughlin. I want to thank Mr. Gekas for organizing this special order.

Larry Coughlin represented a suburban Philadelphia district in the House of Representatives for 24 years. He was a gracious gentleman who represented his constituents with integrity and wisdom.

Mr. Coughlin had a remarkable background. Raised on a farm in Pennsylvania, he earned a degree in economics from Yale and an MBA from Harvard. He subsequently attended night school at Temple University to get his law degree while working during the day as a foreman in a steel plant. His academic accomplishments speak to his energy and ability.

Mr. Coughlin was also a dedicated public servant. He served in the Marines in Korea during the Korean War as a aide-de-camp to legendary Marine Lt. General Lewis B. “Chesty” Puller. He served ably in the Pennsylvania House of Representatives and Senator before running for, and winning—a seat in Congress in 1968.

During his 12 terms in Congress, Representative Coughlin served on the House Judiciary Committee, the House Appropriations Committee, and the House Select Committee on Narcotics Abuse and Control. He was particularly active in working to increase federal housing and transportation assistance to our nation’s cities. Mr. Coughlin understood that even affluent suburbs like the ones he represented depend upon central cities for their continued economic well-being. Our nation is healthier and more prosperous as a result of his service in Congress.

Larry Coughlin was always a quiet, upbeat, courteous man. It was an honor and a pleasure to serve in the House of Representatives with him. I join my colleagues in mourning his passing.

HONORING RACHEL WALSH FOR RECEIVING A RHODES SCHOLARSHIP
HON. JAMES R. LANGEVIN
OF RHODE ISLAND
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. LANGEVIN. Mr. Speaker, I rise to pay tribute to Rachel Walsh, who hails from my hometown of Warwick, Rhode Island, and is the first woman from a New England public university to receive a Rhodes Scholarship.

Rachel was selected for the prestigious Rhodes Scholarship from among 925 applicants from across the nation for her leadership potential, academic achievement, and personal integrity. Throughout her 23 years, Rachel has consistently demonstrated all of these characteristics. Graduating last year from the University of Rhode Island with high honors, she focused on the philosophy of religions, a major she crafted to explore her interest in understanding human motivation. While a student at the University of Rhode Island, she taught to affect public policy, founding the URI Chapter of the Campaign to End the Death Penalty, volunteering with America Reads and mentoring children in Head Start. In her spare time she mastered equestrian arts and Tai Kwan Do kickboxing.

At Oxford, Rachel will study English and theater history, and when she returns she hopes to direct theatrical performances. Already, Rachel has shared her talent with Perseverance Theater in Providence where she works full-time.

I know my colleagues understand the high honor that the Rhodes Scholarship bestows. It signals tremendous achievement and even greater promise. On behalf of the entire Second Congressional District of Rhode Island, I want to express our pride in Rachel’s success. Her example is inspiring and her future is overflowing with possibility. I just hope she comes home once in awhile to remind all Rhode Islanders that the smallest of states can produce the biggest of successes.

BEST PHARMACEUTICALS FOR CHILDREN ACT
SPEECH OF
HON. SHEILA JACKSON-LEE
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, December 18, 2001

Ms. JACKSON-LEE. Mr. Speaker, S. 1789, the Best Pharmaceuticals for Children Act. As Chair of the Congressional Children’s Caucus, the welfare of children has always been a top priority for me. The bill before us today is reauthorizing legislation designed to ensure that more medicines are tested for children and that useful prescribing and dosing information appears on labels.

Under a 1997 law, pharmaceutical companies that test drugs on children at the request of the FDA are given an extra six months of exclusive marketing rights. This law was aimed at encouraging drug companies to test their products on children so that a pediatrician would be able to prescribe appropriate doses for children. As a result of this law, we have seen more drugs for children on the market that have a label telling how they can be used, and even more basic information for pediatricians.

The difficulty of prescribing medicine for children results from various factors: a child’s weight and metabolism, the quick metabolism of a child’s body, and a child’s inaccurate information about how medicines are altering them.

A recent six-week study done in Boston found that over that time, 616 prescriptions written for children contained errors. Of those, 26 actually harmed children. Of the errors that were caught before the medication was administered, 18 could have been fatal. Medication errors in hospitals occur three times more often with children than with adults. This bill can help prevent such mistakes by prescribing adequate testing and proper labeling.

Mr. Speaker, S. 1789 also requires that the General Accounting Office (GAO) study the inclusion of children of ethnic and racial minorities in drug studies. Ethnic and racial minorities make up a substantial percentage of our
population, yet many studies do not reflect the multi-cultural and multi-racial fabric of our society.

Mr. Speaker, S. 1789, which reflects a consensus of the sponsors of both the earlier House and Senate passed bills, is a good bill. It is a necessary bill—necessary to protect the welfare of our nation’s children.

TRIBUTE TO HABITAT FOR HUMANITY IN SPRINGFIELD, MISSOURI

HON. ROY BLUNT
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. BLUNT. Mr. Speaker, I rise today to pay tribute to a group in Southwest Missouri that intends to turn a careless act of pollution into hope for families. Part of the American dream is buying a home for your family. Home ownership in America is at record levels. Two of three families owns or is buying their primary residence. But for many families that dream is beyond reach.

Working with Habitat for Humanity, the House of Representatives has supported in word and deed a commitment to home ownership for low-income families. Members of this body have assisted in raising funds and working on homes that are “dreams come true” for many disadvantaged families. In Southwest Missouri I have assisted in putting up the walls on four homes in what has become an annual event that my staff and I look forward to. Habitat for Humanity is a charity that has been instrumental in helping thousands of families find permanent and affordable shelter. Home ownership contributes to building strong families. It inspires a family’s desire to improve and protect it’s personal stake in the community as well as promotes civic participation and involvement.

More importantly today, I am pleased to announce that Habitat for Humanity of Springfield, Missouri has received a grant from the Corporation for National Community Service specifically to fund a service event on the Martin Luther King Jr. holiday this coming year. The $7,500 grant will be used to fund the organization’s kick-off of their new program “Aluminum Cans Build Habitat Houses.” On Martin Luther King Jr. Day 2002, hundreds of youth will be working throughout my district picking up and recycling aluminum cans. The money raised from collecting the cans will be used to build Habitat houses and also to provide a scholarship for a high school student in our district.

I commend my local chapter for its continued involvement in Southwest Missouri and its proactive efforts to engage young people in public service. Those of us who have been privileged enough to help on Habitat projects have seen the unity that this organization can bring to our communities. Few things are more inspiring than witnessing people from vastly different backgrounds and ethnic heritages working together to help a family achieve their dreams.

It is fitting that this grant, given in honor of Martin Luther King Jr., be used for a project that honors him. I can think of no better way to honor the legacy of a man who sought to sweep away the barriers that kept all Americans from pursuing the American dream.

REMEMBERING MARSHA HANLEY

HON. BRIAN D. KERN
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. KERN. Mr. Speaker, today I rise to recognize a great Hoosier, a great American—Marsha Hanley. Marsha wore many hats during her lifetime—wife, mother, grandmother, volunteer, community leader, and an advocate for homeless children.

On this day, Marsha Hanley was laid to rest by her husband, Herb, children, family, and friends after leaving our world this past Sunday. The manner in which she led her life—her kindness, her love of country, her devotion to her family—serves as an example for others to follow.

A life-long Republican, Marsha cared deeply about her community and country. She followed the issues closely with great interest and was not afraid to express her opinion.

Mr. Speaker, I would like to have been home in Indiana to pay my respects, but as you know—and as I am sure she would understand—we have important legislation before us in Congress on this day. While my heart is with Marsha and her loved ones in Indiana, my duties keep me in our nation’s Capitol.

We are all richer for having known Marsha, and the lives of so many others have been enriched because of her good work. While we will miss her, we take comfort in the knowledge that she is now in a better place and with our Father in heaven.

God bless you Marsha Hanley.

IN RECOGNITION OF MARY DANIELS ON HER RETIREMENT

HON. JAMES R. LANGEVIN
OF RHODE ISLAND
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. LANGEVIN. Mr. Speaker, I am pleased to recognize one of my constituents, Mary Daniels of Cranston, as she begins her retirement at the impressive age of eighty-four.

On Friday, December 7, Mary completed her final day of work at Leviton, an electrical equipment manufacturer that is one of the largest employers in Rhode Island. For thirty-seven years, Mary served as a dedicated and diligent worker, completing any task that was put before her. She will be remembered by her coworkers for her kindness to her friends and family, her impressive work ethic, and her strong character.

After many years of working to support her family, Mary may now take full advantage of her retirement. I am certain that she will enjoy these golden years, as her strong spirit will keep her active. Her four children and eight grandchildren are also certain to benefit now that she has more time to prepare family meals and her famous lemon meringue pie.

I encourage Mary to take full advantage of her retirement years, to spend more time with her family, and to pursue all of her dreams. I now ask my colleagues to join me in congratulating this impressive woman on her notable achievement.

H.R. 3178. WATER INFRASTRUCTURE SECURITY AND RESEARCH DEVELOPMENT ACT

SPEECH OF
HON. SHEILA JACKSON-LEE
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, December 18, 2001

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am pleased that “H.R. 3178, Water Infrastructure Security and Research Development Act” and the Development of Anti-Terrorism Tools for Water Infrastructure was brought to the floor today.

Mr. Speaker, the nation’s water supply and water quality infrastructure have long been recognized as being potentially vulnerable to terrorist attacks of various types, including physical disruption, bioterrorism/chemical contamination, and cyber attack. Interest in such problems has increased since the September 11, 2001 attacks on the World Trade Center and the Pentagon. Damage or destruction to these systems by terrorist attack could disrupt the delivery of vital human services, threatening public health and the environment, or possibly causing loss of life.

Water infrastructure systems include surface and ground water sources of untreated water for municipal, industrial, agricultural, and consumer needs; dams, reservoirs, aqueducts, and pipes that contain and transport raw water; treatment facilities that remove contaminants; finished water reservoirs; systems that distribute water to users; and wastewater collection and treatment facilities. Across the country, these systems comprise more than 75,000 dams and reservoirs, thousands of miles of pipes and aqueducts, 168,000 public drinking water facilities, and about 16,000 publicly owned wastewater treatment facilities. Ownership and management are both public and private; the federal government has responsibility for hundreds of dams and diversion structures, but the vast majority of the nation’s water infrastructure is either privately owned or owned by non-federal units of government.

Mr. Speaker, the federal government has built hundreds of water projects over the years, primarily dams and reservoirs for irrigation development and flood control, with municipal and industrial water use as an incidental, self-financed, project purpose. Because of the size and scope of many of these facilities, they are critically entwined with the nation’s overall water supply, transportation, and electricity infrastructure. Threats resulting in physical destruction or loss of these systems could include disruption of operating or distribution system components, power or telecommunications systems, electronic control systems, and actual damage to reservoirs and pumping stations. A loss of flow and pressure would cause problems for water customers and also would drastically hinder firefighting efforts. Bioterrorism or chemical threats could deliver massive contamination by small amounts of microbial agents or toxic chemicals and could endanger the public health of thousands.

Water supply was one of eight critical infrastructure systems identified in President Clinton’s 1998 Presidential Decision Directive as part of a coordinated national effort to achieve
the capability to protect the nation’s critical infrastructure from intentional acts that would diminish them.

Mr. Speaker, since September 11, the nation’s drinking water utilities have been on a heightened state of alert to protect against the potential disruption of water service and biological and chemical contamination of drinking water supplies. Fortunately, before September 11, the water supply community was already at work with the U.S. Environmental Protection Agency, the Federal Bureau of Investigation and other federal agencies to develop methods and tools to protect water systems from terrorists and consumers. Several drinking water organizations and EPA are currently sponsoring various research and development projects addressing water system security issues. These projects include tools for assessing vulnerabilities, preparations for response and recovery in the event of an attack, understanding the impact of potential biological and chemical agents, and training of water system personnel on security issues.

Mr. Speaker, I would like to thank my colleagues on the Committee for supporting my amendment on H.R. 3178. The amendment I offered, which was passed in the Committee to ensure that the grants awarded under this bill are made to meet the needs of water supply systems of various sizes and are provided to both geographically, socially and economically diverse recipients.

Mr. Speaker, this bill is critical in protecting one of our nation’s most precious resources—the water supply. As indicated, protecting our water supply is important to the future of this nation and ensuring that our children are protected under this act. H.R. 3178, I believe has the greatest potential to ensure the safety of our water systems.

AMERICAN YOUTH
HON. SAM JOHNSON
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SAM JOHNSON of Texas. Mr. Speaker, one of the best aspects of our job is the ability to call to the attention of our colleagues, examples of the leadership, maturity, patriotism and values of our American youth. I have inserted in the RECORD a speech from the June 2001 eighth grade graduation address of Michael Robert Glennon. He was the President of the Student Council at Sheridan School in Washington, DC.

Michael is currently a ninth grader at the Hotchkiss School, Lakeville, Connecticut.

Parents, Grandparents, Faculty, Students, Special Guests, and Classmates, welcome and thank you for sharing our special day. I am honored in representing my fellow graduates to discuss the Sheridan experience and everything that the Sheridan community has meant to us.

First, however, I must be thankful for the love, efforts, and wisdom of our parents who have made possible the privilege of a Sheridan education. Thank you parents.

What do we mean by the Sheridan experience? Sheridan can not be defined simply by what happens on the sports field or in the classroom. It is after school, during recess, and during the day students and teachers interact on a more personal level. That is what makes Sheridan so unique and contrib-

utes to each and every one of our Sheridan experiences.

Community service for those less fortunate than ourselves; the appreciation of nature at the center of which has made us all better stewards of our environment; both of these are hallmarks of the Sheridan experience.

No graduate will soon forget the times we’ve had or the things we’ve learned. But more importantly, we won’t forget each other. The friendships we have made will stick with us the rest of our lives. It is very rare that you get to have such a close relationship with your fellow classmates at school. Although sometimes it is frustrating to have such a small class and small school, in the end it is uniquely Sheridan because your classmates and school are always there for you in any situation. All of us, including me, can remember when Sheridan was there to support us, to share our joy, or lessen our sorrow. If there is one thing we all take away from Sheridan it is the friendships we have made.

On behalf of my entire class and the entire student body, I would like to thank the faculty and the wonderful staff. All of you have helped us in ways you can not imagine. Thank you especially to all of the teachers who have taught us over the years. Mrs. Lytton in kindergarten, Mrs. Miller and Mrs. Curtis in second grade, Mrs. Goldstein in third and fifth grade. Mrs. Pelton, Mrs. Arcuri, Ms. Provonsil, Mr. Walton, Mrs. Cresswell, Mr. Powell, Mrs. Kotler, Mrs. Haggerty, Senorita Fabiola, Mrs. Guertin, Ms. Mendoza, Mrs. Sacher and Madame. Of course, a special thanks to Ms. Brown and Mr. Helfand for helping us through this year and the high school admissions process. Mr. Pummer, thank you for being a great principal, always smiling, always having candy.

In conclusion, earlier I mentioned the privilege of a Sheridan education.

However, this privilege demands responsibility from all of us here today. A responsibility to be a friend, a responsibility to help others, and a responsibility to respect our environment.

But most importantly, a responsibility to honor the values and education we were privileged to receive. The Sheridan experience has shaped our lives. Thank you parents, thank you teachers, thank you classmates, thank you Sheridan.

ON THE DECISION OF SECRETARY OF ENERGY SPENCER ABRAHAM TO PERMANENTLY CLOSE THE FAST FLUX TEST FACILITY ON THE HANFORD NUCLEAR RESERVATION NEAR RICHLAND, WA
HON. DAVID WU
OF RICHLAND
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. WU. Mr. Speaker, I rise today to applaud Secretary Abraham’s decision to permanently close the Fast Flux Test Facility (FFTF) located on the Hanford Nuclear Reservation near Richland, Washington.

The FFTF is a 400-megawatt sodium cooled nuclear reactor that operated from 1982 to 1992 to test advanced fuels and materials in support of the national Liquid Metal Fast Breeder Reactor Program. Since 1992, this use was terminated. The FFTF then became a facility without a mission. When efforts to identify a long-term mission for the FFTF were unsuccessful, the Department of Energy moved the plant into a standby shutdown.

For nearly ten years, this standby mode cost the American taxpayers $32 million per year, even though there was no functional purpose for maintaining this standby status. I have twice introduced legislation to permanently close this environmentally risky, fiscally wasteful, and technologically unnecessary facility.

Mr. Speaker, nuclear contamination from the Hanford Nuclear Reservation has long threatened the Columbia River and the hundreds of thousands of Oregonians living downstream. The millions of dollars previously spent keeping the FFTF on standby can finally be used to perform the clean up that is essential to ensure environmental safety and clean drinking water for Oregonians.

The Department of Energy has taken an important step today to remedy the environmental problems caused by the Hanford facility. I look forward to working with Secretary Abraham in the coming months and years to ensure that Hanford will no longer pose a health threat to those living in the Columbia River region.

PAYING TRIBUTE TO THOMAS MOORE
HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to recognize Thomas Moore of Grand Junction, Colorado and thank him for his service to this country. Thomas began his service to our nation as a sailor, joining the Navy at a young age to travel and experience the world. Early in his service, Thomas participated in a moment that would change the world and bring this nation into war. The moment was Pearl Harbor on December 7, 1941.

Thomas was assigned to the battleship USS Maryland on that December morning. He was serving as a hospital apprentice, learning the skills to assist surgeons in operating procedures. As his ship, along with other ships, were bombed and torpedoed in the harbor, Thomas was thrust into a position to save men’s lives. He spent the next several days assisting the wounded with their battle injuries and doing what he could to ease the shock and pain of U.S. sailors.

As a result of the attack that day, twelve U.S. ships were sunk, beached, or destroyed by Japanese action. The U.S. armed forces suffered heavy casualties losing 2,400 men to enemy action and 1,100 casualties as a result of enemy fire. This nation was given no choice but to declare war on Japan and thus enter World War II. Thomas, like many other service men and women, would know the horrors of war for the next four years.

Mr. Speaker, as we remember the 60th anniversary of Pearl Harbor let us also remember the recent victims of our nation’s quest for freedom. The attacks on this country September 11 again have plunged us into war. As we stand in the defense of freedom we must also pay tribute to the soldiers throughout our nation’s history who gave their lives to protect our way of life. It’s dedicated men like Thomas.
PAYING TRIBUTE TO WESTERN STATE COLLEGE CROSS-COUNTRY TEAMS

HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to recognize an outstanding group of dedicated young men and women from Western State College in Gunnison, Colorado. The group is the men's and women's cross country teams, who for the second year in a row brought back to their school a national championship. I would like to commend them on their efforts and mention several of their accomplishments.

The teams this year won the national title at Slippery Rock State University in Pennsylvania. By taking the title this year and in 2000, Western State has made cross-country history. It is only the second time in NCAA I, II, III Championships that both a men's and women's team from the same school have taken both titles. Their latest achievement culminates a successful year for all the athletes on the team. All of this was accomplished under the guidance and leadership of their coach Duane Vandebusche, who for his efforts was awarded Coach of the Year at a conference, regional, and national level.

Mr. Speaker, I am always proud to recognize the accomplishments of those who have dedicated their time and efforts to achieving a difficult goal. The Mountaineers of Western State College have made great sacrifices in their lives and have done a wonderful job representing the College and the State of Colorado. Their championship is well deserved and I look forward to watching their next season with pride and admiration.

TRIBUTE TO CELIA HUNTER

HON. JAY INSLEE
OF WASHINGTON
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. INSLEE. Mr. Speaker, I rise today to pay tribute to a great conservationist, Celia Hunter, who died December 1 at the age of 82. We need to acknowledge heroes of the north country who made this country the great nation that it is.

Mr. Speaker, there are heroes of the north country who made this country the great nation that it is. We need to acknowledge heroes of the north country who made this country the great nation that it is. Both men and women of the Triton Warrior Battalion, were recently ranked number one out of 270 programs evaluated nationwide. This is a first for them, an achievement for a program smaller than many of its counterparts. This recognition makes our island very proud and is testament to the hard work of the cadets, cadre, and recruiters of the Triton Warrior Battalion.

Since the founding of UOG's ROTC program in 1979, students have been well trained to become commissioned officers in both the active and reserve components of the U.S. Army. The program has commissioned some of Guam's finest men and women as officers and produced some of the Army's most exceptional leaders. In its 22 years, the program at UOG has commissioned over 240 Second Lieutenants, and this year they are expected to commission 20 more.

The U.S. Army Cadet Command, the supervising headquarters for all ROTC battalions nationwide, annually assesses ROTC programs. A multitude of criteria is used to determine performance ranking. While enrollment, retention, basic camp attendance, commission and contract accomplishment are all part of the criteria, the most important factors contributing to the evaluation are commission and contract accomplishments.

Commission accomplishment is based on the number of cadets commissioned in the course of a year. This year, UOG's ROTC program received a commission mission of ten, however, they surpassed that number by commissioning 20 officers. Next year, they have been tasked to commission 12 and it is expected that they will again exceed the tasked commission requirement by doubling the number of commissioned officers. In 2003, it is anticipated that the commission accomplishment will exceed the requirements three times over.

UOG's ROTC program's contract accomplishment is the ability of the program to meet its fiscal year missions and goals for contracting cadets into the advanced course for juniors advancing toward senior status. While the contract mission for fiscal year 2002 is 20 cadets, UOG's ROTC program has exceeded expectations and contracted 34 cadets. Presently, UOG's ROTC program has 111 cadets enrolled, however they continue to witness an annual enrollment increase.

During these difficult and trying times, both men and women of the Triton Warrior Battalion are to be commended. Together, they are an excellent example of the leadership, determination and courage needed to safeguard our freedoms and our democracy. My congratulations to all the cadets and instructors of UOG's ROTC program. May they continue to achieve success in the years to come.

ON THE INTRODUCTION OF LEGISLATION TO PREVENT TEEN PREGNANCY

HON. ROBERT A. UNDERWOOD
OF GUAM
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. UNDERWOOD. Mr. Speaker, it is an honor to congratulate the University of Guam's (UOG) Army Reserve Officer Training Corps (ROTC) program upon their distinction as the best in the nation for mission accomplishment and quality. UOG's ROTC program, the Triton Warrior Battalion, was recently ranked number one out of 270 programs evaluated nationwide. This is a first for them, an achievement for a program smaller than many of its counterparts. This recognition makes our island very proud and is testament to the hard work of the cadets, cadre, and recruiters of the Triton Warrior Battalion.

The United States has the highest rates of teen pregnancy and births in the western industrialized world. Nearly four in 10 young
women become pregnant at least once before they reach the age of 20—one million a year. This is a problem that has a devastating impact on California as a whole (which has the second worst teen pregnancy rate in the nation) and Hispanic teenagers in particular, who have the highest rate of teen pregnancy of any ethnic group. The cost to the United States in health care and education alone is at least $7 billion annually, and the human cost in dreams deferred and children with limited opportunities is immeasurable. Reducing unwanted pregnancies also reduces the number of abortions.

We must act now to build on the success of existing programs that have helped reduce teen pregnancy rates nationwide so that we may ensure young women and men have the information and confidence they need to make wise choices about their sexual behavior. The approach of our legislation is very straightforward: fund programs that work.

Over the past decade, a wide variety of teen pregnancy prevention programs have shown dramatic results in delaying teenagers' sexual activity, promoting the safe use of contraceptives, and reducing teen pregnancy. These programs don't fit a particular model: some provide comprehensive sex and HIV education, some provide information on and access to contraception, some provide economic or service opportunities to youth. Some use media campaigns, some intervention and counseling, and some youth development programs.

Successful education programs do, however, all share a common feature: they deliver the message that abstaining from sexual activity is the only 100 percent effective way to prevent teen pregnancy, but recognizing that teens will not always abstain from sex, also provide accurate information on contraception and other means to prevent pregnancy.

The grant program authorized by the bill we introduce today targets new funding for high-risk communities and groups, and allows a wide range of organizations—from local coalitions to State agencies—to apply for funds. This bill represents an effective and proven way to move forward on teen pregnancy prevention. The program will fund diverse teen pregnancy prevention programs, so long as they are based on methods and programs that work.

This legislation is a win-win deal for teens, their families, and their communities across the nation, and I urge all of my colleagues to support it.

RECOGNIZING THE GINNIE MAE CHOICE PROPOSAL

HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. BARR of Georgia. Mr. Speaker, as a member of Congress, and a member of the Financial Services Committee, I share the goal of increasing homeownership opportunities for American families. Our government and the Congress have made policy choices to support and act upon those choices have paid off for our nation and for American families with more than 67 percent of American families owning their own homes today.

The present system works well and when someone comes up with an idea to change to system, we must be very mindful of the maxim "Do No Harm." One such proposal to alter this system is called the Home Ownership Expansion and Opportunities Act, H.R. 3206 or Ginnie Mae Choice, "Do No Harm." For the first time, the legislation would place the full faith and credit guarantee behind conventional mortgage loans.

Ginnie Mae "Choice" would—in effect—create yet another housing GSE, but with the difference being that this one would have an explicit government guarantee behind all that it does, unlike the current housing GSEs such as Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.

The Ginnie Mae Choice proposal would authorize Ginnie Mae (GNMA) to guarantee securities backed by mortgages with loan-to-value ratios of over 80 percent. Interest and principle payments on these mortgages would be insured first by partial private mortgage insurance (PMI), second by insurance issued by the United States Department of Housing and Urban Development (HUD), and lastly by the GNMA guarantee.

Private mortgage insurers would assume a minimum first loss position that varies from 12 to 35 percent of outstanding principal and interest depending on the loan-to-value ratio, and the GNMA guarantee (combined) would assume all residual risk. In general, loans potentially qualifying for the GNMA Choice program are conforming loans that meet the PMI requirements.

I would like to thank my colleague, Representative Maurice Roukema (R-NJ) for introducing the bill. We share the common goal of wanting to increase homeownership, but upon reflection, I am not certain that this bill will achieve the stated goal. In contrast to Fannie Mae and Freddie Mac, this legislation would impose no housing goals on Ginnie Mae. If the goal of the legislation is to increase homeownership among low-income families, it would seem logical to have some kind of housing targets or loan amounts. Yet, this legislation is silent in that regard.

As a practical matter, I remain unconvinced that the Ginnie Mae Choice proposal would fit a particular model: some programs don't meet the PMI requirements. Second, the grant program authorized by the bill we introduce today targets new funding for high-risk communities and groups, and allows a wide range of organizations—from local coalitions to State agencies—to apply for funds.
International Association of Fire Chiefs, the Chiefs' Association, the California Fire Chiefs' Association, the National Fire Protection Association, and the Special Fire Districts' Association of California.

An active participant in community service and community affairs, Chief Sporleder will be sorely missed by the Fire Department and the community he served. Chief Sporleder has been in existence for many years of service to the people of Santa Clara County, and wish him nothing but the best in the future. He is a leader as well as someone I am proud to call my friend.

IN MEMORY OF SUSAN M. FAGAN
HON. DAVE WELDON OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. WELDON of Florida. Mr. Speaker, I rise to commemorate the life and service of Susan M. Fagan, a Peace Corps volunteer, who lost her life after serving in Ghana in November. At the time of her death, Susan was visiting her family in Ohio. The cause of death is believed to be malaria.

Mrs. Fagan, of Barefoot Bay, Florida, had served in the Peace Corps from November 29, 1999, to November 2, 2001, in Akwida, Ghana, where she started tourist management committees so that the villagers could benefit directly from the burgeoning tourist industry in Ghana. Before completing her service, Susan had developed and presented to the Ghana Tourist Board a long-term plan for promoting tourism in the Akwida region. Thanks to Susan's hard work, that plan is being utilized today.

Susan is survived by her father, William Wilson, her stepmother, Linda Wilson, her sisters, Debra Moore and Shelby Wilson, and stepbrothers, Terry and Brandon Zastrow. A memorial service was conducted in East Liverpool, Ohio, on December 5, 2001. A second memorial service was held in Florida on December 13, 2001. Susan is also survived by her deceased husband’s family, father and mother-in-law, Raymond and Dona Fagan, brother-in-law, William Fagan, and sister-in-law, Dori Ziomek.

Susan embodied the best traditions of Peace Corps Volunteers, and her life and work will be deeply missed by all who knew and worked with her. Our thoughts and prayers are with her family and friends. In memory of Susan Fagan, the Peace Corps flag was flown at half-staff on December 6, 2001.

Susan helped the people of interested countries and helped promote a better understanding of Americans on the part of the people she served. Susan always saw the humor in a situation and never allowed the frustrating things about living in a developing country get her down. She considered herself very lucky to have had such an opportunity.

"I am very proud to say that Susan's life embodied the Peace Corps goals," said Ghana Country Director Leonard Floyd. We will all miss her—her family, friends, the Peace Corps staff, the Peace Corps Volunteers and all of the people she considered her a friend and family in her Ghana home of Akwida." Indeed, her example will continue to inspire us.

HUMAN RIGHTS IN CENTRAL ASIA
HON. CHRISTOPHER H. SMITH OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. SMITH of New Jersey. Mr. Speaker, on Friday, December 21, Kazakhstan's President Nursultan Nazarbaev will be meeting with President Bush. Sometimes in January, Uzbekistan's President Islam Karimov is likely to arrive for his visit. The invitations to these Heads of State obviously reflect the overriding U.S. priority of fighting international terrorism and the corresponding emphasis on the strategic importance of Central Asia, which until September 11 had been known largely as a resource-rich, repressive backwater.

As Co-Chairman of the Commission on Security and Cooperation in Europe, I have chaired a series of hearings in recent years focusing on political opposition and democratization in the Central Asian region. Clearly, we need the cooperation of many countries, including Afghanistan's Central Asian neighbors, in this undertaking. But we should not forget, as we conduct our multi-dimensional campaigns, two vitally important points: first, Central Asian leaders need the support of the West at least as much as we need them.

Unfortunately, Central Asian presidents seem to have concluded that they are indispensible and that we owe them for allowing us to use their territory and bases in this fight against the terrorists and those who harbor them. I hope Washington does not share this misapprehension. By striking against the radical Islamic threat to their respective security and that of the entire region, we have performed a huge service for Central Asian leaders.

Second, one of the main lessons of September 11 and its aftermath is that repression of political opposition and alternative viewpoints is a key cause of terrorism. Secretary of State Colin Powell and National Security Adviser Condoleezza Rice have declared that the war on terrorism will not keep the United States from supporting human rights. I am hopeful the administration means what they have said. But given the sudden warming of relations between Washington and Central Asian leaders, I share the concerns voiced in many editorials and op-eds that the United States will downplay human rights in favor of cultivating ties with those in power. More broadly, I fear we will fall into an old pattern of backing repressive regimes and then being linked with them in the minds and hearts of their long-suffering peoples.

In connection with Mr. Speaker, on the eve of President Nazarbaev's meeting with President Bush and in anticipation of the expected visit by President Karimov, as well as possible visits by other Central Asian leaders, I want to highlight some of the most glaring human rights problems in these countries.

To begin with, corruption is rampant throughout the region, and we should keep this in mind as the administration requests more money for assistance to Central Asian regimes. Kazakhstan's President Nazarbaev and some of his closest associates are under investigation for massive corruption. Not surprisingly, to get this in mind as the administration requests more money for assistance to Central Asian regimes. Kazakhstan's President Nazarbaev and some of his closest associates are under investigation for massive corruption. Not surprisingly, to get this in mind as the administration requests more money for assistance to Central Asian regimes. Kazakhstan's President Nazarbaev and some of his closest associates are under investigation for massive corruption. Not surprisingly, to get this in mind as the administration requests more money for assistance to Central Asian regimes. 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dire poverty—the Nazarbaev regime has cracked down hard on the media. Family or business associates of President Nazarbaev control most media outlets in the country, including printing houses which often refuse to print opposition or independent newspapers. Newspapers or broadcasters that try to cover taboo issues risk being closed or their license revoked by the government. Government and editorial offices have had their premises raided. The government also controls the two main Internet service providers and regularly blocks the web site of the Information Analytical Center Eurasia, which is sponsored by Kazakhstan’s Students’ Movement.

In addition, libel remains a criminal offense in Kazakhstan. Despite a growing international consensus that people should not be jailed for what they say or write, President Nazarbaev on May 3 ratified an amendment to the Media Law that increases the legal liability of editors and publishers. Furthermore, a new draft religion law was presented to the Kazakh parliament at the end of November without public consultation. If passed, it would seriously curtail the ability of individuals and groups to practice their faith freely.

Uzbekistan is a wholesale violator of human rights. President Karimov allows no opposition parties, permits no independent media, and has refused even to register independent human rights monitoring groups. Elections in Uzbekistan are a farce and the Organization for Security and Cooperation in Europe (OSCE) rightly refused to observe the last presidential “contest,” in which Karimov’s “rival” proclaimed that he was planning to vote for the incumbent.

In Kazakhstan, however, Karimov is not lacking—brazen gall. Last week, on the eve of Secretary Powell’s arrival in Tashkent, Uzbek authorities announced plans to hold a referendum next month on extending Karimov’s tenure in office from five years to seven. Some members of the tightly controlled parliament urged that he be made “president for life.” The timing of the announcement could have had only one purpose: to embarrass our Secretary of State and to show the United States that Islam Karimov will not be cowed by OSCE officials or its own people’s demands on democracy and the need to hold free and fair elections.

I am also greatly alarmed by the Uzbek Government’s imprisonment of thousands of Muslims, allegedly for participating in extremist Islamic groups, but who are probably “guilty” of the “crime” of attending non-government approved mosques. The number of people jailed on such dubious grounds is estimated to be between 5,000 and 10,000, according to Uzbek and international human rights organizations. While I do not dismiss Uzbek government claims that the seriousness of the religion-based insurgency, I cannot condone imprisonment of people based on mere suspicion of religious piety. As U.S. Government officials have been arguing for years, this policy of the Uzbek Government also seems counterproductive to its stated goal of countering terrorism. Casting the net too broadly and jailing innocent people will only inflame individuals never affiliated with any terrorist cell.

In addition, Uzbekistan has not only violated individual rights, but has also implemented policies that affect religious groups. For example, the Uzbek Government has conscientiously used its religion law to frustrate the ability of religious groups to register, placing them in a “catch-22.” By inhibiting registration, the Uzbek Government can harass and imprison individuals for attending unregistered religious meetings, as well as deny property purchases and formal education opportunities. As you can see, Mr. Speaker, Uzbekistan’s record on human rights, democratization and religious freedom is unacceptable. I am not aware that Kyrgyzstan’s President Askar Akaev has been invited to Washington, but I would not be too surprised to learn of an impending visit. Once the most democratic state in Central Asia, Kyrgyzstan has gone the way of its neighbors, with rigged elections, media crackdowns and repression of opposition parties. At a Helsinki Commission hearing I chaired last week on democratization and human rights in Kyrgyzstan, we heard from the wife of Felix Kulov, Kyrgyzstan’s leading opposition figure, who has been behind bars since January 2001. Amnesty International and many other human rights groups consider him a political prisoner, jailed because he dared to try to run against President Akaev. Almost all opposition and independent newspapers which have sought to expose high-level corruption have been sued into bankruptcy.

With respect to the proposed religion law the Kyrgyz Parliament is drafting, which would repeal the current law, significant concerns exist. If the draft law were enacted in its current form, it would categorize and prohibit groups based on beliefs alone, as well as allow arbitrary decisions in registering religious groups due to the vague provisions of the draft law. I encourage President Akaev to support a law with strong protections for religious freedom. Implementing the modification suggested by the OSCE Advisory Panel of Experts on Religious Freedom would ensure that the draft religion law meets Kyrgyzstan’s OSCE commitments.

Mr. Speaker, this morning I had a meeting with Ambassador Meret Orazov of Turkmenistan and personally raised a number of specific human rights cases. Turkmenistan, the most repressive state in the OSCE space, resembles North Korea: while the people go hungry, megalomaniac President Saparmurat Niyazov builds himself palaces and monuments, and is the object of a Stalin-style cult of personality. No opposition of any kind is allowed, and anyone who dares to express a view counter to Niyazov is arrested. Turkmenistan is the only country in the OSCE region where places of worship have been destroyed on government orders—in November 1999, the authorities bulldozed a Seventh-Day Adventist Church. Since then, Niyazov has implemented his plans to provide a virtual bible for his benighted countrymen; apparently, he intends to build himself a church as well as a secular guide and president for life. Turkmenistan has the worst record on religious freedom in the entire 55-nation OSCE. The systematic abuses that occur almost weekly are an abomination to the international community. This week, human rights commitments, and in particular the rule of law, must be restored to the OSCE.

Colonel Karl “Kasey” Warner Retirement
at West Point. It was there that he graduated and was commissioned a Second Lieutenant in 1974. Colonel Warner's career epitomizes leadership and selfless service. He has served his country well both as a line officer in Field Artillery and later as a Judge Advocate.

Colonel Warner attended West Virginia University School of Law and graduated in 1980. He has served primarily as a trial litigator and has been an instructor of criminal law at the Army Judge Advocate General School. His career has taken him from the parade grounds of West Point to foreign lands and harsh living conditions—he was the joint task force and multinational force staff judge advocate at Port-au-Prince, Haiti in 1994—1995.

In Haiti, he designed a procedure for detain- ing Haitians—as a matter of policy they deter- mined that detainees should be afforded the same treatment accorded to detained persons under the 1949 Geneva Prisoner of War provi- sions (food shelter medical care)—the treat- ment was so good by Haitian standards that often people would "confess" in the hopes of being detained. However by all accounts the Joint Detention Facility was an unqualified success. Colonel Warner also arranged for the appointment of four judge advocates to be au- thorized to serve as a one-member foreign claims commissions and the appointment of three more judge advocates to serve as a three-member commission.

Prior to becoming the prestigious Special Operations Judge Advocate, Colonel Warner was the deputy legal counsel to the Chairman of the Joint Chiefs of Staff. In whatever chal- lenge he was tasked with, he excelled and constantly personified the words General Douglas MacArthur made famous and synonym- ous with West Point: “Duty, Honor, Coun- try.”

Colonel Warner’s military decorations in- clude the Defense Superior Service Medal, Legion of Merit, Defense Meritorious Service Medal with oak leaf cluster, Meritorious Serv- ice Medal with four oak leaf clusters, Army Commendation Medal with oak leaf cluster, two Joint Meritorious Unit Awards; and the Armed Forces Expeditionary Medal. He is qualified to wear, in addition to Master Para- chutist Wings, the coveted Ranger tab and Air Assault wings. He has also been accorded the honor of receiving the Jump Wings of the Aus- tralians, British, and Saudi Arabians.

Colonel Warner and his wife, Joanie, have four children: Margaret who is a lieutenant with the Army Corps of Engineers in Germany; Frances, a speech pathology graduate student at Vanderbilt University; Kole, who serves with the West Virginia National Guard and attends West Virginia University and Travis, age 13.

It is with great pride and honor that I wish Kasey and his family the best as he retires from the United States Army and continues his service to our great country as the U.S. Attor- ney for the Southern District of West Virginia. He has set an inspiring example of dedication to the defense of freedom and to the protec- tion of the basic liberties that the citizens of our country enjoy by taking his turn at “stand- ing on the wall” and now continues to defend freedom and liberties as a U.S. Attorney.

TRIBUTE TO THE NEW YORK CITY PUBLIC SCHOOLS COMMUNITY

HON. CAROLYN B. MALONEY
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mrs. MALONEY of New York. Mr. Speaker, I rise today to pay special tribute and to recog- nize the courage and professionalism of the New York City Public Schools community dur- ing the attacks on September 11, 2001. I know that none of us will ever forget where we were and what we were doing when the attacks on the World Trade Center occurred. For the New York City Public Schools commu- nity, the attacks were not something they watched on television, they were in the middle of the mayhem. In the immediate aftermath eight schools which were located in the “frozen zone” were closed, displacing nearly 6,000 students, a number which is more than 2½ times the average school district in the U.S.

Not only did the faculty and staff in these af- fected schools react with extraordinary calm, grace and bravery to evacuate their schools and to ensure that every child in their care was safe and accounted for, the students and staff from last Friday's threatened schools worked together in spite of the fact that over 1,500 students and 800 staff members lost a family member or loved one as a result of the disaster. Consider these snapshots from one of the most horrific days in our history.

Jordan Schiele, ajunior at Stuyvesant High School, retold his experiences in a recent arti- cle in ‘The Washington Post.’ Jordan was in band class when the first plane hit Tower One. He saw the second hit, in the middle of a class debate on the best form of government. From the window, he watched what he first thought were fax machines and later realized were people falling from the Tower's top floors. As Tower One collapsed, the lights in his classroom flickered, the whole Stuyvesant building rumbled, and Jordan fled with his classmates out of the building and began run- ning north up the Manhattan Bridge Highway, looking back as a cloud of dust engulfed his school. ‘I’ll never forget when the dust engulfed Stuyvesant,’ he remembers. ‘I felt it was en- gulfing my future, because school is your fu- ture at this age.’

Ada Dolch, Principal at the High School for Leadership and Public Service just four blocks from the site of the Twin Towers, made a se- ries of decisions that students, staff and par- ents credit in saving innumerable lives. When the first explosion came, Principal Dolch looked outside and what she saw made her immediately fear for her 600 students. She watched in horror as debris rained down on Liberty Plaza and waves of frightened people ran into the school lobby for safety. She moved her students away from the 6-by-6-foot windows in every classroom out into the hall- ways and told her kids to remain calm. Then the second plane hit and Stephen Kam of the New York Police Department’s Division of School Safety raced into the lobby and said to Principal Dolch that it was time to get the stu- dents out. Dolch agreed and teachers quickly moved students out of the building floor by floor.

Once outside, they met up with 750 of their peers from the High School for Economics and Finance, which is located next door to Leadership, and their Principal, Dr. Patrick Burke. Two secretaries from Economics, Kath- leen Gilson and Joan Trutenoff, wanted to stand and answer calls from frantic parents but Burke told them “No way, you have to come with me.”

Right as the students got to Rector Street the first building collapsed and a dust ball, full of debris, began to chase them. One teacher shouted to her kids, “Run! Now you can run!” They hopped over a fence for Battery Park at the tip of lower Manhattan while others headed north and east. Once in Battery Park, the students hopped on ferries to Jersey City and Staten Island. Nearly 100 of the students, those who could not make it home that night, were fed and spent the night on cots in Curtis High School on Staten Is- land, accompanied by their teachers. Still oth- ers were housed and fed by parishioners of a Jersey City Catholic Church.

John O'Sullivan, an earth science teacher at Economics and Finance, said that when the first tower fell, he thought they were finished. “It was an optical illusion, but it looked like it was falling on us,” said the teacher. “I'll never forget the look on the face of one of my stu- dents last year. That was the look of terror. It was like that picture of the little girl running from the napalm attack in Vietnam,” he said. Other teachers walked students home over the Man- hattan Bridge to Brooklyn. Mr. O'Sullivan and several of his colleagues walked north with a group of students and then caught a bus to O'Sullivan’s apartment. Once there, the teachers fed pizza and soda to the students and put on a video until their parents could pick them up.

What make Principal Dolch's heroism even more remarkable is that she performed all of these acts of bravery while knowing that her sister Wendy Wakeford, who worked for an in- vestment banking firm on the 100th floor of 1 World Trade Center, was more than likely a victim of the attack. Her sister remains miss- ing. “She was in the first building that was hit, I think that she was caught in the fireball. We haven't heard from her.” Dolch said shortly after the attack. “I prayed she was safe, but I had kids to worry about, I knew I had to get them out.”

The teachers at P.S. 234, the Independence School, which is located dangerously close to the crash site, had to evacuate 6- and 7-year old students during the most harrowing part of the disaster immediately after the second Trade Center tower collapsed and enveloped the school in a debris-filled cloud. Many of the children were screaming for parents who actu- ally worked in the towers. As one teacher stepped into the street, a small child saw the burning bodies falling from the towers and cried, “Look at the burning fire!” Taking some students by the hand and car- rying others on their shoulders, the teachers plunged through the rubble-strewn streets that were clogged with adults running for their lives. With their small charges in tow, they worked through the night moving students to the nearest safe school in Greenwich Village. Some children whose parents could not come to get them by the close of the day went home with their teachers, and stayed with them until their mothers or fathers could be reached by phone.

Mr. Speaker, I salute the New York City Public City School community for their courage on September 11, and I ask my fellow
Members of Congress to join me in recognizing their efforts by becoming, a co-sponsor of House Resolution 325, which recognizes the courage and professionalism of the entire New York City Public Schools community during and after the attack on the World Trade Center on Tuesday, September 11th, 2001, as well as supporting Federal assistance to the school community.

HONORING THE MEMORY OF THE HONORABLE ANNETTE MORGAN, FORMER MISSOURI STATE REPRESENTATIVE

HON. KAREN McCARTHY
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Ms. McCARTHY of Missouri. Mr. Speaker, I rise today to honor Annette Morgan, whose death on December 18, 2001, is an immeasurable loss to our community, the State of Missouri, and our nation. Annette touched the lives of the people who knew her and the people she fought for as a State Representative in the Missouri General Assembly. A stalwart champion of the education needs of our children, she has left an indelible mark on countless lives. The school communities of Missouri have Annette Morgan to thank for many of the pioneering reforms established during her tenure as a State Representative and during her career as a champion for quality education.

Throughout her career, Annette Morgan was dedicated public servant, committed to our community and dedicated to our children. A lifelong resident of the state of Missouri, Annette Morgan grew up in Kennett. She earned degrees at the University of Missouri-Columbia and the University of Missouri-Kansas City in social work and adult and continuing education. Annette pursued a teaching career that began in the Bootheel, helping migrant workers. She later taught at William Chrisman High School in Independence and was coordinator of adult and continuing education at Avila College.

Annette and I shared many memorable moments when we served together in the General Assembly for 14 years. We enjoyed cherished morning walks that allowed us to reflect upon the issues of the day and of our lives. Our commutes to Jefferson City by Amtrak and auto provided us the opportunity to devise successful strategies for legislative challenges and delight in the victories these strategies achieved. Our apartment afforded late night gatherings of women members of the House and Senate that strengthened our resolve and enabled us to forge lasting bonds.

Politics and government ran in Morgan’s blood. Her father, John Noble, was a 16-year state senator from Kennett in the Bootheel. Her grandfather, John Bradley, served on the Missouri Supreme Court. And her mother, Alletha Noble, was a lawyer and a teacher. Because of her heartfelt interest in serving our community and state, Annette Morgan was elected to the Missouri State Legislative in 1980 and served in the House for 16 years. She earned the Chairmanship of the Missouri House Education Committee in 1985, and it was in this capacity that she embraced the task of shaping major education reform that would improve school policy in Missouri. She advocated for education policies that set high academic standards for elementary and secondary students, and she fought to give each local school district the same opportunity for state funds. Serving as both a commissioner on the Education Commission of the States and a member of its steering committee, Annette Morgan was able to affect education policy on a national scale and use this expertise to benefit education in Missouri. She went on to serve as Co-chair of the Missouri Commission on the Education Fund and as a Member of the National Commission on Teaching and America’s Future, and was a leader in key education reform legislation in Missouri, including the Excellence in Education Act in 1985 and the Outstanding Schools Act of 1993. The Outstanding Schools Act contained last school reform to improve the state’s formula for distributing money to schools and increase funding. The major education reforms to schools during the 1985–1995 decade are a credit to her persistence and unwavering commitment to the cause she loved. A former public school teacher and dedicated education advocate, she was the recipient of many honors and awards as her abilities as a leader, educator, legislator, and outstanding citizen were recognized by numerous groups. She was recently named to the Jackson County Honor Roll, honoring the top 175 Jackson County students in celebration of the county’s 175th anniversary. Annette’s legislative victories were not limited to education. She initiated legislation that authorized the first 24-hour skilled nursing facility in the Midwest for HIV/AIDS patients.

Mr. Speaker, please join me in expressing sympathy to her loving family; her son John Allen Morgan, daughter-in-law Veronica; daughter Katherine Morgan Campbell, son-in-law David, granddaughter Alexis Morgan Campbell; and loving friend William P. Mackle. Her love of family and friends will be forever remembered. She will live on in all those whose lives she touched.

RECOGNIZING TOP GEORGIA HIGH SCHOOL FOOTBALL PROGRAMS

HON. BOB BARR
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. BARR of Georgia. Mr. Speaker, it is no just what is the problem with the University of Georgia or the Georgia Tech offense,” to “are you listening to me?” The traditions that are Sanford Stadium, Bobby Dodd Field, and the Georgia Dome have come to be a part of Georgia culture, yet the hype that surrounds this sport starts much sooner than the day the college boys strap on their pads and take to the field. High School football in Georgia has been taken to a whole new level of competition in recent years with technique, strategy, and talent surpassing the highest of expectations. Athletics have become an integral element in educational programs for our youth; teaching teamwork, responsibility, pride, and discipline.

I am proud to say that in Georgia’s 7th District, at least six high school football programs are to be congratulated on their outstanding success this year. Paulding County and Troup High Schools made it to the final four in the AAAA Division, while Cartersville High School represented the district in AA competition. Cedartown and LaGrange made the final four in AAA, and will continue on to play each other for the state title, along with Bowdon which will play Gwinnett County’s Buford High School for the A state championship. In addition to Buford, I would like to highlight Collins Hill for its accomplishments in the AAAA division, and congratulate the Parkview Panthers on the team’s fourth trip to the state championship game in seven years.

The spirit and camaraderie of high school athletics cannot be taught in a classroom, but the lessons learned on the field will shadow their counterparts for a lifetime. I congratulate each team for their perseverance and dedication, and thank the people who supported them along the way.

HONORING CARL WARE

HON. EDDIE BERNICE JOHNSON
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise to pay tribute to Mr. Carl Ware. For almost a third of a century, he has been a leader in the drive for responsible corporate citizenship. He has been an international leader, and an ambassador of goodwill not only for Coca-Cola, but for the entire country.

Mr. Ware joined Coca-Cola twenty-seven years ago and since that time, he has represented the best in American business. He began as a government and urban affairs specialist, and then went on to lead the organization’s efforts to market to African-American and Hispanic consumers. He has overseen the company’s philanthropic efforts, with significant responsibility for international affairs.

Perhaps, Mr. Ware’s greatest legacy is as architect of Coca-Cola’s strategy to divest from South Africa. The African National Congress applauded the company’s actions as a world model. Mr. Ware has been saluted by, among others, former South African President Nelson Mandela and Archbishop Desmond Tutu.

Mr. Speaker, Mr. Ware will step down from his position with Coca-Cola next year. The entire nation is indebted to him for his leadership in the causes of corporate world citizenship and global human rights.
Ms. LOWEY. Mr. Speaker, I rise today in support of the conference report. I want to commend Chairman BOEHRER and Ranking Member MILLER for putting together a strong compromise on such an important issue.

This legislation has the potential to dramatically change the public education system in this country. It authorizes significant levels of funding. It says to parents that Congress believes education is a top priority, and that we will make good on our goal—that every child in America should get a quality education. I am pleased with the changes this bill makes. Changes to the Title I formula will provide a 29-percent increase for New York City schools. For years, the New York City school system has provided an education to tens of thousands of low-income and disadvantaged children, while receiving less than their fair share of Title I funding. This money is especially important as New York City schools recover from the continuing effects of September 11.

This legislation also promises parents that their children will have qualified teachers in the classroom, and that student progress will be closely monitored to ensure that they are making good on our goal—that every child in America should get a quality education.

I have the pleasure to work with Chairman RALPH REGULA and Ranking Member DAVID OSEY in crafting the Labor, Health and Human Services, and Education Appropriations bill. They have both worked tirelessly to provide significant increases in education funding this year, and we will vote on the fruits of their labor next week.

But while we will provide these increases this year, the prospects for continuing to provide the resources necessary to continue our efforts on education are dim. The faltering economy, coupled with the increasing impact of the President’s tax cut, will make the appropriations process exceedingly difficult in the coming years. We will be forced to make some difficult choices.

This same dilemma will be felt in all fifty states. School districts across the country are being forced to slash their budgets as state revenues have plummeted. If we enforce these new requirements without ensuring that schools have the funding to implement them, our school districts will have to make choices they shouldn’t be asked to consider.

I support this legislation, and I urge my colleagues to support it as well. I also hope that our support for education does not stop at authorizing funds, but that this vote today is the first step in the process of providing the necessary resources. Our children deserve no less.
six of Eccleston’s surfing buddies and fellow airman paddled out on surfboards into the Atlantic Ocean and cast a wreathe on the water. Our thoughts and prayers are with his family and friends.

“There’s no greater gift than giving your life so that others may live,” said Chief Master Sgt. Greg Lowdermilk. “He gave the ultimate sacrifice and we’ll always remember him for that. We’ve lost another great American.” We will all miss him. Doug Eccleston is a true hero.

OLYMPIC TORCH BEARER GEORGE M. MOORE

HON. SHELLEY MOORE CAPITO
OF WEST VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mrs. CAPITO. Mr. Speaker, I rise today in honor of a constituent of mine, Mr. George M. Moore. I have the pleasure of knowing George personally, and I am proud to recognize him. Tonight, George will carry the Olympic torch in Martinsburg, West Virginia.

Although George considers this a once in a lifetime opportunity, it will actually be his second time to run the Olympic torch. Seventeen years ago, George carried the flame for the 1984 Olympic games.

In service to our country, George Moore has sacrificed much. As a United States Air Force fighter pilot, Moore did two tours of duty in Vietnam from 1967 to 1970, when his plane crashed into runway construction. Injuries from this accident put George in a wheelchair. He was only 26 at the time.

Today George Moore is an active member of our West Virginia community. He serves as the director of the Martinsburg Veterans Affairs Medical Center. He is a devoted father and husband. His active life is proof that George has the ability to overcome any challenge or obstacle with which he is faced.

In the Olympic spirit, George has dedicated his stretch with the torch to the victims of the September 11th terrorist attacks. His compassion and determined approach to life is impressive and truly embodies the Olympic spirit.

George Moore is an inspiration to all of his fellow West Virginians. George is extremely deserving of this privilege of carrying the Olympic torch in our home state of West Virginia. I am honored to commend George Moore and I wish him all the best tonight.

HONORING MAYOR HARRIET MILLER

HON. LOIS CAPP
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mrs. CAPP. Mr. Speaker, today I would like to pay tribute to a woman who is not only an extraordinary citizen of Santa Barbara, California, but has also served the city as Mayor for the last eight years. On December 30, 2001, the City of Santa Barbara will honor Harriet Miller and pay tribute to her for all the wonderful things she has accomplished not only during her tenure as Mayor, but throughout her life.

Harriet Miller grew up in Idaho and attended Whitman College in Walla Walla, Washington, graduating with a Bachelor of Arts degree in chemistry. After graduation, she went on to earn a Master of Arts degree in public science from the University of Pennsylvania, and later received her Doctorate in Humane Letters from Whitman College. Education has always been a driving force in Harriet’s life. From 1950–1955 she served as an Associate Professor and Associate Dean of Students at the University of Montana. She was then elected as the Superintendent of Public Instruction for the State of Montana in 1956, and additionally served the state as a member of the Board of Land Commissioners, the Library Commission, the Teachers Retirement Board and the Board of Education, in addition to being an ex officio Regent of the Montana University system.

In 1969 Harriet first moved to Santa Barbara and started HMA, a management consulting company. Yet after seven years of serving as president of the company, Harriet relocated to Washington, D.C. and over the next several years served as Director of the American Association of Retired Persons, the National Retired Teachers Association and the U.S. Occupational Safety and Health Review Commission. She then returned to Santa Barbara and was appointed to Santa Barbara City Council in 1987, was elected during the same year, and was reelected as a City Council member in 1992.

In January, 1995, Harriet was appointed as Mayor, and then went on to become elected as Mayor in November of 1995. She was then reelected in 1997. During her tenure, Harriet Miller served the City in many ways, including serving as either a chair, active member, or on the Board of Directors for countless agencies.

Throughout the years, Harriet Miller has been a pleasure to work with and after stepping down from office she will surely be missed. The City of Santa Barbara has been fortunate to have such a distinguished woman as Harriet as Mayor, and the City will never forget all her wonderful achievements. I would like to thank Harriet today for her dedication to Santa Barbara, and wish her the best of luck in all her future endeavors.

A TRIBUTE TO THE HONORABLE AND DISTINGUISHED LIFE OF EIGHTH CIRCUIT COURT OF APPEALS SENIOR JUDGE FLOYD R. GIBSON

HON. KAREN MCCARTHY
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise today to pay tribute to Floyd R. Gibson, Senior Judge, U.S. Court of Appeals for the Eighth Circuit who died Thursday, October 4, 2001. Judge Gibson was a stalwart for justice and his professional career exemplifies his unwavering dedication to public service. His tenure in the Missouri State Legislature and his 34 years on the Eighth Circuit, created a legacy of commitment to Justice and the common good.

Judge Gibson was born in the Arizona Territory in 1910. He moved to Kansas City at age 4 and graduated from Northeast High School. From Northeast, he went on to attend the University of Missouri, where he received his bachelor’s degree in 1931 and his law degree in 1933. In 1935, he wed his wife, Gertrude. Floyd and his lovely wife have raised three successful and talented children, Charles, John, and Catherine, while demonstrating a distinguished career in public policy and the law. Judge Gibson entered private law practice in the Kansas City area, where he rose to become a named partner in three firms. While in private practice, Judge Gibson was elected County Counselor for Jackson County.

He later turned his efforts to state government where he served 21 years in both the House and Senate of the Missouri General Assembly. He believed “politics is the handmaiden of the law and should be actively pursued by members of the legal profession as an avocation.” The Judge distinguished himself in the Missouri Senate as Chairman of the Judiciary Committee, Majority Floor Leader, and in his final term as President Pro Tempore of the Senate.

With such credentials, President John F. Kennedy nominated him in 1961 to become a U.S. District Judge for the Western District of Missouri. Judge Gibson was named to the position of Chief Judge one year to the day of his September 1961 appointment. In June of 1965 President Johnson appointed Judge Gibson to the U.S. Court of Appeals for the Eighth Circuit. He served as Eighth Circuit Chief Judge from 1974 to 1980 when he assumed senior status. As a dedicated public servant, he continued to serve the Bench actively until June of 2000.

Judge Gibson has received numerous awards and honors. He received the University of Missouri Faculty-Alumni Award. He was named Phi Kappa Psi Man of the Year. The Missouri Bar Foundation honored Judge Gibson with the Spurgeon Smithson Award. He was an Honorary Member of the Order of Coif. He received the Kansas City Bar Association Annual Achievement Award and was a recipient of the Lawyers Association’s Charles Evans Wittaker Award. A member of the Missouri, Kansas City, Federal and American Bar Associations, Judge Gibson has distinguished himself through his legal work.

Judge Gibson’s service to his community included the Chairmanship of Manufacturers Mechanics Bank and Blue Valley Federal Savings & Loan. He had an intense interest in agriculture and was a member of the Gibson Family Limited Partnership, which owns the Lone Summit Ranch and other farm ground in Jackson County, Missouri. Judge Gibson also gave back to the Kansas City community through his service on the Board of Trustees for the University of Missouri-Kansas City and as an Advisory Director to the Greater Kansas City Community Foundation. He was recently recognized as one of the top living contributors to the University Missouri-Columbia Law School.

Judge Gibson’s life is celebrated by a host of loving family, friends, and colleagues who mourn his loss. Mr. Speaker, please join me in expressing our heartfelt sympathy to his dear wife, the late Gertrude, his sons, John and Charles, his daughter, Catherine, his daughters-in-law, Judy and Bonnie, his beloved grandchildren, Heather Allen, Jennifer
Ringgold, Lynn Gibson-Lind, Scott Gibson, David Gibson, Joshua Glick and Amber Glick, along with his great-granddaughter, Isabelle Allen. Judge Floyd R. Gibson will be greatly missed, but his legacy and commitment to justice and equality will live on in the hearts and minds of those who knew him.

Judge Gibson was active and energetic as a leader of the Democratic Party of Missouri; however, he left partisan politics at the door of the courthouse when he became a member of the Federal Judiciary. He is remembered by all who knew him and those who appeared before him as a fair, direct and competent judge. He loved his work as a judge, and even after retirement in 1979, he continued to serve the Bench and his country in active senior status until June of 2000. Judge Gibson served his country for most of the Twentieth Century. He served with honor and distinction. He asked for no more and we cannot think of a better epitaph.

TRIBUTE TO ALASKA’S CELIA HUNTER

HON. MARK UDALL
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. UDALL of Colorado. Mr. Speaker, earlier this month news came of the death of one of the pioneers of the conservation movement in Alaska, Celia Hunter.

A founder of the Alaska Conservation Society—Alaska’s first statewide organization of its kind—Celia Hunter was involved in many debates over the future of Alaska, including the “Project Chariot” plan to use nuclear explosives to dig a new deep-water port and the proposed Rampart Dam on the Yukon.

And in the late 1970s, she was among the many people from across the country whose strong support made possible the enactment of the Alaska National Interests Land Conservation Act, introduced in the House of Representatives by my father, Mo Udall of Arizona.

Now Congress has again been debating the proper balance between development and conservation in Alaska, and again Celia Hunter was active and involved in that debate right up to the day of her death. As she explained earlier this year, it remained her view that “if we lose wild spaces, we could be a much poorer nation . . . . the whole concept of natural areas, with intact ecosystems is vital to life . . . . we need places of the world that are still natural.”

Mr. Speaker, in the words of the Fairbanks Daily News-Miner, Celia Hunter’s death was a “great loss for Alaska,” and it leaves the whole country poorer. She earned our thanks and remembrance. She will be greatly missed.

For the benefit of our colleagues, I am attaching a brief outline of her life as well as a newspaper editorial.

Celia’s Life

Many are called, but few choose to hear and give of themselves completely. Celia Hunter was one of those who stood up to those in power and spoke up for those who would otherwise not have had a voice.

Born on January 13, 1919 in Arlington, Virginia, Celia Hunter graduated from the University of Virginia in 1940. Unlike many other women of her time, Celia was allowed to major in forestry, and she was accepted to the Women Airforce Service Pilots, and she became a pilot flying a number of aircraft, including large aircraft such as the P-47 that flew up to 300 mph. Celia delivered aircraft across the country for the Air Force during WWII and dreamed of flying to Alaska one day to see the vast wilderness that other pilots had described.

In December 1946, she and pilot friend Ginny Hill were hired to fly two Stinson airplanes from Seattle to Fairbanks. They arrived in a snowstorm at Weeks Field in Fairbanks on January 1, 1947, nearly a month-long trip with all the weather delays. They decided to stay and work in the tourism industry, ferrying visitors to a travel lodge in Kotsielus during the summer.

This experience inspired Celia, Ginny Hill Wood, and Woody Wood to build Camp Denali, a wilderness camp just outside the original boundary of McKinley National Park. Those visitors could see Denali and enjoy hiking and wildlife-viewing in a magnificent setting.

In 1960, Celia and Ginny helped form Alaska’s first statewide environmental organization, the Alaska Conservation Society. This small group of pioneering conservationists was inspired by Olaus and Margaret Murie to work for the establishment of the Arctic National Wildlife Range and to protect the special and unspoiled lands of Alaska.

Working together, Celia and Ginny have tackled all of Alaska’s major environmental issues. They fought against Project Chariot and the Rampart Dam project, became loving stewards and advocates for Denali National Park, and worked to create and pass the 1980 Alaska National Interest Lands Conservation Act, the greatest lands conservation act in world history.

In the late 70s, Celia’s leadership moved to the national level when she served as Executive Director for the Wilderness Society. She also began writing memorable environmental columns for the Fairbanks Daily News-Miner. Fearless and outspoken, Celia carefully studied a diversity of issues and wrote articulate and compelling columns for more than 20 years. Dedicated to the conservation movement, she also helped found the Alaska Conservation Foundation in 1980.

Through the years, Celia not only devoted her energy to environmental causes; she also loved people and the web of connections between them. She had the natural ability to inspire and nurture countless individuals by listening to their ideas and sharing her views. Her graceful-blue eyes could look into one’s soul and bring out the best of a person’s spirit including a good laugh.

Celia leaves a tremendous legacy of conservation accomplishments. Her vibrant spirit will live on in the wilderness she loved, in the lives of those she inspired, and in the legislation that holds her tireless effort to protect the land and all its living things are grateful. Alaska will forever remember Celia.
[From the Fairbanks Daily News-Miner, Dec. 4, 2001]

A GREAT LOSS FOR ALASKA

Celia Hunter died still doing the work she loved most—fighting for Alaska’s environment.

The night before her death Hunter had been putting together a list of U.S. senators who might be considered undecided regarding the Senate vote on drilling in the Arctic National Wildlife Refuge.

Hunter spent more than 50 years as a pioneer and conservationist in Alaska, most often working side-by-side with her long-time companion and fellow conservationist Ginny Wood.

Hunter’s years of dedication to the protection and preservation of Alaska and her work to that end on the local, state and national levels meant that she played a vital role in shaping Alaska’s environmental future.

Her work and contributions to increase public awareness of Alaska’s unique natural resources are being pushed even more into the public eye as the nation began focusing on solving national energy policy issues. One of the biggest questions directly related to Alaska has been what role if any should ANWR play in that policy—the very issue Hunter contemplated during her last days.

Hunter and Wood first flew in Fairbanks in January 1947, piloting two planes to be delivered to the Interior. Extreme temperatures kept the pair here longer than expected, and after spending a bit of time in Europe, they were back to stay.

The list of her works in conservation and environmentalism are lengthy. In the 1950s, Hunter and Wood built Camp Denali, an early eco-tourism project.

Not long after, Hunter was a founding member of the Alaska Conservation Society, the first statewide conservation society in Alaska. Later on, she was instrumental in the formation of the Alaska Conservation Foundation and served as its first board chair.

Hunter was interim executive director of The Wilderness Society in the 1970s. In 1991, she was presented the Sierra Clubs’ highest honor and received innumerable awards in recognition of her dedication and service to conservation.

News-Miner readers recognize Hunter as a longtime contributor to this page—she began writing her column in 1979. While her opinions quite often differed from our own, our respect for Hunter was beyond question.

In the days since her death, Hunter’s friends and associates have described her in a variety of ways: pioneer, voice of responsible environmentalism, adventurer, kind and honest with everybody. And all said that her passing would leave a void in Fairbanks and in Alaska.

In a 1986 interview with a News-Miner reporter, Hunter said that her basic philosophy was that much of the damage done to the earth was caused by people making a living. That creates an obligation, she said: “Each one of us has a responsibility to take care of the part of the world we live in.”

Hunter’s life-long goal was to minimize the footprints that humans leave on our environment. Through her work and her passion for Alaska, she has left behind an impression that will long be remembered.

TRIBUTE TO CAPTAIN VIRGIL AUGUSTUS KING

HON. ZOE LOFGREN
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Ms. LOFGREN. Mr. Speaker, I rise to commemorate Captain Virgil Augustus King, who will be retiring from the Santa Clara County Department of Correction on December 28th after twenty-six years of service to Santa Clara County.

Captain King joined the Department of Correction in 1989 after serving as a Deputy Sheriff and Sergeant for the Sheriff’s Department. Since that time, he has served as a Sergeant in the Main Jail, Work Out of Class Lieutenant in The Training Unit, Personnel Unit and the Elmwood Complex. Captain King was promoted to Captain in July of 1999, and currently serves as the Programs Division, Professional Compliance and Audit Unit and Special Projects Commander.

Captain King has been integral to the development of the Regimented Corrections Program (RCP), a modified boot-camp program with a strong emphasis on education. RCP has been a highly successful program which this December is celebrating its 5th Anniversary. Captain King was also instrumental in the development of the Artemis Program, a similar program designed for pregnant women and women with young children, which was selected as the 2001 recipient of the Thomas M. Wernert Award for Innovation in Community Behavioral Healthcare. The latest innovative program developed under Captain King’s direction is Women in Community Services, a pre- and post-program for female inmates in Santa Clara County, which starts with classes inside the jail and extends into the community for supportive aftercare. Each of the participants is matched up with a professional mentor for up to six months to assist them in the successful achievement of their individual goals.

I wish to thank Captain Virgil King for his compassionate dedication to the County and wish him the best in his future endeavors. His innovation and loyalty will be sorely missed, but the people of the County are the richer for his service.

PAYING TRIBUTE TO RONALD APPLBAUM

HON. SCOTT McINNIS
OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to recognize the new President of the University of Southern Colorado—Ronald Applbaum. The University and the community of Pueblo are fortunate to have Dr. Applbaum join their extended family. As he prepares for his new post, I would like to recognize several of his academic achievements and wish him the best of luck when he takes his new post in January.

Dr. Applbaum was selected to head the University based on his impressive academic resume and past successes he has enjoyed in other higher education institutions. He was one of three finalists considered for the position in a selection process that lasted just three months. Upon reaching the finalist category, it became an easy board decision to name Dr. Applbaum to the University’s top post.

The doctor was selected trusting that he can continue to lead the University of Southern Colorado to the prominence and stature that the educational institution maintains today in the State of Colorado.

Dr. Applbaum has enjoyed a long and distinguished career in higher education. He has served in numerous academic positions for the University of Texas-Pan American and Dean of the School of Humanities for Long Beach State. His rise to USC’s top post began with a term as president of Western State College in Massachusetts, and serving as the President of Kean University in New Jersey in 1996.

Mr. Speaker, it is my pleasure to welcome Dr. Ronald Applbaum to Pueblo and the University of Southern Colorado. The community is truly fortunate to gain this new and distinguished leader. I would like to further welcome his family to the area and look forward to meeting them in the coming year. Congratulations on your latest achievement, Dr. Applbaum, and welcome to your new home.

I am confident when I say the commitment to higher education is strong with leaders such as yourself and I am assured you will continue to perform great work!

PAYING TRIBUTE TO JACOB SCHOOLIE

HON. SCOTT McINNIS
OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to recognize and pay tribute to a hero of the community of Glenwood Springs, Colorado. Jacob Schooley recently distinguished himself in a local fire that threatened to destroy a historic building and injure several residents. I would like to highlight Jacob’s heroics and thank him for his service.

Jacob arose to a regular morning on Saturday, December 1, 2001, until he heard fire alarms ringing throughout his residence. After making a call to 911, Jacob proceeded to awaken his neighbors to the danger that lay ahead. After finding the source of the fire, Jacob extinguished the flames and directed the residents to safety. Jacob continued to fight the fire until firefighters arrived on the scene to control the blaze. As a result of his quick reaction, the fire damage was minimal and the residents were allowed to recoup their homes soon thereafter.

Mr. Speaker, I again commend Jacob Schooley for his quick action and decisiveness in a time of crisis. The fire harmed several residents and firefighters with burns and smoke inhalation, but without Jacob’s efforts, the toll could have been much worse. I am honored to represent citizens like Jacob and his community of Glenwood Springs. Thank
you for your efforts Jacob and this body appreciates your dedication to helping others in a time of need.

BREAKING THE ABM TREATY COULD SPARK A NEW ARMS RACE

HON. RUSH D. HOLT
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. HOLT. Mr. Speaker, It is with tremendous concern that I note the President’s announcement that the United States will withdraw from the Anti-Ballistic Missile (ABM) Treaty. This is an ill-advised decision that could have dangerous repercussions in the long run.

The most troubling part of the President’s decision today is the rationale supporters have used to justify backing out of the treaty: they claim it interferes with the United States’ development of a National Missile Defense (NMD) system. This is clearly a straw man argument.

The United States is nowhere near developing or fielding a working NMD system, after decades and billions of dollars of effort. To back out of the treaty at this time, a time when we are working closely with Russia and other allies in the international war on terror, is unneeded and simply off base. And to do so for such a technologically premature program is clearly folly.

Backout of the ABM treaty is not without serious repercussions. For example, a senior Russian lawmaker predicted in response to today’s news that Russia will pull out of the Start I and Start II arms reduction treaties. I fear that today’s action will lead to a spiral of action and reactions, sparking a new arms race would not make us less, not more, secure.

SUPPORT FOR BAY AREA COUNCIL
FOR JEWISH RESCUE AND RENEWAL

HON. TOM LANTOS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. LANTOS. Mr. Speaker, I rise today to express my support for the Bay Area Council for Jewish Rescue and Renewal (Bay Area Council), an exemplary organization which has been carrying out important work in the Russian Federation.

The Bay Area Council has designed and implemented a Climate of Trust program to enable Russian law enforcement officials to combat ethnic and religious intolerance and xenophobia in Russia by providing a sustained and supportive relationship between American and Russian communities, law enforcement professionals, city administrators, prosecutors, human rights activists, educators, and local media representatives. The goal is to promote tolerance and reduce incidents of hate-based violence in Russia through training, seminars, workshops, and symposiums.

The Climate of Trust program has brought in tangible results. Over the 2000–01 period, more than five hundred Russian officers, civil servants, community members, and media representatives have taken part in its activities. In the Russian city of Ryazan, which had been marked by anti-Semitic acts, the Climate of Trust program proposed several initiatives which were later enacted and are in the process of implementation. In 2002–03, the Bay Area Council worked on counter activities in Ryazan and expand them to several other Russian communities outside of Moscow. This is a worthy and important work that earned Bay Area Council a tribute in the 2001 State Department International Religious Freedom Report.

Not only our government has recognized the Climate of Trust program as effective and successful in training Russian law enforcement and other government officials in promoting tolerance. The government of the Russian Federation also identified the Climate of Trust program as a key component of its 2001–2005 national program for preventing extremism and promoting tolerance in Russian society.

When Congress graduates Russia from Jackson-Vanik next session, the role of the Bay Area Council as the non-governmental organization that will become even more important in the human rights dialogue between our countries.

The Climate of Trust is exactly the kind of program we should be supporting in Russia. It is cost-effective and it works at the grass-roots level with communities throughout Russian Federation. The program is interactive and responsive to the needs of these communities. I am confident it has immediate and lasting effect on individuals and communities besieged by xenophobia. The Russian Democracy Act, legislation which I authored and which passed the House under Speaker W. Jefferson back at least $50 million for activities designed to support Russian civil society at all levels. I respectfully ask the Administration and the State Department to extend all possible support to the Bay Area Council so that the Council may expand and continue its grassroots efforts at combating xenophobia and promoting civil society in Russia.

TIME TO RATIFY THE CTB

HON. EDWARD J. MARKEY
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. MARKEY. Mr. Speaker, I rise today to express my concern over recent reports that the administration is considering the development of so-called “low-yield” nuclear weapons. While these mini-nukes are allegedly being designed to promote “low-level” nonproliferation of destroying buried stockpiles of chemical and biological weapons, testing these weapons would break a 9-year moratorium on nuclear testing and would have grave implications for nonproliferation. This action would undermine last week’s adoption of the Comprehensive Test Ban Treaty (CTBT), which is already under assault in this administration.

The CTBT is the culmination of a series of incremental efforts to stop the threat of nuclear warfare following the explosion of two nuclear weapons over Hiroshima and Nagasaki. When the President comes to Congress to get the CTBT ratified in 1994, I cosponsored H. Res. 241, which urged the Senate to ratify the CTBT. Despite certification by the President that there were no safety or reliability concerns about the nuclear arsenal that required underground tests, consideration of the Treaty was held hostage by politics and, in 1999, was rejected by the Senate.

Now we come to the present day when 162 States have signed the treaty and 87 have ratified it. The Treaty has still not entered into force, however, and the United States is not among the ratifiers. The current administration has emphatically refused to consider a comprehensive test ban and did not even send a representative to the Conference.

The administration’s rejection of the CTBT and withdrawal from the Anti-Ballistic Missile Treaty send the wrong message to the international community about our commitment to nonproliferation. Our whole nonproliferation stance is linked to the CTBT, since it signals our intention to meet the expectations of the Nuclear Nonproliferation Treaty (NPT). Under the NPT, nuclear weapons States pledged to work in good faith toward total disarmament in exchange for an agreement by non-nuclear weapons States to limit their use of nuclear technology to peaceful applications. Cessation of testing new weapons is a vital part of any serious disarmament plan. If the United States won’t even agree to consider a test ban, and is clearly signaling its intention to go forward with development of nuclear missile defense, how can we possibly persuade other nations to forego their weapons programs?

In this age of heightened concern over terrorist threats we need the CTBT now more than ever. Much work remains to be done to reduce the threat of terrorists obtaining and using weapons of mass destruction. Far more than all nuclear explosions limits the ability of terrorists to develop their own nuclear weapons or to acquire them from hostile nonnuclear weapons States. The CTBT should be an integral part of our anti-terrorism efforts and I urge my colleagues to support its ratification. When the President comes to Congress to get the 1994 ban on the development of new nuclear weapons lifted I urge my colleagues to vote no to the President’s request.
REMARKS ON ACCELERATED DEPRECIATION
HON. CHARLES A. GONZALEZ
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001
Mr. GONZALEZ. Mr. Speaker, I would like to express my strong support for efforts to increase the depreciation deduction. In my view, accelerated depreciation is one of the most efficient and effective ways for Congress to spur business investment in our country.

Mr. Speaker, as you know, this year has seen a dramatic drop off in business investment. Business investment was one of the foundations of the economic boom that our nation enjoyed during the Clinton Administration. It is therefore critical that Congress does what it can to restart the capital investment engine that has propelled our nation’s economy to extraordinary heights over the last decade.

Mr. Speaker, in addition to reductions in interest rates and balancing the budget, one of the most important things the Federal Government can do to increase business investment, in my view, is to accelerate the depreciation schedule for business purchases. Depreciation schedules reflect the Federal Government’s own somewhat arbitrary calculation of what is the economic life of capital. Accelerating the depreciation allowance for new capital investments provides a direct and immediate incentive for businesses to build factories, purchase new equipment, and generally expand operations. This inevitably creates jobs and results in a long term improvement in the productivity rates of American industry. Additionally, unlike many other proposed tax incentives, accelerated depreciation is directly tied to business investment. A business-person can not enjoy this tax incentive unless he or she commits to a capital expenditure.

Mr. Speaker, it is for these reasons, I firmly believe that the long term economic benefits of accelerated depreciation far outweigh the immediate revenue loss consequences of any such tax cut. It is my hope that in the 2002 session of the 107th Congress we will pass into law an acceleration of the depreciation allowance.

IN RECOGNITION OF JESUS BURCIAGA
HON. XAVIER BECERRA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001
Mr. BECERRA. Mr. Speaker, it is with utmost honor and pleasure that I rise to recognize Mr. Jesus Burciaga, a gifted leader and outstanding firefighter from La Habra, California. Today, Jesus achieves another milestone in an already storied career. In the process, he affirms our belief that devotion, determination, and discipline still pay handsome dividends in life.

This 20th of December, the Los Angeles County Fire Department elevates Jesus to the rank of Deputy Fire Chief, third in command of the second largest fire protection agency in America. His promotion highlights a career of exceptional public service which began more than a quarter century ago.

As a young man who once shined shoes on the corner of First Street and Gage Avenue in East Los Angeles, Jesus saw his hard work and perseverance take him from the lowest position in the Los Angeles County Fire Department, suppression aid, to fire fighter, then inspector, to Captain by 1984. Five years later he was promoted to Battalion Chief, and by 1994 he had become Assistant Fire Chief, serving for a time as Los Angeles County Fire Marshal.

Chief Burciaga has accomplished many “firsts.” He became one of the youngest fire-fighters when he joined at the age of twenty-five. He became the first Fire Marshal of Latino descent in the County’s history. And he is certainly the first forty-seven year old father of five daughters whom I have witnessed retain not only his hair but its natural dark color.

I met Jesus more than thirteen years ago at a “Career Day” session at a local elementary school where we both were presented before a class of fifth graders. Captain Burciaga was dressed in uniform; I, Deputy Attorney General Becerra, wore my suit. There was no contest: he glittered, I gawked. He told the kids of his battles with fire, I battled to keep their eyes on me. It would not surprise me if some of those young students today are firefighters.

Chief Burciaga has a passion for service and a devotion to our youth. As President of the United Hispanic Scholarship Fund he has helped raise $500,000 to make the dream of college a reality for more than one thousand students. He volunteers his “spare time” to support his brethren internationally, delivering surplus but valuable firefighting vehicles and training the latest fire fighting techniques to firefighters in countries like Mexico.

But, without question, his greatest passion and devotion, which has earned him our undying respect and affection, belongs to his family. Ana Burciaga has fought every one of her husband’s fires. In her eyes you see the values that have made the Burciaga family so strong. Ana and Jesus and their five accomplished daughters—Elenor, Catherine, Luz, Natalie and Sarah—have every right to be proud today.

Mr. Speaker, on this day, December 20, 2001, family, friends and colleagues gather at Descanso Gardens in La Canada, Flintridge, California to witness the official appointment of Jesus Burciaga as Deputy Fire Chief for the County of Los Angeles and to celebrate 28 years of courage, integrity, and consummate professionalism. It is with great pride that I ask my colleagues in this beloved House of Representatives to join me today in saluting Jesus Burciaga, an exceptional man and cherished friend.

WILKES-BARRE NATIVE HONORED FOR ROLE IN BOMBER CREW RESCUE
HON. PAUL E. KANJORSKI
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001
Mr. KANJORSKI. Mr. Speaker, I rise today to call the attention of the House of Representatives to the dedication of the team from the USS Russell who rescued the four-member crew of an Air Force B-1B bomber that crashed on December 12th in the Indian Ocean. In particular, I would like to highlight the role of Boatswain Mate 1st Class Stephen Lyons, a native of my District.

In addition, Mr. Speaker, I would like to note that I am proud of him and all the military personnel from Northeastern Pennsylvania and grateful for their willingness to serve America.

I would now like to enter into the record the following article about Boatswain Mate 1st Class Lyons from the Wilkes-Barre Citizens’ Voice:

CITY NATIVE INVOLVED IN INDIAN OCEAN RESCUE
(By Gene Skordinski and Tom Venesky)
A Wilkes-Barre native was one of the members of the USS Russell who rescued the four-member crew of an Air Force B-1B bomber that crashed Wednesday in the Indian Ocean.

Boatswain Mate 1st Class Stephen Lyons, 38, operated one boat that rescued the crew.

The rescue boats were launched from the destroyer USS Russell after the jet crashed on its way to bomb targets in Afghanistan.

The $280 million bomber went out of control and fell into the ocean about 80 miles north of Diego Garcia after taking off from the British island, government sources reported.

It was the first manned, fixed wing U.S. aircraft lost in the Afghanistan campaign.

Crew members ejected from the plane at 15,000 feet and were in the water for about two hours during the night.

Lyons, who is on the USS Russell, was driving one search and rescue boat that responded to the crash.

All four crew members were in good condition, said officials.

Lyons joined the Navy following his graduation from Meyers High School in 1983.

During his Navy career, he has served aboard the USS Guam for five years as well as the USS Savannah. He has served in Beirut, Somalia and the Gulf War. He has also completed several six-month tours of sea duty in the Mediterranean Sea and the Indian Ocean.

Lyons was responsible for collecting personal items from sailors on the USS Guam as well as the embassy personnel during the evacuation of the embassy in Somalia.

Aside from operating search and rescue craft, Lyons drives the ship’s launch, a boat used to shuttle the ship’s captain to and from shore.

He has also served at Norfolk, Va.; Pax River, Md.; Kings Bay, Ga., and Pearl Harbor.

While at Pax River, he worked in the testing of hovercraft and with the David Taylor Research in Norfolk.

He is the son of Harold and Jean Lyons, 160 Wood St., Wilkes-Barre. Boatswain Mate 1st Class Lyons is married to the former Charon Gula, formerly of Edwardsville. They have two sons, Stephen, 13, and Justin, 11, and the family resides in Pearl Harbor. His grandmother, Lucy Machniksh, resides in the Poconos area.

His mother said he is currently on his fourth six-month cruise since joining the Navy in 1984. He is set to return after Easter.

Although his exact location is classified, she said she keeps in touch with her son through e-mail.

“He e-mails me three times a week,” she said, adding it can be difficult not knowing where he is.

“You worry and wonder and thank God when you hear from him that it’s good news,” she said. “He can’t tell us where he is or even where he’s going.”
Mrs. Lyons explained that the long months away from his family are accepted as part of her son’s job.

Although it can be difficult to be gone for extended periods of time, she said her son is doing what he loves.

“He’s happiest when he’s on the ocean. There’s a certain calm about it that he enjoys while he’s on the ship,” she explained.

Mr. Speaker, I am pleased to call to the attention of the House of Representatives the service to our nation of the crew of the USS _Russell_, including Boatswain Mate 1st Class Stephen Lyons, as well as all the military personnel from Northeastern and Central Pennsylvania, and I send my best wishes to them and their families.

TRIBUTE TO MR. MITCHELL ROBINSON

HON. JOHN J. DUNCAN, JR. OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. DUNCAN. Mr. Speaker, on December 10th my good friend Mr. Mitchell Robinson passed away after a lengthy illness. He was someone who made a difference and dreamed the American Dream, and he truly represented what this country is all about. The following is a tribute to my friend.

Mr. Robinson, a Knoxville native for 77 years, founded Modern Supply Company in 1949. He devoted his life to family, business and philanthropy. He was married to Natalie Levison Robinson for 50 years.

Mr. Robinson was a lifelong member of Heska Amuna Synagogue and was a leader as chairman and longtime board member. He also chaired the Knoxville Jewish Federation. He established the Sylvia Robinson Memorial Fund and endowed the A.J. and Sylvia Robinson Chapel at the synagogue in memory of his parents.

Mr. Robinson, who served as president of the Southern Wholesalers Association and a Director of the American Supply Association, pioneered the design and kitchen showrooms in East Tennessee.

He was also active in the Knoxville business community, where he was a charter member of the Midtown Sertoma Club. He was a loyal supporter of the University of Tennessee, contributing to the Departments of Judaic Studies and Athletics.

A World War II veteran, Mr. Robinson served as a flight controller in the U.S. Air Corps Radar Unit in the Pacific.

His beloved family also includes children Rabbi Rayzel and Dr. Simcha Raphael of Philadelphia, A.J. Robinson and Dr. Nicole Ellerine of Atlanta, and Pace and Karen Robinson of Knoxville; grandchildren Yigdal and Hallet Raphael; Micaela, Ethan and Nathaniel Robinson, and Asher and Eli Robinson; sister and brother-in-law Fay and Bob Gluck of Boynton Beach, Fla.; brother-in-law Gilbert Levison of Knoxville; brother and sister-in-law Marvin and Deanne Levison of Atlanta; and many nieces, nephews, cousins and friends.

Mitchell spent most of his 77 years in Knoxville, Tennessee. He was part of a generation that had a significant impact on Knoxville and the surrounding area. He came back from World War II with no money, no business, and a limited education. But he had enduring self-confidence, determination, and a desire for accomplishment that stayed with him his entire life right up to the end.

He was part of that “greatest generation” that we read so much about today, and who Tom Brokaw has made so famous. Men and women who have impacted and enriched all of our lives over the last half of the 20th century.

But as many of you know, and as Sinatra sings, Mitch did it his way . . . . whether it was in his business, in his synagogue, or the various other circles he traveled. Everyone was a part of his empire, family, friends, customers, and employees alike. He shared the good and the bad with everyone.

The child of immigrant parents, he created his own style, his own flair in everything he did and everybody he touched.

He had style in his clothes, in his cars, in his hats, in his dancing, in the showrooms at Modern Supply, in the “Pitch from Mitch” stationery, in the incentive trips for his customers that he so tediously planned and enjoyed. He bought things in a big way whether it was a truckload of sinks, shirts for himself, or smoked turkeys for everyone to climb about anyone he met, particularly the females. He had an appetite for food and people that was enormous.

Mr. Robinson was a leader, perhaps not always knowing where he was going, but knowing he was going somewhere. His devotion to his business was inspiring. His family’s contributions to the religious community in time and money are in the record books.

Members of the community called on him when something was needed for those who were less fortunate. He was always there. He was generous to a fault and has set a standard for all of us to follow.

In a Yom Kippur Sermon several years ago, Rabbi Joseph Weinberg, said:

“Always we are commanded to seize the day, to create a life which will be remembered as a blessing. Not how long, but how well did I live? Not how many honors did I obtain, but how honorable was my life. Not how many things did I acquire, but how much was I able to give.”

This quote is very fitting for the life of Mitchell Robinson. I would like to offer my deepest sympathy to the Robinson family. Our Nation and our community have suffered a great loss.

HONORING DAVID SAYLES ENGLISH

HON. DOUG OSE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. OSE. Mr. Speaker, I rise today to honor David Sayles English of Arlington, Virginia, as he joins the Arlington County Police Department.

Throughout most of his adult life, David English has devoted himself to the safety and protection of others. A 1989 graduate of Yorktown High School in Arlington, Virginia, Mr. English attended Western Maryland College prior to serving in the United States Army. His service in the military, most notably at Fort Greely, Alaska and Fort Detrick, Maryland, gave him a unique insight into helping his fellow man.

Following his honorable discharge from the military, Mr. English put his medical knowledge to work as an Emergency Medical Technician (EMT) while earning his paramedic’s license. Shortly after earning his license, David returned to his hometown to work as a firefighter at Fire Station #8 in Arlington County, Virginia. As it has been his lifelong dream to work in law enforcement, David joined the Arlington County Police Department earlier this year.

Tomorrow morning, December 21, 2001, David Sayles English will graduate from the Arlington County Police Academy, officially becoming a Police Officer in Arlington, Virginia. I would like to acknowledge an天生的 group of men and women throughout our nation of whom I am proud. Let me extend my personal thanks to those who serve in uniform. If the efforts of
HONORING COPELAND AND WINONA GRISWOLD ON THEIR 50TH WEDDING ANNIVERSARY

HON. JEFF MILLER OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. MILLER of Florida. Mr. Speaker, it is my distinct pleasure to announce to you and the other members of this distinguished body, that on December 21, 2001, my in-laws, Copeland and Winona Griswold of Chumuckla, Florida, will celebrate their 50th wedding anniversary.

Copeland and Winona were married on December 21, 1951. They met in Chumuckla, Florida during grade school and later became high school sweethearts and valetudinarians of their senior classes. They have lived in Chumuckla these past 50 years, and have shared their love with their children Marty, Von, Vicki and Paul, and their many grandchildren and great grandchildren.

The Griswolds were agricultural pioneers in the State of Florida. They were members of the Farm Family of the Year for Santa Rosa County in 1985, and Copeland was inducted into the Florida Agriculture Hall of Fame in February of this year.

Their love story is one that is still in progress. I can tell you firsthand their love for each other has grown even stronger through the years and serves as an inspiration to us all.

Love has flourished between these two hearts, and I wish them continued happiness and love for years to come.

On behalf of the United States Congress and the people of Northwest Florida, I extend our sincere congratulations to Copeland and Winona Griswold, whose love stands as a shining example to an entire community.

IN HONOR OF THE ACHIEVEMENTS OF THE DISTRICT OF COLUMBIA FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY MEMBERS

HON. ELEANOR HOLMES NORTON OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Ms. NORTON. Mr. Speaker, as Congress prepares to end this session, unique in our history, I ask the House to recognize the work of nine Washingtonians who have just completed a uniquely important public service for our nation’s capital, and therefore for our nation. The nine served the District of Columbia on the District of Columbia Financial Responsibility and Management Assistance Authority. They are the two chairs, Andrew Brimmer and Stephen Harlan, and among the many distinguished and most accomplished residents of the District of Columbia.

This year, the Authority completed six years that have brought the District of Columbia out of the worst financial crisis in a century. To cope with this crisis, Congress passed the District of Columbia Financial Responsibility and Management Assistance Authority Act in 1995. The city had followed several others—Philadelphia, New York, and Cleveland among them—to junk bond status indicating an inability to borrow, or insolvency. As with the cities that preceded them, the District required a “control board” or Authority in order to continue to borrow the necessary money to function. Unlike other cities, however, the nation’s capital reached this point not only because of local mismanagement, but also because it is a city without a state and a city that carried the full complement of state functions and costs. To the credit of the prior administration of President Bill Clinton, which designed a package relieving the city of the most costly state functions and of the Congress, which approved it, the District has had a remarkable recovery.

Working countless hours with the Mayor and the City Council, the Authority helped the District achieve investment grade bond status by the third year of the control period, rather than in four years; create a budget reserve of $150 million and left the city well on its way to creating a 7-percent cash reserve three years ahead of schedule; repay all borrowings from the U.S. Treasury; eliminate the accumulated deficit; and post four years of balanced budgets with surpluses, two years ahead of the Congressional mandate to do so. Elected officials, who continued to run the city throughout, deserve credit for this improvement. However, they would doubtlessly agree that more than any single group or individuals, the Financial Authority deserves the credit for the four-year rapid recovery of the District. It was the credibility of the individuals on the Authority and the extraordinary job they did that enabled the District to borrow in its own name. The city never had to have the Authority borrow for the District. It was the Authority that worked hand in glove with D.C. elected officials to assure that the finances and the management of the D.C. government would proceed apace to improve. And it was the Authority that gave Congress the confidence that the city would be ready for the sunset of the Authority on September 30, 2001.

It would be difficult to overestimate the importance of these Washingtonians to the recovery of the city or the difficulty of the work they were called upon to do—and did. The District could not have made the progress it did without the leadership of the Authority. The Authority’s work required the services and resources of experts; it required wise counsel from experts of their special competence what each gave to the city as a contribution of unique expertise, endless hours, extraordinary effort, and plain, priceless wisdom.

The city the Authority found had been a city torn by crime that had been wracked with many years of overspending and an accumulated deficit as well as a dysfunctional government of city agencies. The city they have left has had four straight years of balanced budgets plus surpluses and a much improved fully functioning city government. At the end of the last fiscal year, the District had a larger reserve of cash than any state in Virginia, which had no surplus. The bottom line that is expected of every jurisdiction of living within its budget, credit to assure borrowing and clean audits has been achieved. The huge task of restructuring and reforming each city agency is proceeding with many notable improvements.

The Authority, working with elected officials has improved the most critical areas, including public safety and education; and the city’s economic development has proceeded.

Today, however, the Authority also left an important warning not only for the city but for Congress about the future of the city. Despite remarkable city improvements and the Revitalization Act’s assumption of $5 billion in pension liability and some state functions, the Authority warned of a structural deficit not of the city’s making that urgently needs congressional attention. Next session, I will introduce a bill to ensure the financial stability of the city.

Today, however, let us be grateful that the most difficult part of the job of revitalizing the nation’s capital has not been left to Congress. It has been done by nine extraordinary citizens, as asked none who watched the Congress, not pay, and not even praise. Yet, considerable praise is the least they are due from the Congress of the United States. It is praise and honor that I ask this House to give to these nine Washingtonians today from a grateful Congress and a grateful city.

THE DISTRICT OF COLUMBIA FINANCIAL MANAGEMENT AND ASSISTANCE AUTHORITY

FIRST AUTHORITY

Andrew Brimmer (Chair)

Dr. Andrew Brimmer served as the first chair of the Authority. Mr. Brimmer, the first African American to serve on the Federal Reserve Board, has long been recognized as a distinguished economist. Among his many posts and achievements is service as an economist at the Federal Reserve Bank of New York and posts teaching economics at Michigan State University, the Wharton School, the University of Pennsylvania, and other colleges and universities. Mr. Brimmer is the President of Brimmer and Company.

Dr. Brimmer became the chair of the Authority when the city was at its lowest point of financial and management disrepair. He led the Authority as it took on very large and intractable fiscal and operational problems and managed them with skill and determination.

Stephen Harlan (Vice Chair)

Stephen Harlan served as vice chair for the first term of the Authority. He was the chair of H.G. Smithy Company, a specialized real estate firm providing mortgage banking, finance and investment, and multi-family property management services. He previously served as vice chairman of RPMG Peat Marwick.

Mr. Harlan successfully led the Authority’s public safety revitalization at a time when crime was the primary concern of District residents and officials.

Joyce Ladner

Dr. Joyce Ladner has served as Interim President of Howard University. Vice President for Academic Affairs, and professor of sociology at the Howard University School of Social Work. She is currently a Senior Fellow of Government Studies at the Brookings Institution.

Dr. Ladner successfully concentrated on improving public schools when education was the primary concern of the Authority.

Constance Berry Newman

Constance Berry Newman, one of the most versatile officials in the public life of the
country, served as vice chair during the sec- ond term of the Authority and is the only member that served both terms. She has been appointed by Presidents of the United States four times to major federal posts and has been a Woodrow Wilson Visiting Fellow, and a member of the adjunct faculty at the Kennedy School at Harvard University and a trustee of Johns Hopkins University. Ms. Newman has served as Undersecretary of the Smithsonian Institution, Director of the Office of Personnel Management, and consultant to foreign governments and international organizations, among other posts. Ms. Newman is currently the Assistant Ad- ministrator for the Bureau for Africa for the U.S. Agency for International Development. Ms. Newman successfully led a number of areas for the Authority, ranging from public schools to procurement.

Edward Singletary

Edward Singletary is a retired business ex- ecutive with experience in accounting, bud- geting, financial planning, finance operations and telecommunication. He worked in the telecommunications industry for nearly 30 years. During his business career, he served the city as chair of the Washington Convention Center, a member of the D.C. Retire- ment Board, and President of the Wash- ington Convention and Visitors Association.

While on the Authority, Mr. Singletary successfully worked on government-wide ad- ministration issues for the city, including technology and procurement.

SECOND AUTHORITY

Alice Rivlin (Chair)

Dr. Alice Rivlin, one of the country’s most respected economists, served as chair of the Finance Committee for her second term. She has had one of the most distinguished public service careers in the nation as Vice Chair of the Board of Governors to the Federal Re- serve, then Director of the Office of Management and Budget, and as the first director of the Congressional Budget Of- fice, among others. Dr. Rivlin is currently a Senior Fellow in Economic Studies at the Brookings Institution.

Dr. Rivlin was the chair of a landmark commission on the District government and its finances. Her name and work that predicted the problems of the city years con- siderably before they resulted in the crisis that brought on the need for the Authority. She led the Authority in September 1998, she led the de- tailed financial work on government oper- ations necessary to manage a careful transi- tion of control of the District to the Mayor and City Council.

Constance Berry Newman (Vice Chair—see above)

Eugene Kinlow

Eugene Kinlow is a native Washingtonian with exceptionally strong community ties, including service as a former chair of the D.C. Board of Education. He is a retired Dep- uty Assistant Secretary for Human Re- sources in the Department of Health and Human Services and a recipient of the high- est award for federal executives, the Presi- dential Distinguished Rank Award. He pre- viously served as a staff statistician at the U.S. Commission on Civil Rights, and worked as the Housing Research Director. Mr. Kinlow’s 30 years of community service in the District led to his determined work as the Authority’s lead member on re- vising health care for the District.

Darius Mans

Dr. Darius Mans was a manager for im- plementation and administration at the World Bank. Prior to his work at the World Bank, Dr. Mans was an economist for the Federal Reserve System Board of Governors. He is currently Country Director at the World Bank for several large African na- tions.

Dr. Mans’ strong institutional and aca- demic financial background was very useful to the Authority’s work on D.C.’s finances.

Robert Watkins, III

Robert Watkins, a distinguished lawyer, has been a partner at Williams and Connolly since 1977. His background includes leader- ship posts in the Office of the U.S. Attorney for the District of Columbia when he was an Assistant U.S. Attorney and work in the Civil Rights Division of Justice Department.

Mr. Watkins successfully worked on justice issues and the Metropolitan Police Depart- ment during a period when the Department underwent substantial reform and crime was reduced.

MONROE TOWNSHIP CELEBRATES THE CAREER OF RETIURING COUNCIL VICE PRESIDENT LEONOARDA FARBER

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. HOLT. Mr. Speaker, I rise today in rec- ognition of retiring Monroe Township Council Vice-President, Leonora Farber.

For many years, Councilwoman Farber has made invaluable contributions to the Township of Monroe and to the State of New Jersey through her exceptional commitment to civil service, education, and the arts.

Throughout her career Lee Farber has self- lessedly contributed her time and energy to her community and has embodied the spirit of public service that we in Congress hold so dear. She began her career of service as a public school teacher after receiving her Mas- ters Degree in Secondary School Administra- tion and Supervision from Hofstra University. Her unwavering support of education in New Jersey continued when she became the Chair of the New Jersey Training School for Boys Citizens Review Board.

In her efforts to advance the interests of her neighbors, Councilwoman Farber has also served as Wharton’s representative to the Adult Communities Advisory Board, as a member of the Executive Board of Greenbrair at Whittingham Residents Association, and of the Executive Board of U.F.T. Retirees.

Lee Farber has passionately supported women’s rights and has provided a voice to the concerns of the disabled as a member of the League of Woman Voters and as Council representative to the Americans with Disabili- ties Committee.

An outspoken advocate of environmental issues, Councilwoman Farber is the former chairperson of Monroe’s Environmental Com- mission where she helped protect New Jer- sey’s air, water, and land from pollution and degradation. An arts patron and enthusiast, Councilwoman Farber also currently serves as Council Liaison to the Cultural Arts Commis- sion.

Lee Farber has led a distinguished career of public service in New Jersey that sets an im- portant example for us all. I hope my col- leagues will join with me in honoring her.

OBITUARY OF EVA LOU BILLINGSLEY RUSSELL

HON. EARL F. HILLIARD

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. HILLIARD. Mr. Speaker, Eva Lou Billingsley Russell, also affectionately known as Grandma Rap, 82 of Birmingham, died on Friday, December 14, 2001. Mrs. Russell was the owner of Fraternal Café in downtown Bir- mingham for more than 20 years. She was a Civil Rights activist most noted for feeding the local as well as national civil rights movement for many years. In addition, Mrs. Russell oper- ated feeding programs for the homeless and poor, years before, attention was given to this problem in our communities.

She spent considerable time encouraging young people to get an education and to stay away from drugs. She often said, ‘That message was “rapped” to the children. It is not com- mon to pick up a magazine and find one of her poems or to hear a child reciting one of her poems in a church or at a school through- out the city. She is the author of the book “Grandma Rap”—A Collection of Poems About the Black Family. She also has three other manuscripts of books that are yet unpublished.

Mrs. Russell has received numerous awards throughout her life. A few of these include: Channel 13 Homegrown Hero—1997, WENN Radio Favorite Person, Beautiful Activist Award, SCLC Humanitarian Award, Crystal Di- amond Award for Community Service; Awards from: University of Alabama, Birmingham, Lawson State Community College, Booker T. Washington Business and Technical College; she has also received numerous awards from elementary, middle and high schools in the Birmingham area.

She was very active at Saint Joseph Baptist Church where she has been a member for a number of years. Most recently, she was a deaconess, Chair of the Pastor’s Aide Board, and worked with the Missionary Society, Homeless Committee, Willing Workers and served in numerous other capacities of leader- ship throughout her membership at the church; including Vice President of the St. Jo- seph Day Care Center, Youth Supervisor and Chair of the Deaconess Board.

Mrs. Russell leaves the following survivors: Three sons: Joseph Russell (Ida), Sac- ramento, CA., Leonard Russell (Juanita)—Bir- mingham, Carl Russell (Constance), Pembroke Pines, FL.; Two daughters-Bir- mingham, Sandra Russell Jackson, Carolyn Russell Todd (Walter); son-in-law-Jerome Huguley, Atlanta, GA. And a daughter-in-law, Rosa Mae Russell, Birmingham; Two brothers and one sister from Cleveland, OH: Richard Billingsley, Simon Billingsley (Eula) and Johnnie Billingsley; a sister Hattie Riddle (Will), Knoxville, TN; a sister-in-law, Margaret Billingsley, Columbus, OH. Mrs. Russell also had 17 grandchildren, 21 great grand chil- dren, a God daughter and son and a host of nieces, nephews, relatives and friends.

The, Home Going Service for Mrs. Russell will be Saturday, December 22, 2001 at Saint Joseph Baptist Church—500 9th Avenue North, Birmingham, Roberts Central Park Chapel di- recting. Visitation is scheduled for Thursday, December 20, from 11 a.m. to 7 p.m. and Fri- day, December 21, from 4 to 9 p.m.
YOUTH COURT: CIVIC ENGAGEMENT AND CHARACTER EDUCATION THROUGH JUVENILE ACCOUNTABILITY

HON. J. DENNIS HASTERT
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. HASTERT. Mr. Speaker, I rise to praise the efforts of the Constitutional Rights Foundation and the Constitutional Rights Foundation Chicago. Their work encourages schools, youth programs, attorneys, judges, and police departments to work together to form and expand diversionary programs.

These programs, known as Youth Courts, are where juveniles, under the supervision of representatives from the education and legal communities, determine sentencing for first time Juvenile offenders who are charged with misdemeanors or minor infractions of school rules.

The program displays that as a sentencing option, community service can serve both the offender and the community.

TRIBUTE TO FERRIS BELMAN

HON. JO ANN DAVIS
OF VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise to pay tribute to a distinguished constituent and public servant whose more than 30 years of service will come to a close at the end of this month.

Ferris Belman of Stafford County, one of the jurisdictions within the 1st District of Virginia, is a retired businessman who has devoted much of his adult life to serving the people of both the city of Fredericksburg and Stafford County.

For 13 years he was a member of the Fredericksburg City Council and has served as a member of the Stafford Board of Supervisors for 18 years, twice as a board chairman. He was also just recently the President of the Virginia Association of Counties.

Mr. Belman has served on numerous committees and commissions over the years and played a leading role in promoting economic growth and development in both the city and county.

Ferris is a man of great honesty and character who has worked diligently on behalf of the people of Virginia. As Stafford County Administrator C.M. Williams notes, Ferris Belman helped insure that Ferry Farm in Stafford, the boyhood home of George Washington, would be preserved intact. He was also largely responsible for the county’s acquisition of Government Island, the site of quarries that provided the stone for construction of the United States Capitol building and the White House.

Ferris Belman will leave office with the grateful appreciation of the thousands of people whose lives he has touched through his service. He will be remembered as a public official who always found time to listen to the concerns of his constituents, and went the extra mile to do all he could for those he represented. Ferris, who once owned several grocery stores, always said he thought of himself not as a politician but “an apple peddler working for the people.”

I would like to thank Ferris Belman for a job well done. His selflessness and devotion to his constituents and Virginia are to be commended, and his service will be missed.

STATEMENT BY THE HONORABLE
SOLOMON P. ORTIZ
ON H.R. 3525

HON. SOLOMON P. ORTIZ
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. ORTIZ. Mr. Speaker, the Rio Grande Valley thanks the House for this economic stimulus package for the border. Our economic opportunities were severely curtailed this fall when the extension of a deadline to obtain new border crossing cards was held up for three months.

The efforts of the House Border Caucus have borne fruit with the inclusion of the extension of the deadline to replace old Border Crossing Cards (BCCs) with new “laser visas.”

This is the perfect Christmas present to the Southwest Border from the United States Congress.

In the aftermath of the September 11 terror attack, the increased vigilance at the border has also translated into a rougher tone in the Congress with regard to what should have been a pro forma extension of the deadline.

The Southwest border has seen extensive economic damage as a result of the deadline not being extended, as expected, in September.

I encourage the Senate to expedite consideration of the bill since the House has overcome the objections now.

As the Co-Chairman of the House Border Caucus, I thank the House for including this provision so important to the Rio Grande Valley.

I am also pleased that the bill authorized funding for additional staff and training to increase our border security.

I am particularly pleased that the bill includes a more complete monitoring program of foreign students, as since September 11 it is glaringly apparent that data and reporting gaps must be filled.

A HOLIDAY MESSAGE ABOUT UNITY

HON. HENRY J. HYDE
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. CONYERS. Mr. Speaker, in this holiday season we are grateful for the familiar traditions of each of our faiths that comfort us and connect us with others. We are also thankful for the unprecedented unity of the Congress, the country, and the larger global community in its shared determination to aid the victims of September 11, and to defeat the forces of terrorism.

To maintain and strengthen that unity for the work that lies ahead, we need to find new ways to solve conflict and to overcome the suspicions that arise from differences in culture, race, religion, economic condition and political ideology. Establishment of shared traditions that promote intercultural contact will help.

On December 15, 2000, the 106th Congress unanimously approved a measure that calls for annual worldwide commemoration of the successful “One Day in Peace January 1, 2000” with shared meals, inter-cultural exchange, pledges of non-violence, and gifts to the hungry.

One Day in Peace provides an unparalleled example of global cooperation that is both instructive and inspiring. On that first day of the new millennium several billion people and nearly every government in the world acted responsibly, cooperatively and with astonishing success to avert the combined threats of unruly crowds, terrorism and fears of Armageddon—as well as feared panic and hoarding related to expected computer failures. The “OneDay” movement, begun by children and eventually pledged by one hundred countries, 1000 organizations in 135 countries, 25 U.S. governors and hundreds of mayors worldwide surely helped. The result could be called the world’s first deliberate day of peace.

We believe this collective achievement by much of humankind is worth remembering and repeating each year. The United Nations General Assembly agrees. It recently adopted a resolution (56/2) inviting all Member States, and all people in the world to celebrate “One Day in Peace 1 January 2002, and every year thereafter.”

At this season, as we enjoy the time-honored holiday traditions of our separate faiths, let us also celebrate a new tradition with a simple, world-wide all-faith holiday observance (comparable to our American Thanksgiving) that demonstrates our mutual resolve to create a future world of peace and sharing.

The schoolchildren who brought the concept of the “OneDay” holiday to Capitol Hill (some of the youngest and most energetic lobbyists we’ve seen) urge all Americans to celebrate OneDay by pledging non-violence to one another on January first. They also ask us to seek out someone of another culture and share a meal together, then match or multiply the cost of that meal with a gift to the hungry at home or abroad, in tangible demonstration of our desire for increased friendship and sharing.

We think these young peacemakers have a good idea. Happy holidays, both old and new!

INDUSTRIAL DEVELOPMENT BOND PROMOTION ACT OF 2002

HON. AMO HOUGHTON
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. HOUGHTON. Mr. Speaker, I am pleased to be joined by my colleagues, Mr. NEAL and Mr. ENGLISH, in introducing the “Industrial Development Bond Promotion Act of 2002.” While retaining the current limit on the tax-exempt issue of the bill, this legislation would modernize the pool of manufacturers who may be eligible to take advantage of the benefits of qualified small issue bonds.
Qualified small issue bonds play an important role in creating and sustaining a vibrant manufacturing sector in rural communities. Today, however, the so-called "$10 million limit" impedes many growing manufacturers from taking advantage of the benefits of qualified small issue bonds. This rule states that the aggregate face amount of the bonds together with the aggregate amount of certain related capital expenditures during a six-year period beginning three years before the date of issue and ending three years after that date, must not exceed $10 million. This $10 million limit was imposed in 1978. It does not consider changes in the economy, inflation, or the increased costs associated with the construction of manufacturing facilities. Even in small rural communities like those in the district, industrial development authorities have projects that routinely exceed this $10 million limit and are therefore ineligible for this type of financing.

The Industrial Development Bond Promotion Act of 2002 would permit capital expenditures of $30 million to be disregarded in determining the aggregate face amount of certain qualified small issue bonds. Given today's global economy and proof that U.S. manufacturers are not adverse to building and manufacturing offshore, it is most important that the calculation of the limit be changed. Across the country, manufacturing jobs are disappearing. The manufacturing sector's share of all U.S. jobs slipped from 17 percent ten years ago to 13 percent today. Small issue bonds are a valuable tool to local economic development authorities and go a long way toward creating and maintaining investment in manufacturing facilities in communities throughout our country.

We encourage our colleagues to join us in cosponsoring this legislation.

HAROLD BENGSCH AWARDED 2001 HUMANITARIAN OF THE YEAR

HON. ROY BLUNT
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. BLUNT. Mr. Speaker, I rise to honor a dedicated civil servant who is working daily to improve the health of residents in the Seventh Congressional District of Missouri.

Earlier this month, Harold Bengsch, the Director of the Springfield-Greene County, Missouri Health Department, was awarded the 2001 Humanitarian of the Year Award, established by the Community Foundation of the Ozarks. The recognition comes with a $5,000 cash award that is to be divided between the recipient and the charities of their choice. Mr. Bengsch, true to the reasons why he was so honored, gave the entire amount to charity.

Harold received the award for three decades of outstanding work improving the area's public health. His dedication and vision were instrumental in cutting the number of children testing positive for elevated blood lead levels in Greene County from 28 percent to 15 percent. Under his leadership, immunization rates for children at two years of age has increased from less than 50 percent to more than 90 percent. As director of the local health department, Harold has conducted research, had his studies published in professional journals and is responsible for the ongoing management of the ever growing city-county public health programs. These programs include disease control, preventive and environmental health and medical services.

Harold is a proven problem solver. He is a master at bringing people together—those who need the service and those who provide it. His soft-spoken manner, intelligence and broad experience in public health issues makes Harold Bengsch an invaluable resource to his community and well respected throughout the state of Missouri.

The unreasonable actions of government bureaucrats are regularly criticized on the Floor of the House. In this case I want my colleagues to know there is at least one bureaucrat who is doing an outstanding job of serving the public. I can assert without hesitation that the public health of Springfield Greene County and Southwest Missouri is better today because of the work, effort and vision of Harold Bengsch.

PERSONAL EXPLANATION

HON. MICHAEL G. OXLEY
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. OXLEY. Mr. Speaker, I was absent from the House floor during yesterday's rollcall votes on H. Res. 320, H.R. 3529, and the motion to recommit H.R. 3529. Had I been present, I would have voted "aye" on H. Res. 320 and "nay" on the motion to recommit H.R. 3529.

H.R. 3529, HELP AMERICA VOTE ACT

HON. TOM UDALL
OF NEW MEXICO
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. UDALL of New Mexico. Mr. Speaker, today, the House is considering H.R. 3295, the “Help America Vote Act of 2001,” an election reform proposal that seeks to address many of the problems with our national electoral system. It has been over a year since the 2000 Presidential Election, which brought many of these problems to light. Although it is not perfect, this legislation is long overdue, and I urge my colleagues to support its passage.

I won’t rehash the events of the 2000 Campaign, as we are all too familiar with hanging chads, the flawed butterfly ballot, and the countless ballots in Florida and elsewhere—that were discarded and not tallied. That was a national tragedy. We’ve had a year to do something here in the House, and I am glad to see it is finally acting. I hope we can use this important legislation to address many of the shortcomings of our national voting system. H.R. 3295 is just a first step in our ongoing effort to restore our constituents’ trust in the system of how we conduct our elected officials.

Our constituents deserve to have that trust restored.

This bill authorizes $400 million for one-time payments to states or counties to replace punch card voting systems in time for the November 2002 general election. These are the infamous ballots used in Florida and elsewhere.

H.R. 3295 also creates a bipartisan Election Assistance Commission, which is intended to be a national clearinghouse for information and to review the procedures used for Federal elections.

It authorizes $2.25 billion to help states improve their voting systems. Specifically, this bill will help states establish and maintain accurate voter lists; encourage voters to get out and vote; improve voting equipment; improve the processes for verification and identification of voters; recruit and train poll workers; improve access for voters with disabilities; and finally, educate voters about their rights and responsibilities.

Most importantly, H.R. 3295 will establish minimum federal standards for state election systems regarding voter registration systems, provisional voting, the maintenance of accuracy of voter registration records; overseas absentee voting procedures, permitting voters with disabilities to cast a secret ballot, and allow voters an opportunity to correct errors.

Now, as I said earlier, this bill is not perfect. In fact many well-respected organizations in the civil rights community oppose this legislation. I understand and share some of their frustrations. However, I believe that by passing this bill today, we can move forward in hopes that the bill that comes back from the Senate will have many improvements.

I commend my colleagues Mr.NEY of Ohio and Mr. HOYER of Maryland for their hard work in crafting this legislation. I encourage them, however, to work with Mr. OXLEY and Senator DODD to ensure that if there is a conference on this bill, we can vote for an even better bill.

Vote yes on H.R. 3295.

PUBLIC HEALTH SECURITY AND BIOTERRORISM RESPONSE ACT

HON. JOHN SHIMKUS
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. SHIMKUS. Mr. Speaker, as a sponsor of H.R. 3449, which was introduced in the House on December 11, 2001, I would like to include for the record the following description of the bill:

Section 302 would provide the Secretary authority to administratively detain any article of food where FDA has credible evidence or information indicating that such article presents a threat of serious adverse health consequences or death to humans or animals.” The “serious adverse health consequences” standard, which is used consistently in Title III of this Act, relates to the situation in which there is a reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death. This corresponds to FDA guidance pursuant to Title 21, Section 7.3 of the Code of Federal Regulations.

The authority provided under Section 302 may not be delegated by the Secretary to any official less senior than the FDA district director in which the article is located. Under this authority, the article may be detained for a
reasonable period, not to exceed 20 days, unless the Secretary requires up to an additional 10 days. Because there is potential for food of limited shelf life to be detained, the “reasonable period” may, depending upon the perishability of the food, be significantly shorter than 20 days. The rulemaking authority is created in this section. The purpose of the rulemaking is to establish expedited procedures for the detention of perishable foods, such as fresh produce, fresh fish and seafood products. The Secretary should promptly complete the rulemaking.

Within 72 hours of filing an appeal the Secretary is required to provide opportunity for an informal hearing and render a final decision regarding the appeal. The Secretary’s decision regarding the appeal is subject to judicial review consistent with the Administrative Procedure Act, Title 5, Section 704, of the United States Code. There is great need for timely review of an administrative detention order and the Secretary should assure that appeals are resolved in a timely manner. The value of perishable foods may be lost entirely, and even the value of foods that have considerable shelf life may be reduced substantially if administrative and judicial review are inappropriately delayed.

While an article of food is subject to administrative detention, the Secretary may order that it be temporarily held in a facility. Determination of the food in a secure facility is not a requirement. The Secretary should ensure that the food would be held under commercially appropriate conditions of cleanliness, temperature, humidity and what other considerations are required in industry practices regarding holding the article of food under detention. Conditions of the secure storage facility should not erode the safety or quality of a detained article. The Secretary should also take reasonable precautions to protect against an inappropriate release of a detained food. Secured storage requirements should apply if there is a reasonable apprehension that the article of detained foods are likely to be inappropriately released. This section does not impose any obligation on the owner of a detained food to bear the cost of the secure storage facility.

This section also permits the Secretary to order a temporary hold for a reasonable period of time, but not longer than 24 hours, of food offered for import if an FDA official is unable to inspect the article at the time it is offered for import and where the Secretary already has credible evidence or information indicating that such article of food presents a threat of serious adverse health consequences or death to humans or animals; the same standard employed for administrative detention under this section. The period of the hold is intended to provide the Secretary sufficient time to dispatch an inspector to the port of entry in order to conduct the needed inspection, examination or investigation. The authority to temporarily hold an article of food is not provided to facilitate mere administrative convenience. Instead, it is intended to reflect the physical impossibility of the Secretary to temporarily hold foods under this section are intended to be used to deter bioterrorism and therefore apply to specific instances where particular items of food meet the standard for detention.

Section 303 provides authority to the Secretary to debar from importing articles of food, any person that is convicted of a felony relating to food importation, or any person that repeatedly and knowingly import food that is adulterated. This section would authorize debarment following a felony conviction regarding food importation. In the great majority of situations permissive debarment authority will be employed to issue an administrative detention order. In addition, this section includes authority that would allow debarment of a person without a relevant criminal conviction. This authority is intended to bolster efforts to deter bioterrorism. The Secretary should primarily use this authority to debar bad actors that repeatedly and knowingly import food that seriously threatens public health.

Most forms of adulteration do not pose a serious threat to public health and many forms of adulteration pose no public health threat at all. When food adulteration occurs, food importers and distributors often offer to destroy the food. This debarment authority should not be used against innocent purchasers of food, nor is this authority to be used as an administrative shortcut to act against an importer where criminal prosecution is not sustainable.

Section 304 authorizes the Secretary to inspect and copy all records relating to an article of food if the Secretary has credible evidence or information indicating that an article of food presents a threat of serious health consequences or death to humans or animals. This provision excludes restaurants and other establishments of a company and the Secretary is provided the authority to request access to the facilities of the company and the Secretary is provided the authority to request access to the facilities of the company. The Secretary requires written records that clearly document the person from whom food was directly received, and to whom it was directly delivered, would sufficiently enable adequate tracking of the source and distribution of food. This records access would not extend to the most commercially sensitive or confidential records, including recipes, financial data, pricing data, personnel data, research data, or sales data (other than shipment data and sales data). This authority would not permit access to any records regarding employees, research or customers (other than shipment data). Nor does it permit access to marketing plans.

Under Section 304 the Secretary must take appropriate measures to prevent the unauthorized disclosure of trade secret or confidential information obtained by the Secretary pursuant to Section 304. The Secretary shall ensure that adequate procedures are in place to ensure agency personnel will not have access to records without a specific reason and need for such access, and that possession of all copies of records will be strictly controlled, and that destruction of records regarding personal holding and access to these records will be kept.

Section 305 requires all facilities (excluding farms) that manufacture, process, pack or hold food for consumption in the United States to file with the Secretary, and keep up to date, a registration that contains the identity and address of the facility and the general category of food manufactured, processed, packed or held at the facility. This section authorizes the Secretary to exempt certain retail establishments only if the Secretary determines that the registration of such facilities is not needed, that the registration would be ineffective or that registration under this section is to authorize the Secretary to compile an up-to-date list of relevant facilities to enable the Secretary to rapidly identify and contact potentially affected facilities in the context of an investigation of bio-terrorism involving the food supply.

Enforcement of Section 305 would be delayed 180 days from the date of enactment, and this section requires the Secretary to take sufficient measures to notify and issue guidance within 60 days identifying facilities required to register. This section also requires the Secretary to promulgate adequate guidance, where needed, to enable facilities to determine whether and how to comply with these registration requirements. The Secretary is encouraged to utilize the notice and comment process as an appropriate method for notifying potential registrants of their obligation to register and to receive advice and assistance from registrants on how best to develop a registration system that is both workable and cost-effective. In many instances, additional steps may be needed since the notice and comment may not be adequate to inform small businesses and other importers who may not have the resources or capabilities to research and track federal regulatory notices in a timely manner prior to the expiration of the 180-day enforcement bar.

This section does not impose a registration fee, and calls for a one-time registration. In other words, once a facility is registered it will only have to amend its original registration in a timely manner to reflect any changes. This section also requires the registration to help reduce paperwork and reporting burden, but registration would also be permitted using a paper form. The Department should work in a cooperative manner with facilities in terms of their obligations to register, and should be reasonable in situations where facilities are making good faith efforts to comply.

Registration should be made as simple as possible (such as permitting both electronic and paper registration, as well as permitting a headquarters to register on behalf of all establishments of a company) and the Secretary shall promptly complete a rulemaking regarding exemption from registration requirements for various types of retail establishments. As
part of this rulemaking the Secretary should look broadly at the various types of the food establishments in order to ascertain whether they should be exempted and shall exempt from registration those facilities that are not necessary to accomplish the purpose of this section. The Secretary should assure that implementation of this section does not unnecessarily disrupt the flow of commerce.

Section 306 requires the Secretary to pro-mulgate a rule to provide for prior notice to the Secretary of food being offered for import. The prior notice is to occur between 24 and 72 hours before the article is offered for import. In circumstances where timely prior notice is not given, the article is to be held at the port until such notice is given and the Secretary, in no more than 24 hours, examines the notice and determines whether it is in accordance with the notice regulations. At that time, the Secre-tary must also determine whether there is in his possession any credible evidence or informa-tion indicating that such article presents a threat of serious adverse health consequences or death to humans or animals. This deter-mination by the Secretary should not delay or unnecessarily disrupt the flow of commerce.

Section 306 is not intended as a limitation on the port of entry for an article of food. In some instances, such as inclement weather, routine shipping delays, or natural disasters, a shipment of food may arrive at a port of entry other than the anticipated port of entry pro-vided on the notice. When such situations arise, arrival at a port other than the antici-pated port should not be the sole basis for in-validating a notice that is otherwise in accord-ance with the regulations. Also, the importer of an article of food is required to provide infor-mation about the grower of the article of food, if that information is known to the importer at the time that prior notice is being provided in accordance with the regulations. This provi-sion only requires the importer to provide any information he has in his possession at the time that prior notice is being provided. The Secretary shall closely coordinate this prior notice regulation with similar notifications that are required by the U.S. Customs Service with the goal of minimizing or eliminating unnec-essary, multiple or redundant notifications.

BEST PHARMACEUTICALS FOR CHILDREN ACT

SPEECH OF
HON. BART STUPAK
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Tuesday, December 18, 2001

Mr. STUPAK. Mr. Speaker, I rise tonight to urge Members to vote against the pediatric ex-clusivity bill, S. 1789. It is the product of a flawed negotia-tive process, a flawed legisla-tive process, and a flawed regulatory process which was instituted back in 1997. First approved in 1997, pediatric exclusivity granted drug companies an extra six-month extension on their patent if they would conduct a study to determine what the effects were on children. The FDA sends a written re-quest for a pediatric study to the drug com-pany. Upon completion of the study, FDA grants a six month extension of the patent mo-nopoly—the "pediatric exclusivity"—which the drug companies then use as a marketing tool to promote and increase the drug's sales.

What I find horrifying is the grant of exclu-sivity takes place after the drug company does its study but before anyone knows what is in-cluded in the results of the study. Nothing is said to the general public—which includes par-ents and pediatricians—about the serious adverse effects or dos-age requirements. Under S. 1789, there is no requirement to change the labeling on the drug to reflect the changes that may be need-ed when the drug is dispensed to young peo-ple. There is no label to tell doctors, patients, and their families the proper dosage, or how to dispense or use the drug.

My argument has always been this: before you grant pediatric exclusivity to a pharma-ceutical company and before this exclusivity is then marketed as being FDA approved for pe-diatric use, shouldn't you at least know what is the effect of the drug on young people?

Under current law—and this bill would extend current law after the study is completed, exclusivity is granted, but whether the drug helps or hurts young people remains a secret and is not disclosed to the doctors, patients, and their families for an average of 9 months. Shouldn't this information get out to these people before they ingest this medication?

I have a chart, which I have used on the floor before. It highlights the problems with S. 1789, which does not require labeling changes until 11 months after the drug is being used in the pediatric population. How many of you would give your child a drug and not know whether it helps or harms your child until 11 months later?

There have been 33 drugs granted pediatric exclusivity. Only 20 have been re-labeled to reflect the results of the pediatric study, and even those label changes have taken an aver-age of 9 months.

For 9 months, doctors, patients, and their families have no idea if the child is receiving the proper dosage or even if the drug is really safe!

Now why can't doctors, patients, and their families know this information before the grant of pediatric exclusivity is given? I was not al-lowed a chance to offer my amendment before the full House. My amendment is very simple—

For the love of me, I cannot understand why the majority does not want doctors, patients, and their families to know the effect of drugs may have on children!

What is the proper dosage? What is the effi-cacy? What is the safety level for our children?

For the love of me, I cannot understand why the majority does not want doctors, patients, and their families to know the effect of drugs may have on children!

Mr. NETHERCUTT. Mr. Speaker, the recent published reports about the planting of false evidence by biologist with the United States Forest Service and the United States Fish and Wildlife Service adds another alarm to this issue.

An internal Forest Service investigation has found that the science of the habitat study had been skewed by seven government officials: three U.S. Forest Service employees, two U.S. Fish and Wildlife Service officials and two em-ployees of the Washington Department of Fish and Wildlife.

These officials, according to published re-port, planted three separate samples of Can-adian lynx hair on rubbing posts used to identify existence of the creatures in the two national forests. Had the deception not been discovered, the government likely would have banned many forms of recreation and use of natural resources in the Gifford Pinchot Na-tional Forest and Wenatchee National Forest in Washington State. The restrictions would have had a real-life devastating impact on the economy of Washington State.

Today I join with many of my colleagues in demanding that these employees, upon evi-dence of their guilt is established, be imme-diately terminated. It is unacceptable that these employees have simply been counseled for their planting of evidence. Federal employ-ees should be held accountable for their ac-tions—period.

Further, I support a complete review of the lynx study as well as a review of any other projects on which these employees may have worked. The integrity of these agencies and our future efforts to protect threatened and en-dangered species depends on these reviews. As a member of the Interior Appropriations Subcommittee, I intend to make sure that this kind of activity never happens again and that the agencies involved are not perpetrating a fraud on the American people. That is my highest responsibility.
UNITED STATES SECURITY ACT

HON. JERRY F. COSTELLO
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. COSTELLO. Mr. Speaker, I rise today in support of the Democratic Caucus’ Homeland Security bill, the United States Security Act (USA Act).

This legislation is a collaborative effort crafted by my democratic colleagues on the Homeland Security Task Force. I was honored to have served as the vice chair of the Transportation Security task force with my friend, Bob Borski, who chaired the task force.

The USA Act addresses funding needs to improve our homeland security in the following areas: public health, transportation, physical and informational infrastructure, law enforcement and the military. As the attacks of the 11th clearly and unfortunately demonstrated, our nation is vulnerable to attack. This bill goes a long way to minimize these vulnerabilities.

In the past five years—and prior to the 11th—there have been international events which highlighted potential weaknesses in our transportation systems. In Tokyo, Japan, individuals caused harm by releasing sarin gas in the subway system. Despite the USGS Cole was attacked in a seaport that, although in Yemen, was considered safe. While these attacks occurred overseas, they could have taken place here in the States.

With the passage of the Aviation Security Act earlier this year, significant improvements to aviation security were mandated. However, other modes of transportation could still be susceptible to attack. This legislation authorizes funds to secure bridges, tunnels, dams, seaports, rail, and public transit.

Specifically, the bill provides $3.6 billion to strengthen bridge and tunnel structures, improve inspection facilities and the inspection of Hazmat materials on highways, supply the traveling public with real-time information about availability roads and bridges if terrorist attacks were to occur again, and improve security for locks and dams. It also provides $992 million to enhance security at our seaports by increasing coast guard personnel, establishing a sea marshal program, requiring transponders for foreign vessels in U.S. waters, and screening ship cargo by x-ray. To improve security on transit systems, $3.2 billion is authorized. Funds would be used to hire additional security personnel, improve communications and refine mass transit evacuation plans. With the appropriation of funds, the security of our transportation systems will markedly improve.

The USA Act also authorizes funds to strengthen communities responses to emergency incidents. This is done by increasing the number of firefighters, providing grants to communities and first responders and improving technology so that important information can be more readily shared between local, state and federal governments. Our nation’s first responders are an integral component in response to a terrorist attack, and we must ensure that they are well prepared.

In addition, the bill also takes major steps towards improving the preparedness of the military to effectively fight terrorism and preventing the proliferation of weapons of mass destruction. We have the best military in the world; however, the war on terrorism is unlike any we’ve ever fought, and enhancement of current training is important.

Mr. Speaker, I believe that we have produced a good bill. This legislation addresses many real needs in enhancing the security of the United States. I urge my colleagues to join me in support of the legislation.

HONORING THE DEDICATED SERVICE OF DANIEL HARTER

HON. BART GORDON
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. GORDON. Mr. Speaker, I rise today to bid farewell to Daniel Harter, an intern with my office. Daniel has provided a unique perspective along with legal expertise as a member of my staff for the past three months, and became an invaluable resource.

Daniel started with me shortly after completing law school, wanting to learn as much as possible about the workings and intricacies of Capitol Hill. Despite being confronted with challenges and pressures most would fold under, Daniel persevered and became a valued part of my Washington, DC, office.

Like so many capable and hard working young congressional staff members, Daniel is moving on to work as an attorney. Although my staff and I are saddened to see him leave, Daniel’s commitment to the legal process, his passion for public service, and his vigorous pursuit of perfection will serve his clients and his profession well.

Daniel tackled every task head on, from helping with day-to-day operations, to aiding with the daunting legislation and constituent demands of post-September 11 life on the Hill. His contribution to our office and his work for the people of Middle Tennessee will be missed.

U.S. HAS LONG TRADITION OF HELPING MUSLIMS, AS SHOWN BY 1952 EMERGENCY ASSISTANCE TO NEARLY 4,000 MECCA PILGRIMS

HON. PAUL E. KANJORSKI
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. KANJORSKI. Mr. Speaker, I rise today to call the attention of the House of Representatives to the fact that our nation has a long history of helping Muslims. While we are familiar with the actions America has taken in recent years to intervene for the benefit of Muslims in Somalia, Bosnia and Kosovo, among numerous other locations around the world, America is hardly new to coming to the aid of people of the Islamic faith.

In particular, I would like to call the attention of the House to an instance brought to my attention by an alert constituent, Mr. Leonard Mulcahy for making sure that America’s assistance to the Muslim pilgrims in 1952 is not forgotten. Despite our imperfect history, Americans can be proud of ours a generous and tolerant nation, and I believe the fact that we provided this type of assistance to thousands of Muslims nearly half a century ago helps to illustrate that fact.

FEDERAL LEGISLATION TO PROTECT THE VOTING RIGHTS OF ACTIVE DUTY MILITARY MEMBERS WHOSE HOME OF RESIDENCE IS AMERICAN SAMOA

HON. ENI F.H. FALEOMAVAEGA
OF AMERICAN SAMOA
IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. FALEOMAVAEGA. Mr. Speaker, I rise today to introduce federal legislation to protect the voting rights of active duty military members whose home of residence is American Samoa.

Since 1977, active-duty service members serving overseas or on the United States mainland have been excluded from fully participating and voting in both general and runoff Federal elections in American Samoa due to several factors, including local law that requires active duty military members to register in person, limited air and mail service between the U.S. mainland and American Samoa, and delays in the preparation of new ballots in the case of runoff elections.

However, under the provisions of 42 U.S.C., 1973ff-1, Federal law states that:

Each State shall—

1. permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special primary, or runoff elections for Federal office;

2. permit overseas voters to use Federal write-in absentee ballots . . . in general elections for Federal office;”
Mr. OWENS. Mr. Speaker, because I had to return to my district to handle very urgent business concerns, I was unable to be present for the roll call vote on roll call votes 505 and 508. On roll call votes 506, 507 and 509, I would have voted “nay”.

O H N. N I C K J. R AHALL I I
O F W EST V IRGINIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. RAHALL. Mr. Speaker, the United States is an economic powerhouse. We work hard to keep our economy growing and to maintain a high standard of living for the people who reside here. Yet we have a drain on the economy estimated to be $137 billion annually, a drain that goes unchecked and relatively unpublicized because it is not a “glamorous topic.” This drain is spreading, continually invading our natural spaces and crowding out our native flora and fauna.

In this regard, I am referring to harmful non-native species, invasive species; an issue which is not yet fully in the public’s eye. Even if a person has little concern with native fish and wildlife and the habitats they live in, even if that person resides in a city where the major wildlife is found only in alleys, the fact remains that invasive species are a drain on our economy. Included in the $137 billion figure I referred to earlier are the negative impacts on agricultural production, control costs, and costs in lost land and water resources and uses. This number is too large to ignore, particularly when trends suggest that the number will only go up over time.

For example, my home State of West Virginia is a relatively small in terms of land mass, but here are only a few of the impacts felt from harmful nonnative species:

The balsam fir tree, on the state list of rare plants, is being infected by a small insect, the balsam wooly adelgid, which sucks the sap, killing the tree. This tree is a unique species for the State, and unless drastic measures are taken, it will be completely wiped out by this insect.

Shale barrens, one of the most unique natural plant habitats in West Virginia, have been invaded by many non-native species over the years, but two of the most problematic are spotted knapweed and barren broomgrass. These plants out-compete native species and slowly eradicate them from these unique ecosystems.

In a continuation of the plight of the Great Lakes, the zebra mussel has found its way to West Virginia. So far, the zebra mussel is responsible for the federal listing of five species of mussel in the Ohio River, not to mention economic damage from its clogging of water pipes.

These are only three of the over 150 harmful non-natives that currently affect West Virginia. In my view, we have an obligation to our native species to protect, conserve and restore them from the introduction of harmful invasive species.

For these reasons, today I along with the gentleman from Maryland, WAYNE GILCHREST, and the gentleman from Guam, ROBERT UNDERWOOD, are introducing a bill to protect, conserve and restore our native fish, wildlife and their habitats by addressing the threat of these space invaders, harmful invasive species. Maryland, for example, has a nutria problem, too many nutria, and the veined rapa whelk, both of which I know Mr. Gilchrest has great concern with. Mr. Underwood has chosen to be an original cosponsor because of the enormous impacts the brown tree snake has on Guam, its power lines and native bird species.

The Species Protection and Conservation of the Environment Act, or SPACE Act, would provide the missing link in existing efforts to combat the pernicious and destructive space invasion of some of our most valuable natural areas by:

1. Providing incentive money to States to write State-wide assessments to study exactly where their native species are being threatened by harmful nonnative species;
2. Providing incentives for projects to implement the State assessments;
3. Encouraging the formation of partnerships among the Federal government and non-Federal land and water owners and managers;
4. Addressing harmful nonnative species’ migratory pathways;
5. Implementing specific recommendations of the National Strategy written by the National Invasive Species Council;
6. Creating a Federal-level rapid response capability; and
7. Tasking the National Invasive Species Council to develop standard monitoring requirements for projects combating harmful nonnative species.

Using a two-pronged approach, the SPACE Act would provide resources to States, territories and U.S. territories, including Indian Tribes, to address real problems and real solutions. The first prong is a grant program to provide resources to States, territories and tribes to develop assessments to control their harmful nonnative species. Participation in the program would be voluntary, but once this bill becomes law we believe that all States, territories and tribes will want to take advantage of this opportunity and the benefits it can bring to them, aiding them in the organization, prioritizing and specific actions with regards to their harmful non-native species problems and allowing them to apply for what the bill refers to as Aldo Leopold Grants. Technical assistance would also be available to the States, territories and tribes through the National Invasive Species Council to ensure that all assessments would be effective and include the recommendations of the Council’s overarching Management Plan.

The second prong is implementing the assessments through what would be known as Aldo Leopold Native Heritage Grant Program, which would be available on a 75% federal, 25% non-federal cost sharing basis. Through a variety of partnerships land and water owners and managers would be eligible to receive grants administered by the Secretary of the Interior. The approved applications would be as a guide for developing projects with partners, including Department of Interior and Forest Service lands, working together to control or eradicate harmful nonnative species on the lands and waters under their governance. With the assessment as the foundation for all projects, this legislation would encourage addressing all problems at the ecosystem level and including all land and water owners. To support the use of innovative methods and technologies, grants would be available on an 85% federal, 15% non-federal basis if new techniques are used. Reporting and monitoring requirements are mandated by the grant, allowing for the creation of a database which would track the methods and results of
leader—Reverend William Holt Hargrave. For more than 25 years, Reverend Hargrave served with distinction as the Pastor of the Ebenezer Baptist Church in Englewood, New Jersey. As a former Mayor of Englewood, I have had a wonderful opportunity to see him lead his congregation, and to experience his warm and kind heart.

The members of the Ebenezer Baptist Church are some of the most patriotic and spiritually uplifting people that I have ever had the pleasure of knowing. The congregation is filled with decent, honest, God-loving people who have a tremendous sense of community. Certainly, Reverend Hargrave’s leadership has had a tremendous impact on all of their lives.

As a voice of comfort and reason, Reverend Hargrave committed himself to the church and provided guidance and wisdom to those in his congregation and community. Anyone who has ever known Reverend Hargrave knows full well that his heart is filled with love, compassion, and faith. His presence always puts everyone at ease.

I wish Reverend Hargrave and his family all the best. We all thank him for his service and commitment to the Ebenezer Baptist Church and all the people of the great and good city of Englewood.

COMMEMORATING THE CENTENNIAL ANNIVERSARY OF THE 4-H CLUB

HON. BILL SHUSTER
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. SHUSTER. Mr. Speaker, I rise today to honor the centennial anniversary of one of America’s foremost youth organizations, the 4-H Club. In February, the 4-H Club will celebrate their centennial by holding a “National Conversation on Youth Development in the 21st Century,” the results of which will be reported to the President and Congress.

Since its founding in 1902, the National 4-H Club has helped in the education and development of our nation’s youth. While 4-H started agricultural in nature, it has since evolved to include a variety of different educational programs for children in rural as well as urban areas, ranging from environmental preservation to career exploration and workforce preparation.

I congratulate the 4-H Clubs of Pennsylvania on their commitment to our nation’s leaders of tomorrow. The last 100 years have proven the necessity for the 4-H Club and other similar educational organizations, and I wish for their continued success for many years to come.

TRIBUTE TO DAN RAMIREZ

HON. SUE WILKINS MYRICK
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mrs. MYRICK. Mr. Speaker, there are a lot of good things going on in our communities that you don’t necessarily hear about in the news. Recently, a friend in Charlotte, Dan Ramirez, went above and beyond and the call of duty to help a young man, dying of leukemia, get home to his family. Greyban Saenz, a 24 year old native of Honduras, wanted to be with his family. The Buddy Kemp Cancer Caring House in Charlotte contacted Dan the Monday before Thanksgiving to see if there was anything that he could do to help. Dan didn’t think twice. He jumped right in and found an affordable flight and someone to accompany Greyban on that flight. He worked through Thanksgiving, and got Greyban a flight, met him at the airport, made sure he was safely on the plane, and he even translated the doctor’s discharge papers into Spanish. Dan did all this for a man he had only known for 5 days. Greyban flew home to his family the Saturday morning after Thanksgiving. Dan later said that as sick as Greyban was, he was animated and excited that morning. Glad to going home. I’m thankful for people like Dan Ramirez who go the extra mile to help someone in need. It’s people like that make America strong.

TRIBUTE TO CREDIT UNIONS: ASSISTANCE TO AFFECTED BY FIGHT AGAINST TERRORISM

HON. WALTER B. JONES
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. JONES of North Carolina. Mr. Speaker, in the aftermath of the September 11 terrorist attacks, many of our financial institutions have gone the extra mile to be of assistance to those affected by the incidents and their aftermath.

I rise today to pay particular tribute to the CEOs and volunteer board members of North Carolina credit unions. Representatives of those credit unions, and of the North Carolina Credit Union League and CUNA, recently made the trip to Washington to visit my office not long after September 11. While they had thought of canceling the trip out of respect for the larger issues stemming from the tragedy, they instead came to offer their support to this Congress. They also pledged that their credit unions will remain committed to serving the changing financial needs of their members and the citizens of North Carolina during this period of economic uncertainty.

For example, Mr. Speaker, the 3rd District of North Carolina is home to three major military bases—Camp Lejuene, Cherry Point Marine Corps Air Station, and Seymour Johnson Air Force Base—all of which are served by a credit union. These credit union employees help military personnel and their families with the money challenges that they face during these difficult times, and have committed to safeguarding the financial well being of our service men and women deployed overseas.

For instance, the staff of First Flight Federal Credit Union in Havelock, NC, has been working with the base legal department at the Marine Corps Air Station at Cherry Point to ensure that family members have the appropriate authority to conduct financial transactions on behalf of the service member while they are deployed.

Another example is the Seymour Johnson Federal Credit Union in Goldsboro, NC, which has established a call center hotline to provide
support and answer questions from family members whose spouses have been deployed.

Mr. Speaker, time does not permit me to list all the great things that these credit unions are doing to assist their members—both military and civilian during these difficult economic times. But their efforts deserve our praise and our thanks.

I urge my colleagues to speak with the credit unions and other financial institutions in their own districts to let them know all the ways they are helping their customers during this time of need. Through the efforts these financial institutions, and others, we will not only weather this storm but we will be economically stronger for it.

REMARKS BY RABBI MICHAEL MILLER
HON. ANTHONY D. WEINER
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. WEINER. Mr. Speaker, this past month, the Queens community of Belle Harbor was shaken by the crash of American Airlines flight 587. As many of you know, this neighborhood had already been hit particularly hard by the attacks of September 11, as dozens of Belle Harbor residents lost their lives to the attacks, many of them firefighters. A number of us have struggled to find the appropriate words to articulate our emotions during these times of unfathomable loss. At the memorial service for flight 587 the Sunday after the crash, Rabbi Michael Miller managed to find those words. I wanted to share his eloquence with my colleagues, and that is why I ask unanimous consent that these remarks be inserted into the RECORD. I hope that my colleagues will find them as comforting as I have.

REMARKS AT A PRAYER SERVICE FOR THE VICTIMS OF THE CRASH OF AMERICAN AIRLINES #587, SUNDAY, NOVEMBER 18, 2001, 2:00 PM, RIDS PARK, QUEENS, NY

In our Jewish tradition it is proper to express one’s hosts. And it is within that spirit that I thank Mayor Giuliani for convening this service, and for his demonstration of compassion. I also extend my gratitude to Governor Pataki, Senators Schumer and Clinton, and Congressman Anthony Weiner during these difficult times.

(Psalm 121)

Last Monday morning, hundreds of people, men, women and children, the young and the old, woke up before dawn and rose from their beds. A trip was to be taken to the Dominican Republic.

In apartments, houses and hotel rooms last Monday morning, there was the predictable last minute rush. The checklist of things to take. Packing that extra shirt, a pair of stockings, a gift for family in Santo Domingo.

And no doubt, last Monday morning, there was the presence of that anxiety which accompanies travel. Tickets. Passports. Would the car service come on time? Will we get to the airport within minutes to spare? Do we have too much baggage? Too little?

Inevitably, last Monday morning, or maybe it was last Sunday night, there was the farewell. Fathers, mothers, wives, husbands; sons, daughters; sisters, brothers; grandparents, grandfathers; friends, lovers.

The farewell: a kiss; an embrace, A shake of the hand, or a wave. A “so long” over the phone, “have a good trip.”

A farewell. But not a goodbye.

And for those in Belle Harbor, not even that.

And then... And then tragedy.

Close to 300 individuals, some as families, some as couples, some as friends, some alone. Gone.

Tragedy, finality, shock and tears.


In the second chapter of the Book of Lamentations, Eicha, we read: “Horid, chanucha, dim’a yomam volayla.” Shed tears like a river, day and night.

What binds us together today, as what has bound us together at the Ramada, at the Javits Center, and even while at home, are the tears. A river of tears, day and night.

Tears are not shed in English. Tears are not shed in Spanish. Tears are not shed in Hebrew. The tears themselves are a common language. Crying itself is a language of grief.

We shed rivers of tears for the children whose lives had been so fresh, whose promise had been so abounding, whose future had been so bright.

We shed rivers of tears for the mothers and fathers, wives and husbands, who had longed to watch their children grow, who had worked so hard to make a better life, who had given so much love to each other and to so many.

We shed rivers of tears for brothers and sisters, friends and lovers whose companionship had been so sustaining.

We shed rivers of tears, day and night, for never having the opportunity to share a last hug, a kiss, a smile; to say goodbye; I’m sorry; I love you.

We shed rivers of tears, day and night, and we pray.

As the liturgy for the closing Ne’lalah prayers of the Jewish Day of Atonement, Yom Kippur, reads: “Yehi ratzon milfanenecha shomaiya kol bechiyot shetasim dimoteinu benochda h’iyyot.” May it be Your will, You who hears the sound of weeping, That You place our tears in Your flask for safe keeping.

And we pray, O Lord, that the waters of our tears, like the incoming tide, draw the souls of these innocents close to You.

Lord, protect them, guard them, watch over them, and bless them—now and for eternity.—“Eicha shel yom yom”

May their repose be peace.

And let us say—Amen.

INTRODUCTION OF THE MEDICARE SUBSTITUTE ADULT DAY CARE SERVICES ACT

HON. GERALD D. KLECZKA
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. KLECZKA. Mr. Speaker, today Mr. STARK from California and I are introducing the Medicare Substitute Adult Day Care Services Act. This critical legislation would expand home health rehabilitation options for Medicare beneficiaries who would need to have a certification from a doctor for skilled therapy in the home.

This legislation simply recognizes that adult day care facilities can provide the same health services with the added benefits of social interaction, activities, meals, and a therapeutic environment, in which a group of trained professionals can treat, monitor and support Medicare beneficiaries who would otherwise be monitored at home by a single caregiver. Rehabilitation is enhanced by such comprehensive care.

Not only does ABC aid in the rehabilitation of the patient, it provides an added benefit to the family caregiver. When a beneficiary receives the Medicare home health benefit in the home, the provider does not remain there all day. They provide the service they are paid for and leave to treat their next patient.

Because many frail seniors cannot be left alone for long periods of time, this prevents the caregiver from having a respite or being able to maintain employment outside of the home. If the senior could utilize ABC services, they would receive supervised care for the whole day and the caregiver would have the flexibility to maintain a job and/or be able to leave the home for longer periods of time.

Adult day care centers are proving to be effective, and often preferable, alternatives to complete confinement in the home. I urge my colleagues to cosponsor and support this important legislation.

PROTECTING OUR COMMUNITIES FROM PREDATORY LENDING PRACTICES ACT

HON. MAXINE WATERS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Ms. WATERS. Mr. Speaker, today I rise to introduce the “Protecting Our Communities
This problem is getting worse, not better. According to an ACORN study, Separate and Unequal 2001: Predatory Lending in America, which was released last month, African-American homeowners who refinanced in the Los Angeles area were 2.5 times more likely to receive a subprime loan than white homeowners who refinanced. Similarly, African-American homeowners were likely to receive a subprime refinance loan. And this is not merely a function of income: Upper-income African-Americans and middle-income African-Americans were more likely to receive a subprime loan than low-income white homeowners. Similarly, African-Americans and Latinos were also more likely to receive a subprime refinance loan than low-income whites.

We must continue to scrutinize predatory lending practices and protect American communities, which are easy targets for the predatory lending industry. Congress and federal agencies must recommit our efforts to ensure that greater opportunity to credit access means an increase in quality of life, not an increase in predatory lending and foreclosure. I will continue fighting on the federal level until predatory lending is eliminated and the term will only have relevance in history books. I encourage my colleagues to support my legislation and look forward to working with you to eliminate this blight from our communities.

TRIBUTE TO K. ROSS CHILDS ON THE OCCASION OF HIS RETIREMENT AS COUNTY ADMINISTRATOR FOR GRAND TRAVERSE COUNTY, MICHIGAN

HON. BART STUPAK
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. STUPAK. Mr. Speaker, I rise tonight to pay tribute to a dedicated public servant, K. Ross Childs, who is retiring after serving as County Administrator for Grand Traverse County, Michigan, since 1976. Ross will be honored on January 5 at a special celebration in Traverse City by the many friends and colleagues he has touched in his long career.

A review of Ross’ professional resume reveals an individual who acquired a broad base of skills that ably suited him for the job of county administrator. A Canadian citizen by birth, he did his undergraduate studies in the community of Owen Sound, Ontario. He came to the U.S. in 1955 to earn an engineering degree at the University of Michigan, and his postgraduate studies included courses in engineering, business administration and public administration at U. of M. and Detroit’s Wayne State University.

This resume also reveals an administrator who recognized that being in charge of a diverse and growing county required close coordination with local, public, and private organizations. At various times Ross has served as a member or officer of, among others, the Michigan Leadership Institute, the Grand Traverse Commons Redevelopment Corporation, Leadership Grand Traverse, the Traverse Bay Economic Development Authority, the Traverse City Visitors Bureau, the Traverse City Area Chamber of Commerce, National City Bank, Blue Cross Blue Shield, and Munson Medical Center. Ross has also been extremely active in Rotary International and will serve as district governor for 2002–2003.

But, Mr. Speaker, when I worked with Ross Childs, I wasn’t working with a resume or a list of titles. I worked with a dedicated public servant, a man who was a passionate advocate for his Grand Traverse County. Whether he was laboring on behalf of an individual or for the county’s largest employer, Munson Healthcare.

I have worked with Ross on numerous issues, including funding for a new airport terminal at Cherry Capital Airport, funding for roads in the county, and projects at the Coast Guard air station in Traverse City. In between dealing with major projects or problems, I always knew that when the National Association of Counties met in Washington, D.C., Ross would arrive with a list of county issues for me to work on.

Ross and his wife Helen have two daughters, Mary and Susan. As a change from our usual meetings in Washington, it was a pleasure for my staff and me to be able to show Ross, Helen and Susan some of the sights and sounds of this great city when they came here on a family visit.

That doesn’t mean we haven’t had our differences, Mr. Speaker. I ask you to recall that Ross in an alumni of the University of Michigan, a school he not only attended but represented on the hockey rink. Waving those Michigan school colors of maize and blue in front of a Michigan State supporter like me is like waving the proverbial red flag in front of a bull.

Mr. Speaker, let me add a personal note of appreciation, Ross and Helen lost their son Scott, a hockey player like his father, in an auto accident some years ago. When my own son BJ died last year, Ross was there at the funeral to lend his support. We share a profound loss that never quite heals, and I will always remember and appreciate his true expression of sympathy and genuine concern.

So, Mr. Speaker, K. Ross Childs is giving up the reins of power in Grand Traverse County, and in one of his final acts as administrator he has helped hire and mentor Dennis Aloia, who comes from Marquette in the Upper Peninsula of Michigan. As a U.P. resident myself, I am pleased to see that Ross has learned what a great value and resource the U.P. can be for Grand Traverse County.

While Ross may be leaving his post as county administrator, he will remain active in northern Michigan as regional governor of Rotary, a organization to which he has been extremely dedicated for many years.

I ask you, Mr. Speaker, and our House colleagues to join me in congratulating this public servant on a job well done and in wishing Ross and Helen Childs the best in their retirement years.

CONGRATULATIONS TO MR. AND MRS. FLORENIO BACA
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. BACA. Mr. Speaker, it is my privilege to announce to you and to the rest of my esteemed colleagues, that on January 5, 2002,
Tribute to Dr. Brenda Davis, Outgoing President, Corona Chamber of Commerce

HON. KEN CALVERT
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. CALVERT. Mr. Speaker, I rise today to honor a woman whose dedication to the community and to the overall well-being of my hometown of Corona, CA, is exceptional. The City of Corona has been fortunate to have dynamic and dedicated business and community leaders who willingly and unselfishly serve their communities a better place to live and work. Dr. Brenda Davis is one of these individuals.

On January 5, 2002, Dr. Davis will be honored as the outgoing 2001 President of the Corona Chamber of Commerce. Currently Provost of the Norco Campus at Riverside Community College, Dr. Davis brings a wealth of talent to making the campus a better place to learn. She has worked with great enthusiasm, administration and supervision over her faculty and students. A person with passion and principles, who has strived to have a positive effect upon her local community, Dr. Davis’ leadership has been instrumental in strengthening the bonds between the cities of Corona and Norco, along with their business and educational communities.

Dr. Brenda Davis holds a Doctor of Education degree in Curriculum and Teaching, a Master of Education in Psychiatric Mental Health Nursing and Bachelor of Science in Nursing all from Teachers College, Columbia University in New York. Dr. Davis is recognized as a very effective administrator and has held several administrative positions at Riverside Community College, including Director, Department Chairperson of Nursing; Dean, Nursing Education; Dean, Grant and Contract Services.

Brenda’s tireless, engaged action has propelled the City of Corona forward in a positive and progressive manner. Her work to promote the businesses, schools and community organizations of the City of Corona make me proud to call her a fellow community member, American and friend. I know that all of Corona is grateful for her contribution to the betterment of the community and salute her as she departs. I look forward to continuing to work with her for the good of our community in the future.

ON INTRODUCING THE ANTI-TERRORISM CHARITY PROTECTION ACT

HON. STEVE ISRAEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. ISRAEL. Mr. Speaker, I rise today to introduce the Anti-Terrorism Charity Protection Act, a bill that will not only ensure that organizations supporting terrorism are denied the benefits of an American tax deduction, but will protect innocent citizens from donating to organizations that are misappropriating funds to support terrorism.

Mr. Speaker, since September 11th, we have learned a great deal about Osama bin Laden and the al Qaeda terrorist network. Bin Laden apparently is rich, with a personal fortune of over $300 million. In addition, a complex global financial network exists to supplement his personal fortune. Alarmingly, evidence suggests that organizations in the United States and abroad have been糊瞳 to themselves as charitable groups to help funnel funds to al Qaeda.

The President has already frozen the assets of the Wafa Humanitarian Organization, the Al Rashid Trust, the Makhtab al-Khidmat and the Society of Islamic Cooperation. These were groups that were supposedly charitable organizations, but were mere conduits for raising money for the treacherous acts of September 11th and other acts of terrorism around the world.

On December 3rd, the Administration froze the assets of the Holy Land Foundation for Relief and Development, a foundation based in Richardsown, Texas. According to a December 5th article in The New York Times:

Mr. Bush and Treasury Secretary Paul O’Neill said today that they believe many Muslims who contributed to the Holy Land Foundation did not know where their money was going. "Innocent donors who thought they were helping someone in need deserve protection from these scam artists." Mr. O’Neill said at the White House. The Treasury also announced action against the Al Aqsa Bank and the Belt al Mal Holdings Company, a bank that it described as "direct arms of Hamas.' '

I ask that the full text of the article follow my remarks.

It seems clear that the Holy Land Foundation for Relief and Development is an organization that serves as the fundraising arm of Hamas, which is responsible for hundreds, if not thousands, of terrorist deaths in Israel over the last several years, with a record of innocent young people in Jerusalem, Tel Aviv and Haifa.

I do not believe that the American people, especially American Muslims, are intentionally giving money to support terror. In fact, I am sure that the vast majority of contributors to this organization believed that their money was going to support the legitimate humanitarian concerns of Americans have about the situation in the Middle East.

The facts, however, indicate that these contributions were being used to finance bombs targeted at innocent civilians.

Mr. Speaker, Americans trust the IRS to determine what is and what is not a charity. If there is an organization that is designated by the IRS to allow contributions to be tax deductible, almost all of our citizens would automatically assume that the group was legitimate. The IRS does an excellent job applying its regulations very stringently. Unfortunately, according to the IRS, the Holy Land Foundation did receive these benefits.

Currently, the IRS by internal regulation denies charities affiliated with terrorism a tax deduction. This is all well and good, but the fact that this could be challenged in court. I believe that the IRS needs a stronger tool. I believe that this restriction must be in the law.

Finally, Mr. Speaker, during consideration of the Financial Anti-Terrorism Act, I introduced an amendment on this issue that Chairman Oxley, Mr. LAFALCE, and the Committee on Financial Services were gracious enough to accept, though it did not make it through conference. The amendment asked that Treasury study how terrorist organizations may use charities to fund their operations. I am gratified to see that the Department of the Treasury and Secretary O’Neill seem to be focusing on this issue and would encourage them to continue doing so.

Mr. Speaker, if we are going to win the War on Terrorism, we must fight the war on every front. The financial front is one important battleground and we must do everything we can to ensure that our soldiers—not only in Afghanistan behind rifles but here in America in front of computer screens—have the weapons they need to defend America.

[From the New York Times, Dec. 10, 2001]

Bush freezes assets of biggest U.S. Muslim charity, calling it a deadly terror group

By David E. Sanger and Judith Miller

WASHINGTON—President Bush significantly broadened his counterattack on terrorist groups today, freezing the assets of the largest Muslim charity in the United States.

Mr. Bush accused the charity of supporting Hamas, the Palestinian militant group that took responsibility for three suicide bombings in Israel over the weekend.

In a statement, Mr. Bush’s aides said the move was a strong demonstration of solidarity with Prime Minister Ariel Sharon of Israel, who has urged...
that Hamas be treated with the same severity as Al Qaeda’s terrorist network.

White House officials said they had planned to move against the charity and two banks that helped finance Hamas later this month, but sped up the action after the bombings, which killed 25 people and wounded almost 200, many of them teenagers.

Treuhaft said the charity was the Holy Land Foundation for Relief and Development, based in Richardson, Tex., had been under investigation since 1989.

In a statement the charity denied allegations that it provides financial support to terrorists. It said “the decision by the U.S. government to seize the charitable donations of Muslims during the holy month of Ramadan is an affront to millions of Muslim Americans.”

A senior official said the administration had delayed acting for fear of harming the F.B.I. investigation of the charity. Search warrants were executed today when federal officials seized documents at the charity headquarters and other offices.

International political considerations were also in play, other administration officials said. The House debated whether moving against Arab extremist groups could weaken the coalition Mr. Bush has assembled in the war on Afghanistan. “The bombings raise new questions of this considering,” a senior administration official said.

Speaking in the Rose Garden this morning, Mr. Bush appeared to side with Mr. Sharon in his characterization of Hamas. “Hamas is one of the deadliest terrorist organizations in the world today,” he said, adding that it “has obtained much of the money it pays for murder abroad right here in the United States.”

The statement was something of a turnaround on the administration. Its first list of terrorist groups subject to American action, released days after the Sept. 11 attacks, made no reference to Hamas. A second list released in October called Hamas and some 20 other militant groups terrorist organizations, but said few had assets in the United States.

It is difficult to assess how effective the administration’s new campaign will be in slowing Hamas. Officials said the group relied on American charities that solicit funds in many places around the country for tens of millions of dollars each year. Hamas has long said that the money goes to social causes, easing the suffering of Palestinians. The F.B.I. say they have evidence the money is siphoned to the organization’s terrorist arm.

The State Department says that Hamas also receives some funding from Iran, but even more from wealthy patrons in Saudi Arabia and Palestinian expatriates in the gulf. The success of the Bush administration’s crackdown will depend largely on its ability to persuade those countries to follow suit.

Mr. Bush and Treasury Secretary Paul O’Neill said today that they believe many Muslims who contributed to the Holy Land Foundation did not know where their money was going. “Innocent donors who thought they were helping someone in need deserve protection from these scam artists,” Mr. O’Neill said at the White House. The Treasury also announced action against the Al Aqsa Bank and the Beit al Mal Holdings Company, a bank that it described as “direct arms of Hamas.”

So far, 13 half a dozen banks in the United States have frozen $1.9 million of the Holy Land Foundation’s assets, Treasury officials said today.

In Hardvard, F.B.I. agents and local police officers stood guard outside the Holy Land Foundation offices as movers removed items such as file cabinets, office furniture and computers in accordance with President Bush’s order.

Movers using a tractor-trailer arrived with the seizure notice at about 8 a.m. and worked into the night.

Steven Emerson, an expert in Islamic terrorist networks, said that the United States should have known as early as 1993 that Hamas leaders were “meeting in America and using Holy Land Foundation as a conduit to raise money for terrorism, recruit support, and undermine the U.S.-sponsored peace process.”

RECOGNIZING THE ACHIEVEMENTS OF MESA

HON. HILDA L. SOLIS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001
MS. SOLIS. Mr. Speaker, I rise today to congratulate Mathematics, Engineering, Science Achievement (MESA) of the University of California for being selected as one of the five most innovative public programs in the country by Innovations in American Government, a project of the John F. Kennedy School of Government of Harvard University, the Ford Foundation, and the Council for Excellence in Government.

I have long supported MESA, which helps educationally disadvantaged students to excel in math and science. MESA encourages students to develop an academic path leading to high school graduation and baccalaureate degrees in math and science. Parents are encouraged to become involved and learn that college can be a reality for their children. In addition, MESA brings in industry representatives in science fields to introduce the students to science-based career options.

Eighty-five percent of MESA’s graduating high school seniors go on to college, compared to only fifty percent of California’s graduating high school seniors overall. Seven states have established programs based on California’s MESA model. Today, more than twelve percent of the nation’s historically underrepresented students who attain baccalaureate degrees in engineering are MESA students.

The innovations in American Government program identifies outstanding problem-solving and creativity in public sector programs. This year, 1,200 programs were nominated for the award. These programs underwent an extremely rigorous assessment process before Innovations determined its winners.

I applaud MESA on its accomplishments and wish the program continued success in helping California students succeed.

HIGHER EDUCATION RELIEF OPPORTUNITIES FOR STUDENTS
ACT OF 2001

SPEECH OF
HON. PATSY T. MINK
OF HAWAII
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001
Mrs. MINK of Hawaii. Mr. Speaker, I want to express my support for S. 1793, the HEROS Act, which will help provide relief from student loan deadlines and administrative requirements to victims and their families of the September 11 terrorist attacks, and for members of the military who are called up for active duty in response to those attacks. S. 1793 provides the Secretary of Education with the authority to delay or cancel student loans for members of the military. It will also allow students to receive temporary relief from certain administrative requirements. For such institutions, some administrative requirements may be rendered unreasonable to meet as a result of the September 11 attacks.

Congress will also have the opportunity to learn about the effectiveness of these waivers, as the Secretary will be required to report on the waivers granted and make recommendations for any statutory or regulatory changes that may help provide these students relief in the future.

As we all know, September 11 had a devastating impact on our Nation and our economy. The HEROS Act will provide crucial relief to those students who were victims of this horrible event, and will also protect the eligibility of students serving in the military. By helping military students remain eligible for student aid, we can help ensure that our next generation of leaders is properly prepared to face an increasingly interconnected global environment, and can help rebuild our nation and protect against future attacks. The HEROS Act is looking to the future, while helping those burdened by our recent past and I support S. 1793.

REGARDING MONITORING OF WEAPONS DEVELOPMENT IN IRAQ

SPEECH OF
HON. BARBARA LEE
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001
Ms. LEE. Mr. Speaker, I rise today in opposition to this resolution. I want to be very clear: I strongly support inspection of Iraqi weapons facilities. This resolution, however, is not the best way to accomplish that goal.

We clearly stand at a moment in history when we must reinvent our foreign policy to
meet new challenges. Renewed arms inspections of Iraq should be part of that new matrix, but smarter sanctions and humanitarian engagement must also be undertaken.

Engagement is crucial. We should work with our allies to forge a policy that strengthens the cause of peace and stability in the Middle East.

There are some who call for an invasion of Iraq. I am strongly opposed to such a step. Opposition to a United States assault on Iraq is found not only in the capitals of the Middle East but throughout much of the rest of the world as well.

International leaders such as United Nations Secretary General Kofi Annan and former South African President Nelson Mandela have strongly voiced their opposition to such an attack, arguing that the only lasting solutions lie in collective international efforts.

As Kofi Annan said earlier this month, “Any attempt or any decision to attack Iraq today will be unwise and could lead to a major escalation in the region.” President Mandela warned that bombing Iraq would be a disaster that would inject “chaos into international affairs.”

Therefore, I must oppose this resolution not because I oppose inspections but because I believe it is too inflammatory and will make inspections less likely, not more likely.

This is the wrong resolution at the wrong time. At this moment we face a crisis in the Middle East as the Israeli-Palestinian conflict threatens to spin out of control. That must be the epicenter of our concern right now. Yes, we want inspections, but this is not the best way to achieve them.

TERRORIST BOMBINGS CONVENTIONS IMPLEMENTATION ACT

SPEECH OF
HON. CAROLYN C. KILPATRICK
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Ms. KILPATRICK. Mr. Speaker, while I support the ratification and implementation of the International Conventions for the Suppression of Terrorist Bombings and the Suppression of the Financing of Terrorism in H.R. 3275, I cannot support the overall bill. I am concerned that bill includes controversial language that will jeopardize future enforcement of these Conventions.

I believe that the provision in title I that authorizes the imposition of the death penalty for the offenses set forth in section 102.2 is superfluous and unnecessary. Our experience with other nations, as it pertains to the U.S. death penalty, should guide our actions on the floor today. Courts in Canada and France have refused to extradite criminals to the United States, citing our continued insistence on the imposition of the death penalty. A South African Constitutional Court ruled that a suspect on trial in Manhattan in connection with the bombing of the American Embassy in Tanzania should not have been turned over to United States authorities without assurances that he would not face the death penalty.

At a time when we are seeking the cooperation of nations to bring international criminals to justice, it makes no sense to authorize this death penalty provision, which may, in fact, impede the extradition of criminals to U.S. jurisdiction. The administration acknowledges that capital punishment is not required to implement the Conventions. Yet, even while admitting that the provision is unnecessary to implement the Convention, the administration justifies the inclusion of this new death penalty provision by claiming that it simply tracks current law.

This justification is without merit. Under U.S. law, the death penalty is justified for its deterrent effect. Surely in this case there is no punitive or deterrent basis for the death penalty.

In this instance, those that the Conventions target are willing to commit suicide for their criminal causes. In this instance, it cannot be argued in good faith that fear of the death penalty will prevent terrorists from carrying out acts of terrorism.

TERRORIST BOMBINGS CONVENTION IMPLEMENTATION ACT OF 2001

SPEECH OF
HON. SHEILA JACKSON-LEE
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Ms. JACKSON-LEE of Texas. Mr. Speaker, the International Convention for the Suppression of Terrorist Bombings was initiated by the United States in the wake of the 1996 bombing of Khobar Towers in Saudi Arabia. It requires signatories to criminalize terrorist bombings aimed at public, governmental, or infrastructure facilities and to prosecute or extradite those responsible. The United States has not yet ratified the convention, which went into force in May of this year. The legislation before us, H.R. 3275, implements the International Convention for the Suppression of Terrorist Bombings.

Specifically, H.R. 3275 makes it a Federal crime to unlawfully deliver, place, discharge or detonate an explosive device, or to conspire or to attempt to do so, in a public place, public transportation system, or in a State or Federal facility. It provides penalties of up to life in prison, or death for perpetrators if the bombing resulted in fatalities, and also provides for the prosecution or extradition of perpetrators who commit crimes outside of the United States, but who are subsequently apprehended in this country.

Additionally, H.R. 3275 implements the International Convention for the Suppression of the Financing of Terrorism, which requires signatories to prosecute or extradite people who contribute to, or collect money for, terrorist groups.

It also makes it a Federal crime to directly or indirectly provide or collect funds to carry out, in full or in part, specific acts of terrorism. It also makes it a crime for any U.S. national or entity, both inside and outside the country, to conceal or disguise the nature, location or source of any funds provided or collected to carry out terrorist acts. It also provides for the prosecution or extradition of perpetrators who commit these crimes outside of the United States, but who are subsequently apprehended in the United States.

Finally, provisions in the bill make the crimes of terrorist bombings and terrorist financing “predicate offenses” under U.S. wiretap laws and included on the list of Federal crimes of terrorism.

Mr. Speaker, I fully support prompt ratification and implementation of the International Conventions for the Suppression of Terrorist Bombings and the Suppression of the Financing of Terrorism. However, I am concerned that H.R. 3275 includes controversial changes to U.S. domestic law that go well beyond those changes required to bring our laws into conformity with the requirements of those agreements.

Specifically, we must avoid the redundancy of ancillary provisions relating to the death penalty, wiretapping, money laundering, and RICO predicates. To this end, during the recent Judiciary Committee markup of this I joined my colleagues, Mr. SCOTT and Mr. DELAHUNT in their opposition to certain ancillary provisions of this bill in relation to treaty approval.

While I fully support the efforts of our law enforcement professionals in light of the recent attacks against this Nation, I am concerned that prosecutors should be limited in the extent to which they can cast the widest possible net, often to the great detriment of those who were not initially targeted by Congress when the legislation was enacted.

Many of these provisions have already been included in the anti-terrorist bill which has since been passed into law on October 26, 2001. Therefore, to include the same provisions in H.R. 3275 would be redundant and would serve no purpose. As a matter of fact, Mr. Chertoff of the Department of Justice stated recently that these provisions are not even relevant to the implementation of the treaties.

Moreover, most party states to the Conventions do not tolerate the death penalty, but are still in compliance with the treaty. This could have a profound effect on extradition and result in an inordinate burden on our criminal justice system.

These necessary changes could have easily been facilitated on the floor by allowing amendments, and I regret that we were not allowed to address these issues due to the suspensions calendar.

Despite these concerns, it is in our best interest, as well as in the interest of the international community, that we comply with the treaty. Our message that we will not tolerate terrorism in any way, shape, or form, must be strong and clear.

I believe that this bill fulfills this obligation.
billion funding level represents an 11 percent increase above last year’s budget. I am especially pleased that this legislation would provide a 15 percent increase for education funding and 15 percent increase or $23.3 billion for biomedical research conducted through the National Institutes of Health (NIH).

With regard to education, I am pleased that this bill would dramatically increase funding, for education programs by providing $6.8 billion or 15 percent over FY 2001 levels and $3.9 billion more than the President’s request. Over the last five years, the average annual rate of new educational investment has been 13 percent. This legislation would increase the education investment to 17 percent—the highest in a decade. While the bill does not include support for the class size reduction initiative, I am pleased that the program was redirected into teacher quality state grants. Under this legislation, these state grants will receive a $2.9 billion increase to help schools reduce class size and provide professional development for teachers and other school employees. Additionally, the committee’s inclusion of $975 million for the President’s Reading First initiative will enable schools to bring proven, research-based reading programs to students in the critical early learning years. The $1 billion increase for 21st Century After School Centers will provide students with a quality after school programs. And for students continuing on to higher education, the increase in the Pell Grant maximum grant to $4,000 will enable low-income students to meet today’s ever-increasing educational costs. Additionally, the bill wisely rejects proposed enrollment cuts to Head Start, preventing possible cuts for as many as 2,500 children from this critically important program. I am pleased that the committee included a 18 percent increase in the federal share of special education costs. This agreement provides $8.7 billion for educating children with disabilities, $1.3 billion more than this year’s funding. In 1975, Congress passed Public Law 94-142, the landmark law for special education. The 2001 budget includes increased funding for IDEA schools with average of just $833. While I believe the funding increase in this legislation represents a step in the right direction, I believe we must abide by our commitment to fund 40 percent of IDEA costs, and I am hopeful that we will consider greater funding increases in subsequent years.

While the overall bill is a good one, there are many important programs that were level-funded or eliminated under this legislation. To that end, I look forward to working with my colleagues to secure funding for these programs at adequate levels, or in the case of school modernization, to work for its reinstatement. In total, though, this bill makes important investments in education, and will provide America’s children with the resources they need to succeed and be productive members of our society.

As a Co-Chair of the Congressional Bio- Medical Research Caucus, I am pleased that this legislation provides $23.3 billion for the National Institutes of Health (NIH), an increase of 15 percent or $3 billion more than last year’s budget. This $23.3 billion NIH budget is our fourth payment to double the NIH’s budget over five years. Earlier this year, I organized two bipartisan letters in support of a $3.4 billion increase for the NIH. I am a strong supporter of maximizing federal funding for biomedical research through the NIH. I believe that investing in biomedical research is fiscally responsible. Today, only one in three meritorious, peer-reviewed grants which have been judged to be scientifically valid will be funded by the NIH. This higher budget will help save lives and provide new treatments for such diseases as cancer, heart disease, diabetes, Alzheimer’s, and AIDS. Much of this NIH-directed research will be conducted at the teaching hospitals at the Texas Medical Center. In 2000, the Texas Medical Center received $289 million in grants from the NIH.

In addition, I support the $4.3 billion budget for the Centers for Disease Control, a $431 million increase above last year’s budget. The CDC is critically important to monitoring our public health and fighting disease. Of this $4.3 billion CDC budget, $1.1 billion will be provided to address HIV/AIDS programs and to combat tuberculosis. This CDC budget also provides $627 million to provide immunizations to low-income children. In Texas, there are many children who are not currently receiving the immunizations that they need to stay healthy. This CDC program will help to monitor and encourage low-income families to get the immunizations that will save children’s lives and reduce health care costs. Investing in our children is a goal which we all share.

I also want to highlight that this agreement provides $285 million for pediatric graduate medical education (GME) programs. As the representative for Texas Children’s Hospital (TCH), which is one of the nation’s independent pediatric training facilities, I am pleased that this bill fully funds this critically important program. This budget is $50 million more than last year’s budget and is the same level which has been authorized for this program. Under current law, independent children’s hospitals such as TCH can only receive Medicare GME funding for those patients with ESRD. This legislation will provide Medicare benefits. Since many of TCH’s patients are not Medicare eligible, current GME programs fall to help pay for the cost of training our nation’s pediatricians. Last year, TCH received approximately $8 million from this program, which is more than half of the cost of training physicians and fellows at TCH. This bill is an important step in the right direction to ensure that all hospitals receive assistance to help defray the cost of training physicians.

I am also pleased that this agreement includes funding for several projects which I have spearheaded. This bill provides $440,000 for the Center for Research on Minority Health (CRMH) at the University of Texas M.D. Anderson Cancer Center. This $440,000 budget is the third installment in my effort to examine cancer rates among minority and underserved populations. The CRMH is a comprehensive cancer control program to address cancer risks among minority and medically underserved populations. I urge my colleagues to support this legislation and vote for this important health, education, and labor funding measure.

Mrs. LOWEY. Mr. Speaker, I rise today in strong support of the conference report and urge its adoption. I want to thank the Ranking Member, Mr. Obey, for yielding me this time and for his strong and forceful leadership not only on this bill, but also for the American people.

I want to recognize the Chairman of our Subcommittee, Mr. REGULA. He has been an absolute pleasure to work with and has gone to great lengths to craft this bill in a bipartisan manner and that the concerns of Members on both sides of the aisle were considered.

Mr. Speaker, this conference report provides tremendous increases for health, education, and worker safety and training. We’ve been able to follow up on the promises we made on this floor last week when we passed the ESEA conference report in this bill. Increases in Title I funding will ensure that our most disadvantaged children have access to a quality education. Pell Grants will reach a maximum of $4,000 per student, giving low-income students a helping hand in paying for college. Overall, the bill boosts education funding by over $1 billion, to its highest level ever.

In health programs, the bill continues to provide an unprecedented level of funding for medical research. We are in an age of tremendous discovery in medical research, and the resources provided to NIH will help find treatments and cures for many diseases. There are tremendous increases for health research and treatment, HIV/AIDS programs, and programs for the elderly. And, we address the growing threat of bioterrorism by giving the CDC, our leader in this fight, greater resources to help keep us safe.

Even with these vast increases for so many programs, we know that next year will be very different. The surpluses we’ve enjoyed have disappeared. And, the President’s tax cuts will take up more and more of the federal budget as we go forward. We’re just beginning to fund education and healthcare at the levels they deserve. I am concerned, as are many of my colleagues, that we will not be able to provide this same level of funding next year.

I want to mention one area of critical importance—the need to combat obesity in this country. The Surgeon General reported last week that two out of three American adults are overweight. In fact, he estimates that obesity will cause more deaths than smoking in the coming years. Reducing the rate of obesity can prevent untold illness and death. We’ve been so successful in convincing people to quit smoking, and this should be the next big fight for public health.

I know that Chairman REGULA and Mr. Obey will be very interested in that effort, and I want to again thank the Chairman and Ranking Member for their tireless efforts in putting this bill together. I urge adoption of the conference report.
LIVING AMERICAN HERO APPRECIATION ACT

SPREE OF

HON. LANE EVANS
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. EVANS. Madam Speaker, the remarks that I made in support of H.R. 2561 were made in the context of the measure as it was originally introduced by my colleague, the gentleman from Pennsylvania, CURT WELDON. The measure passed by the House under suspension of the rules, however, was an amended version of H.R. 2561. As amended, H.R. 2561 did not embody certain provisions that had been included in the original bill.

With regard to H.R. 2561 as amended, I want to express my strong support for this legislation that demonstrates our continued commitment to recipients of the Medal of Honor. In the name of the Congress, the President presents the Medal of Honor. It is the highest honor that can be bestowed upon any American citizen. Only 3,455 Americans have been awarded Medals of Honor, and today only 149 of them are living.

As the Ranking Democrat on the Veterans’ Affairs Committee, as a senior member of the Armed Services Committee, and as a United States Marine, I feel strongly that these heroes deserve special recognition and consideration. Their valiant contributions must be honored and supported by all Americans.

Accordingly, I am pleased that H.R. 2561 would increase from $600 to $1,000 the monthly amount paid to recipients of the Medal of Honor and provide for retroactive, lump-sum payments to such recipients to reflect this increase. In addition, the bill would provide an additional medal for use in display or exhibits to those recipients who desire one, and increase the criminal penalties associated with the unauthorized purchase or possession of a Medal, or with the false representation of its awarding.

Madam Speaker, I am proud to be an original cosponsor of H.R. 2561 and I strongly urge my colleagues to join me in supporting our Medal of Honor recipients.

NURSE REINVESTMENT ACT

SPREE OF

HON. MARK FOLEY
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Mr. FOLEY. Mr. Speaker, I want to thank all the members of this chamber for passing H.R. 3487, the Nurse Reinvestment Act. This bill will provide immediate relief to a sector of the healthcare industry in desperate need of our support. The nursing shortage is approaching critical levels and it is clearly affecting patients throughout our country. These men and women who work on the front lines of our healthcare system everyday face tremendous hurdles. I have met with nurses and their representatives who have thoroughly explained the problems with mandatory overtime, the need for staffing standards, and protection for those employees who report unsafe conditions or practices in the facilities in which they work.

H.R. 3487 is a step in the right direction. It will provide for funding public service announcements to recruit nurses, loan repayment programs, and scholarship programs. It also requires the GAO to report to Congress on several key issues in the nursing arena—including nursing faculty shortages and disparities among the practices of nurses between for profit and for profit entities.

Again, I thank my colleagues for their support of this very important piece of legislation.

CONFERENCE REPORT ON H.R. 3061,
DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

SPREE OF

HON. SHEILA JACKSON-LEE
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Wednesday, December 19, 2001

Ms. JACKSON-LEE. Mr. Speaker, I am pleased with the bipartisan bill passed out of the House Labor–HHS–Education subcommittee and brought to the floor by unanimous consent makes certain that we continue our commitment to education and health care, preserves our most important worker protection programs, and includes the largest increase in new educational investment in a decade. This is good news for the American people.

However, I am extremely disappointed that this $123.8 billion appropriation does not include a greatly needed provision to expand insurance coverage for mental illness. This provision, known as “mental health parity” would have required group health plans offering mental health coverage to make that coverage available at the same level as insurance coverage for physical illness.

This was a crucial social issues issue that was included in the Senate version of the spending bill (H.R. 3061) that should have been adopted by the conferees. The adoption by the conferees of an amendment offered by Representative RANDY “DUKE” CUNNINGHAM that would keep the Wellstone-Domenici Mental Health Parity Act of 1996 (P.L. 104–204) in effect for another year is notable, but should not replace the responsibility of the conferers to address this important issue to protect all Americans from disparities in insurance coverage.

According to the Wall Street Journal, the cost to American businesses of untreated mental illness is projected to rise to $1.6 billion (18%) increase to $10.35 billion for Title I grants, the 45% increase to $665 million for Bilingual Education, the 31% increase to $2.85 billion for Teacher Quality grants, and the 15% increase to $1.1 billion for Impact Aid.

This appropriation also increases funding to the Department of Labor by 3%, or about $12 billion, rather than cut by 3% as proposed by the President. This is a $301 million increase over fiscal 2001 spending and provides growth in the major employment, training and worker protection programs. It also targets $5.2 billion to the Department of Health and Human Services, increasing $5 billion over fiscal 2001 and $2.5 billion over the President’s initial request.

However, much more should have been done to help displaced workers, particularly in light of those recently displaced by the September 11 attacks on America, including more than 100,000 airline employees have lost their jobs. These attacks radically altered the prospects of workers and business in every community in America.

Unfortunately, by all indicators, the recession is upon us and it seems clear that we have not yet hit bottom. So while hard working Americans continue to lose their jobs through no fault of their own, we must do all that we can to provide them with the benefits and safety net that they need and deserve.

That’s why I was proud to join Representative HASTINGS and over 150 other members of the House in co-sponsoring H.R. 2946, the Displaced Workers Relief Act of 2001. This bill provides a $7 billion infusion of capital and money which was introduced in the Senate by Senator JEAN CARNahan of Missouri. It would have provided those who lost their jobs in the wake of the attacks of September 11 with the ability to pay rent, put food on their table, buy school books for their children, while trying to get by in these difficult times.

Specifically, the bill extended unemployment benefits from 26 to 78 weeks, provided 26 weeks of unemployment insurance benefits for workers who would not otherwise qualify, extended Job Training Benefits from 52 to 78 weeks, authorized up to 78 weeks of federally subsidized COBRA premiums, and provided temporary Medicaid coverage for up to eighteen months to those workers without COBRA

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Again, I thank my colleagues for their support of this very important piece of legislation.

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Specifically, the bill extended unemployment benefits from 26 to 78 weeks, provided 26 weeks of unemployment insurance benefits for workers who would not otherwise qualify, extended Job Training Benefits from 52 to 78 weeks, authorized up to 78 weeks of federally subsidized COBRA premiums, and provided temporary Medicaid coverage for up to eighteen months to those workers without COBRA
coverage. Many of these benefits would have served Americans well had they been included in this Conference Report. I am, however, pleased with the large increase to the National Institutes of Health by targeting $23.3 billion, which helps meet our pledge to double fiscal 1998 spending on NIH by fiscal 2003.

The bill addresses the new threats that the nation faces by increasing the Centers for Disease Control (CDC) by increasing funding 11% above last year. Also, it maintains the Low-Income Home Energy Assistance Program (LIHEAP) at the FY 2001 level, an increase of $300 million over the President's request. Finally, it rejects proposed enrollment cuts to Head Start, preventing potential cuts of as many as 2.500 children from the program. Finally, the support I received for Houston in fighting prostate and breast cancer—with $290,000 for minority testing centers and $150,000 for Sisters Network—will help save lives.

Overall, this bill, while not perfect, addresses many of the problems that we currently face and fulfills our obligations to the American people. I support it, and I urge my colleagues to also support it.

THE NATIVE AMERICAN BREAST AND CERVICAL CANCER TREATMENT TECHNICAL AMENDMENT ACT OF 2001

Mr. UDALL of New Mexico. Mr. Speaker, let me begin by thanking Chairman Tauzin for allowing S. 1741, introduced by my friend Senator Bingaman, to be considered by the House. I have appreciated working with him to bring S. 1741 to the floor and know that the issue of early detection and prevention holds a personal closeness to the both of us and to countless others in this body.

On April 3, 2001, I introduced H.R. 1383, the companion to S. 1741, along with Representatives WATTS, HAYWORTH, SHERRID BROWN, CAMP, DELAURO, KENNEDY, KILDEE and over one hundred bi-partisan co-sponsors.

The consideration of this legislation today represents the diligent and bi-partisan work over the last month and within the past few weeks and hours, by several Members of Congress and their staffs. The work of these individuals ensures that a simple but very important technical correction to the Breast and Cervical Cancer Treatment and Prevention Act of 2000 (P.L. 106-354) will allow coverage of breast and cervical cancer treatment to Native American women.

Mr. Speaker, because of a technical definition in P.L. 106-345, American Indian and Native Alaskan women were and currently are excluded from this law's eligibility for treatment. And, as states determine whether to expand their Medicaid programs to provide breast and cervical cancer treatment as an optional benefit, passage of this legislation will ensure that American and Alaskan Women are included to receive treatment.

It is estimated that during 2001, almost 50,000 women are expected to die from breast or cervical cancer in the United States despite the fact that early detection and treatment of these diseases could substantially decrease this mortality. While passage of last year's bill made significant strides to address this problem, it failed to do so for Native American women and that is why we are here today.

Mr. Speaker, I want to thank my colleagues, especially Representatives WATTS, SHERRID BROWN, WAXMAN, CAMP, and HAYWORTH for working with me to bring S. 1741 to the floor today. I especially want to thank Jack Horner of Representative J.C. WATT's Republican Conference staff, Tim Westmoreland of HENRY WAXMAN’s office, Katie Porter of SHERRID BROWN’s office, and Tony Martinez and Mike Collins of my office for their vigilant and diligent work to ensure that this legislation did not fall victim to the end-of-the-year crunch.

Mr. Speaker, I urge all my colleagues to support this bi-partisan and important legislation so that we may send it to the President for his signature, which is an historic event that Native American and Native Alaskan women are not denied life-saving breast and cervical cancer treatment.

ESTABLISHING FIXED INTEREST RATES FOR STUDENT AND PARENT BORROWERS

Ms. MINK of Hawaii. Mr. Speaker, I want to express my support for S. 1762, which will provide students with low interest rates on Federal student loans, while preserving the health of the student loan industry by ensuring the current and future participation of lenders in this market. By helping lenders stay in the student loan markets, we are making sure that qualified students will have access to a higher education, regardless of their financial background.

S. 1762 represents a carefully brokered compromise between those representing the needs and interests of students, and those representing the lending industry. This compromise essentially fixes a problem that would have arisen in 2003 in the student loan interest rate formula that, according to the lending community, would have dried up resources for students needing funds for college by potentially reducing returns for such loans below the cost of issuing such loans. The fix that was worked out preserves the current interest rate formula for borrowers of loans below $50,000 that determines how much lenders receive from the Federal government, while looking in today's very low interest rates for students.

The formula will change in 2006 so that the interest rate students pay will be fixed at 6.8 percent, which is an historically low interest rate for students, and will eliminate confusion among borrowers of student loans regarding changing interest rates and formulas. With the changes in S. 1762, students benefit by getting guaranteed low interest rates, and by having the availability of funds for loans, and the stability of the student loan industry ensured.

As I mentioned, S. 1762 is supported by groups representing students and lenders alike, as well as student financial aid administrators. We have received letters of support from the United States Student Association, the State Public Interest Research Groups, the National Association of Student Financial Aid Administrators, the American Council on Education, the Consumer Bankers of America, and the Education Finance Council.

Passage of S. 1762 is crucial for ensuring the availability of funds for qualified students to go to college. As we know, more and more students are going to college these days, and more are doing so with the help of student loans. S. 1762 will mean that more students can go on to college and will be more able to participate in the 21st century.

I urge a “yes” vote for S. 1762.

ECONOMIC SECURITY AND WORKER ASSISTANCE ACT OF 2001

Mr. COYNE. Mr. Speaker, I rise today in opposition to this second deeply flawed economic stimulus bill.

The measure before us today represents a modest improvement over the first stimulus bill, but it is still inadequate. While the bill would extend unemployment benefits for an additional 13 weeks, it does nothing to help families and low-wage workers.

Serious concerns have been raised about the administration of the proposed 60 percent refundable tax credit for health insurance premiums. Such premiums cost, on average, about $220 a month for an individual and $580 a month for a family. Moreover, concerns have been raised that enactment of such a credit could undermine our country’s existing system of predominantly employer-provided health insurance.

In addition, the legislation before us still provides an inadequate level of funding to States to help them deal with the crisis. The National Governors’ Association estimates that the combined budget shortfall for all 50 States could exceed $50 billion in 2002. Some provisions in the bill before us would actually exacerbate the fiscal challenge facing many states—the proposal to allow larger tax write-offs for purchases of new equipment, for example, which has been estimated to reduce state revenues by more than $5 billion next year alone.

Finally, this latest bill still allocates much of its “economic stimulus” to tax cuts for corporations and upper-income households. While this Republican stimulus bill would not repeal the corporate alternative minimum tax, it means that it. This latest stimulus bill would also speed up the phase-down of marginal tax rates for taxpayers in the upper tax brackets—just like the first stimulus
bill. Moreover, while the argument for these tax cuts is that we need to spur additional investment in businesses and factories, this argument rings hollow given that businesses are currently struggling to eliminate the excess capacity that exists in many industries. I believe that the most effective stimulus the federal government can provide at this time is to expand demand for goods and services—and that the most effective way to expand that demand is to make up some of the lost income in households that have been hit by recent layoffs.

In short, I believe that, like the first economic stimulus bill rammed through the House by the Republican leadership in October, this legislation is both unfair and unwise. It does too little to help the people who have been laid off and too much to help the people who are well off. Moreover, it does too little to stimulate the economy in the coming year and loses too much revenue in subsequent years. I urge my colleagues to vote against this poorly crafted legislation.

HUMANITY’S GREATNESS IN A TIME OF PERIL

HON. LOIS CAPPS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mrs. CAPPS. Mr. Speaker, I rise to bring to the attention of the country and, I might add, a thoughtful article by Frank Kelly that appeared in the Santa Barbara News-Press, entitled “Humanity’s Greatness in a Time of Peril” on November 25, 2000.

Mr. Frank K. Kelly has been a journalist, a speechwriter for President Truman, Assistant to the Senate Majority Leader, Vice President of the Center for the Study of Democratic Institutions, and Vice President of the Nuclear Age Peace Foundation.

Mr. Speaker, I submit the following article:

(From the Santa Barbara News-Press, Nov. 25, 2001)

VOICES—HUMANITY’S GREATNESS IN A TIME OF PERIL

(By Frank K. Kelly)

In a time of trouble and sorrow, with fears of terrorism shadowing the future, 500 human beings gathered in Santa Barbara on Nov. 9 to honor two young leaders who have shown courage and compassion in lives of high achievement. The gathering was described as “An Evening for Peace,” but it was far more than that. It was a celebration, a tremendous manifestation, of the creative powers of humanity.

Two Peace Leadership Awards were presented that evening by the Nuclear Age Peace Foundation. One went to Hafsat Abiola, founder of the Kudrat Initiative for Democracy, a passionate advocate for human rights throughout the African continent. A beautiful young woman with a delicate face, she spoke of the struggles she had endured and the triumphs that had been achieved. When she finished, the people in the banquet room rose to their feet in a spontaneous ovation.

The second Peace Leadership Award was given to Craig Kielburger, founder of the Free the Children organization, who initiated a movement that led to the release of thousands upon thousands from conditions of labor enslavement. He created it when he was 12 years old, stirred by the tragic fate of a boy from Pakistan who was sold into bonded labor and killed when he protested against the treatment of children in his country. When Kielburger, now 18, completed his speech, he also received an ovation.

Bursts of affection and admiration flashed around that enormous room in wave after wave. When the two leaders expressed their confidence in humanity’s future, it was evident that their experiences had increased their awareness of the goodness and generosity existing in so many members of the human species. They had a glow of love and respect around them.

There were hundreds of students in that huge room, from high school and colleges, students with a wide range of gifts and ambitions, students from many ethnic backgrounds. Their faces were shining with excitement as they were clearly inspired by the two young leaders who were being acclaimed.

I was among the hundreds of older persons who participated in that gathering of glorious beings. I lived through four wars and I had witnessed terrible sufferings. Yet I also witnessed noble acts in many places. In spite of wars and other calamities, in spite of terror and all the threats that existed, I was sure that human beings would go from height to height, achieving more in each generation.

The celebration on Nov. 9 convinced me again that Thomas Morton was right when he asserted in his book that it is “a glorious destiny to be a human being.” I saw the light of that glory in the faces of the young and the old when they leaped to their feet to respond to a Nigerian woman and a Canadian man.

I was grateful for the privilege of being in that room on that marvelous night. I was grateful for the work of the Nuclear Age Peace Foundation in bringing so many wonderful persons together. I was grateful for the fact that I had participated in founding it and supporting it for 20 years.

I felt an exultance, which reminded me of the surge of joy I had felt when I took part in the liberation of Paris in August of 1944. I had never expected to ride into that city as a member of a victorious army. I had never expected to be embraced by so many people, to be hailed as a liberator. It was an ecstasy I had not earned. It was one of many gifts showered upon me in a fortunate life.

On the night of Nov. 9, I felt the exaltation that comes when people are coming to the light of that glory in the faces of the young and the old. We rejoiced together, we felt the measure of joy I had felt when I took part in the liberation of Paris in August of 1944. I had never expected to ride into that city as a member of a victorious army. I had never expected to be embraced by so many people, to be hailed as a liberator. It was an ecstasy I had not earned. It was one of many gifts showered upon me in a fortunate life.

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I strongly believe that every one who was in that room that night will carry the starburst of that celebration in their lives through all the trials and troubles of the coming years. I thrill to the hope that a tremendous Age of Fulfillment is dawning for the whole human family.

HON. JACK KINGSTON
OF GEORGIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. KINGSTON. Mr. Speaker, in response to the terrorist attacks on September 11th, the people of Vidalia, GA took it upon themselves to undertake a project to show our support for America. The town of 6,000 did not have an American flag that stood in the middle of town, and they were driven to raise over $3,000 to erect a flag pole which will permanently display the American flag in the center of town.

SPECIAL ORDER FOR VIDALIA FLAG POLE

Mr. Speaker, I rise today to share with you the dedication and hard work of some remarkable Americans; the citizens of Vidalia, GA, September 11th, 2001 affected every single one of us, and the 3 month anniversary of this tragedy served to remind us of that infamous day. All over the country people from different states, neighborhoods, and backgrounds have come together under a common bond as Americans. It has been no different in my home state of Georgia, and I would like to share with you today, Mr. Speaker, the dedication and patriotism of the good people of Vidalia, GA.

CENTRAL NEW JERSEY HONORS WORLD TRADE CENTER VICTIM
MR. FOX WITH A POEM WRITTEN BY HIS DAUGHTER JESSICA

HON. RUSHD. HOLT
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. HOLT. Mr. Speaker, I rise to honor and recognize Plainsboro, New Jersey resident and World Trade Center victim, Jeffrey L. Fox with a poem written by his thirteen year old daughter, Jessica. Jessica asked that I share her poem with the world and I am honored to do so:

A PLACE OF MEMORIES

The gleaming towers stood in the sky,
Majestic looking and up so high.
The sun shines down on towers so great,
Majestic looking and up so high.
The gleaming towers stood in the sky,
Majestic looking and up so high.
The sun shines down on towers so great,
Majestic looking and up so high.

The towers crumbled down to Earth
Because two planes crashed in their birth.
People beneath the towers ran.
Now the towers no longer stand.
The rescue workers worked non-stop,
Searching the rubble bottom to top.
People pulled out became less and less
And using their strength became a test.
The gleaming towers stood in the sky,
Majestic looking and up so high.

At this time in our Nation’s history, when we struggle to find solace and draw lessons from acts of terror against us, we gain strength and perspective from those families these atrocious acts left behind. We find strength in the memory of Jeffrey Fox and in the words of his brave and courageous daughter.

Mr. Speaker, again, I rise to honor the Fox family and I ask my colleagues to join me in recognizing their legacy to our community and New Jersey.

HONORING THE HARD WORK AND PATRIOTISM OF THE CITIZENS OF VIDALIA, TOOMBS COUNTY, GA
Michael Slater's commitment to environmental issues ultimately defined his career and his life. As President of the Friends of the Earth Foundation he had the opportunity to work on those environmental issues closest to his heart. Following his tenure as President, he continued his activism on environmental issues.

Michael Slater graduated from Stanford University. He began his career as an investor, but felt deeply connected to those issues which affect our Earth. He believed, correctly, that those issues which affect the earth affect all of us. Therefore, he devoted himself to working to make the Earth a better, safer and healthier place for all of us to live. For this reason, he has been cited by many as not only an environmentalist, but a humanitarian; a fitting label for someone so committed to valuing and preserving humanity.

He shared his love of the environment and commitment to environmental issues with his wife of 34 years, Teri. Along with her work on environmental issues she worked tirelessly as a preservationist to save precious natural wonders and to ensure that important pieces of our history are maintained. A day rarely went by in which the two of them did not take in the beauty of flowers, plants and other natural wonders. They passed their appreciation and passion for the environment on to their two sons, Eric and Edward. Michael and Teri would often travel to wilderness locations together.

Michael Slater believed it was his obligation—and the obligation of all of us who are here today— to ensure that what we have today will be here for the next generation to enjoy tomorrow. These are the words Michael Slater lived by.

Mr. Speaker, I salute Michael Wylie Slater today and I ask my fellow Members of Congress to join me in honoring his life and legacy of this member of the community who will be so deeply missed.

INTRODUCTION OF LEGISLATION TO EXPAND THE EARNED INCOME TAX CREDIT

HON. WILLIAM J. COYNE
OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. COYNE. Mr. Speaker, since its inception in 1975, the Earned Income Tax Credit, or EITC, has been an important part of the Federal Government’s “safety net” of programs for Americans living in poverty. Its effect on children is especially significant. Over the years, the EITC has succeeded in lifting more children out of poverty than any other government program.

The EITC was conceived as a “work bonus” alternative to a proposal to provide cash welfare to low-income two-parent families. It was also seen as a way to lighten the burden of Social Security taxes on low-income workers. Over the years, the credit has been expanded and increased. This program demonstrates the way in which government can improve the lives of its citizens in a meaningful way.

However, not enough families remain in our country. For instance, 29 percent of all children in families having three or more children subsist at incomes below the poverty
level. This is more than double the poverty rate among children in smaller families. Nearly three of every five poor children in this country live in families with three or more children.

Recently the General Accounting Office (GAO) determined that 4.3 million eligible households did not claim the EITC in 1999, forgoing $2.6 billion in credits. The preponderance (about 81 percent) of the $2.6 billion in unclaimed credits would have gone to households with three or more children. Households with no eligible children would have received most of the remainder. The non-participation rates for these two groups, 37 percent for households with three or more children and 55 percent for childless households (as compared to roughly 95 percent for all other households), are convincing evidence that more needs to be done to expand and simplify the EITC program.

The current structure of the EITC fails to help larger families, with three or more children, since the highest level of credit is given to families with two or more children. Combining these larger families with families having two children ignores the unique needs of large families, which have experienced more difficulty in moving from welfare to work due to increased family expenditures such as child care costs.

Today I am introducing legislation to remedy this problem by creating a new EITC benefit level for families with three or more children. This new level, with a credit percentage of 45 percent, will provide a higher benefit for these families than what they currently receive under the “two or more children” category (which has a 40 percent credit rate).

My bill also will double the credit percentage for workers with no qualifying children from 7.65 percent to 15.3 percent. This change recognizes the fact that there is virtually no safety net for parents in this category, who face high federal tax burdens. The 15.3 percent credit percentage is the amount needed to offset the full amount of the payroll tax, including the employer’s share. In his paper, “should the EITC for Workers Without children be Abolished, Maintained, or Expanded?” Robert Greenstein, of the Center on Budget and Policy Priorities, notes that single workers are the only group in the United States who begin to owe federal income tax before their income reaches the poverty line; the federal income tax codes taxes them somewhat more deeply into poverty. Besides offsetting the full amount of the payroll tax (which most economists believe is borne by workers in the form of lower wages), Mr. Greenstein states that expanding the credit might also serve two other beneficial purposes—it might draw more single workers into the work force. The economic stimulus function of my bill cannot be overlooked, especially at a time when we are providing inducements to qualify for the credit.

At a time when our country is undergoing so much change, we must not forget that our low-income families continue to remain at the margins of our economy and could be the first to suffer the effects of the current economic downturn. Their needs existed before the tragic events of September 11 and probably have only worsened since then.

I believe that the creation of the additional EITC category involving three or more children will benefit approximately 3.2 million households, thereby further reducing poverty among larger families. In addition to helping larger families to make ends meet, this new benefit level will provide these families with funds for upward mobility and asset building capabilities. Even a moderate increase in income will assist these families to improve their circumstances and work toward escaping poverty.

This bill also will benefit the U.S. economy by providing additional incentives for more people, especially low-income women, to join the work force. The economic stimulus function of my bill cannot be overlooked, especially at a time when we are providing inducements for corporations and higher income earners.

The Center on Budget and Policy Priorities supports this legislation as a “bill that would better reward and encourage work, reduce poverty among the working poor, and simplify the EITC.” They further state “This is one of the most worthy initiatives policymakers could pursue.”

I urge my colleagues to join me in this effort to further enhance the highly successful EITC by supporting this legislation, and, in doing so, by supporting a respectable income level for those Americans who are, and have been, left behind.

Mr. NEY. Mr. Speaker, Whereas, Jeremy W. Kidd is lovingly remembered by his parents, family and friends;

Whereas, Jeremy made each day of his life full of excitement and goodness;

Whereas, Jeremy always had a smile on his face and brought smiles to the faces of all those he came in contact with; and

Whereas, Jeremy’s kindness and consideration to others will always be remembered by all whose lives he touched;

Therefore, I invite my colleagues to join with me and the citizens of Ohio in mourning the loss of Jeremy W. Kidd, yet celebrating his life and his memory.

PERSONAL EXPLANATION

HON. JOHN N. HOSTETTLER
OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. HOSTETTLER. Mr. Speaker, I was unavoidably absent from the House of Representatives on December 5 through December 13, 2001, due to the illness and subsequent death of my dear mother. Although I received the appropriate leave of absence from the House, I would like my constituents in the 8th District of Indiana to know how I would have voted if I were present on Roll Call votes #469 through #498. For the record, I would have voted in the following ways:

Hostettler Vote
Rollcall Nos.: 498 Yea; 497 No; 496 Yea; 495 Yea; 494 Yea; 493 Yea; 492 Yea; 491 Yea; 490 Yea; 489 No; 488 No; 487 Yea; 486 Yea; 485 Yea; 484 Yea; 483 Yea; 482 Yea; 481 No; 480 No; 479 Yea; 478 Yea; 477 Yea; 476 Yea; 475 Yea; 474 Yea; 473 Yea; 472 Yea; 471 No; 470 Yea; 469 Yea.

IN RECOGNITION OF KEN MILLS AND NIKI STERN OF THE LEXINGTON DEMOCRATIC CLUB

HON. CAROLYN B. MALONEY
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mrs. MALONEY of New York. Mr. Speaker, I rise to pay tribute to Ken Mills and Niki Stern, leaders of the Lexington Democratic Club in New York City. The Lexington Democratic Club has been such a vibrant part of the community in which I live and represent. It is a pleasure to pay tribute to two of its most illustrious leaders.

After graduating Phi Beta Kappa and Magna Cum Laude from Princeton University, Ken Mills went on to make his mark in the field of communications for The Katz Agency, in 1978
he was appointed Director of Communications for the New York City Office of Economic Development by Mayor Ed Koch. In 1981, he was appointed Director of Public Information for the New York State Banking Department. He was then named Vice-president and Director of the New York Merchants Bank. In 1994 he founded Ken Mills Communications which he continues to operate today.

Ken Mills first joined the Lexington Democratic Club during John F. Kennedy’s 1960 campaign for President. After serving on the Club’s Executive Committee, he was elected its president. He then went on to become a District Leader, serving in that position until 1978. In 1995 he began another tenure as Lexington Democratic Club President, a position he held until early this year. Ken, who also serves on Manhattan Community Board 8, is not only an effective leader, but one who has earned the respect and admiration of professional and political colleagues. In recognition of his many outstanding achievements, we pay tribute to Ken Mills today.

Niki Stern has demonstrated a commitment to social and political causes. A long time community activist, she worked extensively on behalf of the Peace Movement in Westchester County, New York in the 1960’s. She remained actively involved upon moving to New York City and in 1979 began working as a Community Liaison for Assemblyman Mark Alan Siegel and for New York City Comptroller Harrison J. Goldin. She was also appointed to Community Board 8.

She also joined the Lexington Democratic Club where she was elected to many offices, culminating in her 1993 election as president. Working with Ken Mills, since 1995, as Executive Vice-president, she initiated the Club’s annual mid-winter receptions and dinners and many other innovations which helped restore the Lexington Democratic Club to its position as the largest political organization on Manhattan’s East Side. They have made the Lexington Democratic Club an invaluable part of the political landscape of New York City.

Mr. Speaker, I salute Ken Mills and Niki Stern and I ask my fellow Members of Congress to join me in recognizing the great contributions of both of these tremendously dedicated community leaders.

AMERICA THE BEAUTIFUL

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. HOLT. Mr. Speaker, I’m sure everyone agrees that we now live in troubled times—times of anxiety, of uncertainty, of struggle. But we also live in a time of incomparable national unity. You could look around the country and everywhere see the visual signs of unity, as the plethora of American flags displayed outside homes and businesses or a crowd at a sports game chanting “U-S-A!” but the real truth is that the river of our national spirit runs much deeper than flag-waving could ever show. And in the fight against the evil that now threatens us, the American people are united like never before.

More than a century ago, an English Literature Professor from Wellesley College named Katharine Lee Bates penned what has become the theme song for this extraordinary unity. On a trip to Colorado, Bates ascended Pike’s Peak and basked in the wonder of the “purple mountain majesties” and “spacious skies” she saw. This scene inspired her to write “America the Beautiful.”

Returning to Wellesley, Bates sent the four stanzas of “America the Beautiful” to the Congregationalist, where they first appeared in print, appropriately, on July 4th, 1895. The hymn garnered immediate popularity and was initially set to music by Silas G. Pratt. But the attention Bates’ hymn drew prompted her to rewrite it in 1904, making it more simple and direct. After a few more changes over the next several years, the final version, the one so many Americans know today, was finished in 1913 and set to the tune of Samuel A. Ward’s “Materna.” In true American spirit, Bates gave countless hundreds of free permissions for the use of “America the Beautiful.”

Today we turn to Bates’ timeless words for comfort and for a reminder of our nation’s strength. These words remind us of the heroism of the first responders who responded to the attacks on the World Trade Center and the Pentagon; of the soldiers, sailors and flyers fighting the war on terrorism; and of the cavalcade of heroes who have fought over the years for civil rights, voting rights, and workers’ rights—those “heroes providing liberating strife Who more than self their country loved.” They remind us that the “thoroughfare of freedom” we so often take for granted has been blazed by pioneering pilgrims working even up to today. They remind us of the incredible resolve of New York, one of the “albaster cities, gleaming/Undimmed by human tears.” But most of all, Bates’ words remind us of the indomitable American spirit that stretches high and proud, “from sea to shining sea.”

Perhaps the most expressive theme of “America the Beautiful” is that we Americans constantly seek to be uplifted—that we invoke divine help to mend our “ev’ry flaw,” that we know even our “golden” characteristics can be further refined. That is a sign of far greater strength than simply waving a flag and chanting “U-S-A!”

Mr. Speaker, in a testament to our national unity, I ask unanimous consent that the complete lyrics of “America the Beautiful” be entered into the RECORD.

AMERICA THE BEAUTIFUL

(By Katharine Lee Bates)

O beautiful for spacious skies,
For amber waves of grain,
For purple mountain majesties
Above the fruitéd plain!
America! America!
God shed his grace on thee
And crown thy good with brotherhood
From sea to shining sea!
America! America!
Goddess of the Potomac
Whose stern, impassioned stress
For liberty in law!
America! America!
And every gain divine!
For purple mountain majesties
O beautiful for patriot dream
That sees beyond the years
And crown thy good with brotherhood
From sea to shining sea!

DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE PROGRAMS ENHANCEMENT ACT OF 2001

SPEECH OF

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 11, 2001

Mr. SMITH of New Jersey. Mr. Speaker, the “Department of Veterans Affairs Health Care Programs Enhancement Act of 2001” reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans’ Affairs reached on certain provisions of a number of bills considered by the House and Senate during the 107th Congress, including H.R. 2792, a bill to make service dogs available to disabled veterans and to make various other improvements in health care benefits provided by the Department of Veterans Affairs, and for other purposes, by the House Committee on Veterans’ Affairs on October 16, 2001, and passed by the House on October 23, 2001 [hereinafter, “House Bill”]; S. 1188, a bill to enhance the authority of the Secretary of Veterans’ Affairs to recruit and retain qualified nurses for the Veterans Health Administration, and for other purposes, reported by the Senate Committee on Veterans’ Affairs on October 10, 2001, as proposed to be amended by a manager’s amendment [hereinafter, “Senate Bill”]; S. 1576, a bill to amend section 1710 of title 38, United States Code, to extend the eligibility for health care of veterans who served in Southwest Asia during the Persian Gulf War; and, S. 1598, a bill to amend section 1706 of title 38, United States Code, to enhance the management of the provision by the Department of Veterans Affairs of specialized treatment and rehabilitation for disabled veterans, and for other purposes, introduced on October 21, 2001.

The House and Senate Committees on Veterans’ Affairs have prepared the following explanation of the compromise bill, H.R. 3447 (hereinafter referred to as the “Compromise Agreement”). Differences between the provisions contained in the Compromise Agreement and the related provisions in the bills listed above are noted in this document, except for clerical corrections and conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—ENHANCEMENT OF NURSE RECRUITMENT AND RETENTION AUTHORITY

Subtitle A—Nurse Recruitment Authorities

Current Law

Several VA programs under existing law are designed to aid the Department in recruiting qualified health care professionals in fields where scarcity and high demand produce competition with the private sector.
The Department is authorized to operate the Employee Incentive Scholarship Program (hereafter EISP) under section 7671 of title 38, United States Code. Under the EISP, VA may award scholarship funds, up to $10,000 per year per participant in full-time study, for up to 3 years. These scholarships require eligible participants to reciprocate with periods of service to the Department. Currently, enrollment in the scholarship program is limited to employees with 2 or more antecedent years of VA employment. Statutory authority for this program terminates December 31, 2001.

The Department is authorized to operate the Education Debt Reduction Program (hereafter EDRP) under section 7681 of title 38, United States Code. Under the EDRP, the Department may repay education-related loans incurred by recently hired VA clinical personnel. Such requests are used to meet its nurse eligibility requirement limiting EDRP participation to other VA nurses who are enrolled in the Civil Service Retirement System. At retirement, VA registered nurses enrolled in the Civil Service Retirement System receive annuity credit for unused sick leave. However, this credit is unavailable, however, to VA nurses enrolled in the Federal Employee Retirement System.


dnurses who work regularly scheduled tours of duty during Saturdays and Sundays. How-
ever, licensed vocational nurses and certain health care support personnel, whose employment status is grounded in employment authorities in title 5 and title 38, United States Code, are eligible for premium pay on regularly scheduled tours of duty that include Sundays. Saturday premium pay for these employees is a discretionary decision at individual medical facility. at individual

Section 121 would mandate that VA provide Saturday premium pay to employees specified in Section 745(b).

Section 122 would extend authority for the Department to provide VA nurses enrolled in the Federal Employee Retirement System the equivalent sick-leave credit in their retirement annuity calculations that is provided to other VA nurses who are enrolled in the Civil Service Retirement System. Section 123 would require the Department to evaluate nurse-managed clinics, including those providing primary and geriatric care to veterans. The managed clinics are in operation throughout the VA health care system, with a preponderance of clinics operating in the Upper Midwest Health Care Network. The report should include information on patient satisfaction, provider experiences, cost, access and other matters. The Secretary would be required to report results from this evaluation to the Committees on Veterans’ Affairs 18 months after enactment.

Section 124 would require the Department to develop and implement nationwide clinical staffing standards policy to ensure that veterans are provided with safe and high quality care. Section 125 of title 38, United States Code, sets forth the manner in which medical facilities shall be operated, but does not include reference to staffing levels for such operations.

Section 125 would require the Secretary to submit annual reports on exceptions approved by the Secretary to VA’s nurse qualification standards. Such reports would include instances requested and granted to permit promotion of nurses who do not have baccalaureate degrees in nursing, and other information. Section 126 would require the Department to report facility-specific use of mandatory overtime for professional nursing staff and nursing assistants. The Department has no nationwide policy on the use of mandatory overtime. This report would be required within 180 days of enactment. The report would include information on the amount of mandatory overtime paid by VA health care facilities, mechanisms employed to monitor overtime use, assessment of any ill effects on patient care, and recommendations on preventing or minimizing its use.

Section 126 would require the Department to report to Congress its use of the authority on or after January 1, 1999, through December 31, 2001. The report will include the number of waivers requested and approved under authority to extend overtime for nurses who work regularly scheduled tours of duty on a case-by-case basis for individuals appointed on or after January 1, 1999, through December 31, 2001.

Section 127 would require the Department to report to Congress its use of the authority on or after January 1, 1999, through December 31, 2001. The report will include the number of waivers requested and approved under authority to extend overtime for nurses who work regularly scheduled tours of duty on a case-by-case basis for individuals appointed on or after January 1, 1999, through December 31, 2001.

Section 128 would require the Department to report to Congress its use of the authority on or after January 1, 1999, through December 31, 2001. The report will include the number of waivers requested and approved under authority to extend overtime for nurses who work regularly scheduled tours of duty on a case-by-case basis for individuals appointed on or after January 1, 1999, through December 31, 2001.

Section 129 would require the Department to report to Congress its use of the authority on or after January 1, 1999, through December 31, 2001. The report will include the number of waivers requested and approved under authority to extend overtime for nurses who work regularly scheduled tours of duty on a case-by-case basis for individuals appointed on or after January 1, 1999, through December 31, 2001.
Department to provide service dogs to veterans suffering from spinal cord injury or dysfunction, other diseases causing physical immobility, or hearing loss (or other types of disabilities susceptible to improvement for enhanced functioning) for which use of service dogs is likely to improve or enhance their ability to perform daily living or other skills of independent living. Under the provision, a veteran would be required to be enrolled in VA care under section 1705 of title 38, United States Code, as a prerequisite to eligibility. Service dogs would be provided in accordance with existing priorities for VA health care enrollment.

Senate Bill

Section 201 would authorize the Secretary to provide service dogs to service-connected veterans with hearing impairments and with spinal cord injuries.

Compromise Agreement

Section 201 follows the House provision. Any travel expenses of the veteran in adjusting to the service dog would be reimbursable on the same basis as such expenses are reimbursed under Section 101, title 38, United States Code, for blind veterans adjusting to a guide dog.

MANAGEMENT OF HEALTH CARE FOR CERTAIN LOW-INCOME VETERANS

Current Law

Section 1722(a) of title 38, United States Code, places veterans whose incomes are below a specified level—in calendar year 2001, $23,688 for an individual without dependents—within the definition of a person who is “unable to defray” the cost of health care. The section includes two other such indicators of inability to defray: evidence of eligibility for Medicaid, and receipt of VA nonservice-connected pension. Veterans in these circumstances are adjusted equally unable to defray the costs of health care; as such, they are eligible to receive comprehensive VA health care, without agreeing to make co-payments required from veterans whose incomes are higher. Under current law, a single-income threshold (with adjustments only for dependents) is the standard used.

House Bill

Section 103 would amend section 1722(a) of title 38, United States Code, to establish geographic income thresholds for determining a non-service-connected veteran’s priority for VA care, and therefore, whether the veteran must agree to make co-payments required for care. This section’s purpose would be to address local variations in cost of care, cost-of-living or other variables that, beyond gross income, impinge on a veteran’s relative economic status and ability to defray the cost of care. In section 103, low-income limits administered by the Department of Housing and Urban Development (HUD) for its subsidized housing programs would establish an adjusted poverty-income threshold to be used in the ability-to-defray determination. The actual threshold for determining an individual veteran’s ability to pay would be the greater of the current-law income threshold in section 1722 of title 38, United States Code, or the local low-income limits set by HUD.

Section 103 also would include a 5-year limitation on the effects of adoption of the HUD low-income limits policy on system resource allocation within the Veterans Health Administration. The provision would not be increased or decreased during the period by more than 5 percent due to this provision. The provision would take effect on October 1, 2002.

Senate Bill

Section 202 would amend section 1722 of title 38, United States Code, to include the HUD income index in determining eligibility for treatment as a low-income family based upon the veteran’s permanent residence. The current national threshold would remain in place. The base figure if the HUD formula determines the low-income rate for a particular area is actually less than that amount. The effective date of this change was January 1, 2002, and would apply to all means tests after December 31, 2001, using data from the HUD index at the time the means test is given.

Compromise Agreement

Section 202 retains the current-law income threshold, but would significantly reduce co-payments from veterans near the threshold or very close to the poverty line and veterans in need of VA hospital inpatient care. The HUD low-income limits would be used to establish a family income determination within the priority 7 group. Those veterans whose family income limits for their primary residences would pay the co-payments as otherwise required by law. Veterans whose family income limits for their primary residences between the current income threshold level under section 1722, title 38, United States Code, and the HUD income levels would be used to determine eligibility in circumstances that are below 80 percent from co-payments required of veterans with incomes in that range. The effective date for this change would be October 1, 2002.

MAINTENANCE OF CAPACITY FOR SPECIALIZED TREATMENT AND REHABILITATIVE NEEDS OF ELDERLY VETERANS

Current Law

Section 1706 of title 38, United States Code, requires VA to maintain nationwide capacity to provide for specialized treatment and rehabilitative needs of veterans, including those with amputations, spinal cord injury or dysfunction, traumatic brain injury, and severe, chronic, disabling mental illnesses. To validate VA’s compliance with capacity maintenance, section 1706 includes a requirement for an annual report to Congress. The reporting requirement expired on April 30, 2001.

House Bill

Section 102 would modify the mandate for VA to maintain capacity in specialized medical treatment and rehabilitative needs of veterans, including those with amputations, spinal cord injury or dysfunction, traumatic brain injury, severe, chronic, disabling mental illness, substance-use disorders, and original cord injuries and dysfunction, the brain injured and blinded, and those who need prosthetics and sensory aids; and, would extend the capacity reporting requirement for 3 years.

Senate Bill

S. 1598 similarly would modify current law with regard to VA’s capacity for specialized services, but would require that medical centers maintain capacity, in addition to geographic service areas; require that VA utilize uniform standards in the documentation of patient care workload used to construct reports under the authority; require the Inspector General on an annual basis to audit each geographic service area’s capacity data; and, prohibit VA from substituting health care outcome data to satisfy the requirement for maintenance of capacity.

Compromise Agreement

Section 203 is derived substantially from the House bill, with additional provisions from the Senate bill, including a requirement that VA utilize uniform standards in
the documentation of workload; a clarification that “mental illness” be defined to include post-traumatic stress disorder (PTSD), substance-use disorder, and seriously and chronically mentally ill services; a prohibition from substituting outcome data to satisfy the requirement to maintain capacity; and, a requirement that the IG audit and certify to the Congress as to the accuracy of VA’s required reports.

PROGRAM FOR THE PROVISION OF CHIROPRACTIC CARE AND SERVICES TO VETERANS

Current Law

Public Law 106-117 requires the VA to establish VA chiropractic services program, implemented over a 5-year period. Title II would establish a 5-year period, period to VA to employ chiropractors as federal employees and obtain chiropractic services through contracts; establish an advisory committee on chiropractic care; authorize chiropractors to function as VA primary care providers; authorize the appointment of a director of chiropractic service reporting to the Secretary with the same authority as other service directors in the VA health care system; and provide for training and materials relating to chiropractic services to Department health care providers.

Compromise Agreement

Section 204 of the Senate Bill would establish a VA chiropractic service program in VA health care facilities and clinics in not less than 25 states. The chiropractic care and services would be for neuro-musculoskeletal conditions and related exacerbation complex. The VA would carry out the program through personal service contracts and appointments of licensed chiropractors. Training and materials would be provided to VA health care providers for the purpose of familiarizing them with the benefits of chiropractic care and services.

Compromise Agreement

Section 204 would follow the Senate bill but would replace its reference to 25 states with a reference to VA’s 22 Veterans Integrated Service Networks (referred to as “geographical service areas” in the section). The agreement would include an advisory committee to assist the Secretary of Veterans Affairs in implementation of the chiropractic service program. Under the agreement, the advisory committee would expire 3 years from enactment.

FUNDS FOR FIELD OFFICES OF THE OFFICE OF RESEARCH COMPLIANCE AND ASSURANCE (ORCA)

Current Law

The Under Secretary for Health has provided funding for ORCA field offices from funds appropriated for Medical and Prosthetic Research.

Senate Bill

Section 205 of the Senate Bill would establish ORCA field offices to direct, coordinate and report on special telephone services for veterans.

Compromise Agreement

Section 205 follows the Senate bill. The House bill has no comparable provision.

Compromise Agreement

Section 206 would follow the Senate bill.

SENSE OF CONGRESS ON SPECIAL TELEPHONE SERVICES FOR VETERANS

Current Law

None.

House Bill

The House bill has no comparable provision.

Compromise Agreement

Section 206 follows the Senate bill.

Section 204 would require the Secretary to assess special telephone services for veterans (such as help lines and “hotlines”) provided by the Department. The assessment would include the geographic coverage, availability, utilization, effectiveness, management, coordination, staffing, and cost of those services. It would require the assessment to include a survey of veterans to measure satisfaction with current special telephone services, as well as the demand for additional services. The Secretary would be required to submit a report to Congress on the assessment within 1 year of enactment.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 207 contains a Sense of the Congress Resolution on the Department’s need to assess and report on special telephone services for veterans.

RECODIFICATION OF BEHAVIORAL COUNSELING AUTHORITY AND CERTAIN OTHER HEALTH-RELATED AUTHORITIES

Current Law

Chapter 17 of title 38, United States Code, contains various legal authorities under which VA provides services to non-veterans. These provisions, that authorize bereavement-counseling services for family survivors of permanently and totally disabled veterans and emergency humanitarian care, are intermingled with authorities for the care of veterans in various sections of chapter 17.

House Bill

The House bill has no comparable provision.

Compromise Agreement

Section 205 follows the Senate bill. The Committees are concerned about the need for ORCA to maintain independence from Medical and Prosthetic Research and Development. The Committees have concluded, on the strength of hearings and reports on potential conflicts of interest, that funding for ORCA field offices should be statutorily separated from the Medical and Prosthetic Research Appropriation and associated with the Medical Care Appropriation. ORCA advises the Under Secretary for Health on matters affecting the integrity of research, the safety of human-subjects research and research involving the care and use of laboratory animals used in VA biomedical research and development. ORCA field offices investigate allegations of research impropriety, lack of compliance with rules for protection of research participants and scientific misconduct. The ORCA chief officer reports to the Under Secretary for Health.

MAJOR MEDICAL FACILITY CONSTRUCTION

Current Law

None.

Senate Bill

Fiscal year 2002 appropriations are available for an emergency repair project at the VA Medical Center, Miami, Florida. Section 205 of the Senate Bill authorizes $29.3 million for this project, in accordance with section 8104 of title 38, United States Code.

House Bill

The House bill has no comparable provision.

Compromise Agreement

Section 206 follows the Senate bill.

SENSE OF CONGRESS ON SPECIAL TELEPHONE SERVICES FOR VETERANS

Current Law

None.

House Bill

The House bill has no comparable provision.

Compromise Agreement

Section 206 follows the Senate bill.

EXTENSION OF EXPIRING COLLECTIONS AUTHORITY

Current Law


House Bill

Section 106 would extend until 2007 VA’s authority to collect means test co-payments and to collect third-party payments.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 209 follows the House bill.

PERSONAL EMERGENCY RESPONSE SYSTEM FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

Current Law

None.

House Bill

The House bill would require the Secretary to carry out an evaluation and study of the feasibility of providing a specialized personal emergency response system for veterans with service-connected disabilities. It would require a report to Congress on the results of this evaluation.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 210 follows the House bill.

HEALTH CARE FOR PERSIAN GULF WAR VETERANS

Current Law

Section 1710 of title 38, United States Code, designates eligible veterans for whom the Secretary is required to furnish hospital, nursing home, and domiciliary care. Section
The Senate Bill would amend section 1710 of Title 11 of the United States Code, to extend health care eligibility for veterans who served in Southwest Asia during the Gulf War, to December 31, 2011.

House Bill

The House Bill contains no comparable provision.

Compromise Agreement

Section 211 follows the Senate bill but extends the health care eligibility to December 31, 2002.

STEELWORKERS' APPEAL

HON. DONNIS J. KUCINICH
OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 20, 2001

Mr. KUCINICH. Mr. Speaker, on December 12th, hundreds of Americans came to the Capitol to implore their elected representatives to help them. They are steelworkers, living in Ohio, Indiana, Illinois, Minnesota and Pennsylvania. They work for LTV Steel Company, which is in bankruptcy after enduring years of unfair competition from foreign imports.

The steelworkers testified before a hearing of the Congressional Steel Caucus. They spoke poignantly and eloquently. They expressed the key principles upon which our Republic was founded: liberty and justice for all.

What the people here face at LTV is my understanding that this program was not designed to help steelworkers. It was designed to help the company’s unsecured creditors by developing a plan which includes work rule concessions by the steelworkers.

I urge you not to wait any longer. Please contact the Emergency Loan Guarantee Board and ask them to approve the $250 million loan guarantee for LTV Steel. We need this guarantee to save our jobs and to save our families. Thank you.

STATEMENT OF RICHARD DOWDELL, LTV STEELWORKER, UNITED STEELWORKERS OF AMERICA, LOCAL 1011, INDIANA HARBOR, INDIANA

Thank you for the opportunity to appear before you today to speak about the crisis facing myself and over 8,000 other employees of LTV Steel.

My name is Richard Dowdell. I serve as a Unit Co-chairperson of the Chicago coke unit. I began working at LTV Steel in March, 1964 as a stove tender. I joined the mechanical apprenticeship program and became a millwright in 1968. I am married and have two children.

LTV has arbitrarily decided it is better for the employees working in its steel mills to no longer have a job. They actually told the bankruptcy court judge that it is better for them to work a few more days to get through the year instead of getting on with our lives. But I have invested 37 years of my life working for LTV Steel and I am not willing to go without fighting to save my company and my job. The Steelworkers union and the unsecured creditors have put forward a modified labor agreement that can and should be accepted. The sacrifice offered by our steelworkers will give us at least a fighting chance to save LTV Steel if they are approved by the bankruptcy court judge.

The termination of our contract would mean that thousands of steelworkers and retirees could lose their health insurance. My wife has an existing medical condition where she has a microvalve in her heart which requires expensive medication. If we were to lose our health insurance, I do not know how we could afford her medication. There are some 69,000 LTV retirees, many of whom are in similar circumstances and are relying on the company providing their health care. If we lose our health insurance, there may not be anywhere for us to go, especially for those like my wife who have serious, pre-existing medical conditions that require medication.

LTV’s asset protection plan does not protect two of their most important assets: the
company’s two coke plants, one in Chicago and the other in Warren, Ohio. These facilities may be worth $300 million. Instead, the company has chosen to permanently shut down these facilities, unless the hot mills, are not subject to the court’s recent December 5th order providing for hot idle shutdown. The coke facilities are subject to the judge’s order now unless the judge modifies his order.

The steelworkers and retirees of LTV Steel ask you to consider and support the fact that the Emergency Steel Loan Board moves quickly to approve the $250 million loan to save LTV Steel. Please act now before it is too late.

Thank you.

STATEMENT OF COUNCILMAN ROOSEVELT COATS, CITY OF CLEVELAND, OHIO

Thank you for receiving my testimony today concerning the future of LTV Steel. My name is Roosevelt Coats, and I am the Councilman for the City Council from Ward 10 in the city of Cleveland, Ohio. I have served on the City Council since 1987. Prior to that time, I was a United Steelworker for the United Steelworkers of America.

I share the concerns of Congressman Dennis Kucinich, the woman from Cleveland, and many in this room about the future of LTV Steel Company.

The work done by the City of Cleveland about the possible loss of LTV Steel is devastating to our city and to the lives of tens of thousands of people who live in our city. The loss of LTV Steel would mean the loss of 35,000 steelworkers’ jobs in the City of Cleveland. It would also result in the loss of another 7500 steelworkers’ jobs in the states of Ohio, Michigan, and Minnesota. 40,000 additional jobs would be affected nationally, and 69,000 families nationwide who have pensions and health care benefits either reduced or eliminated.

The prospect of losing your health insurance, especially if you are an elderly person who is dependent on your pension or Social Security and facing mounting costs for health care and prescription drugs is nothing short of frightening. Where can an 80-year-old retiree with preexisting conditions afford health insurance if they lose their insurance? How can current workers afford health insurance for their children, their spouse, and themselves if they lose their insurance? These are the key questions which trouble thousands of my constituents today.

Needless to say, the loss of 35,000 jobs would have a tremendous impact upon the City of Cleveland, mainly because of the city losing the tax revenue from these family-supportive jobs. We have millions of dollars a year in property taxes to the City of Cleveland. This is revenue to our city which is vital in paying for police, fire, education, public health, and other vital functions of our local government. Such a significant loss of local tax revenue would necessarily lead to either cutbacks in city services, layoffs of public personnel, or increases in taxes to maintain services, or perhaps a combination of all three options. It would also lead to an erosion of our city’s infrastructure as we know it today. There is no doubt that the loss of LTV will lead to a diminished quality of life for people in Cleveland. We saw what happened twenty years ago when the steel industry collapsed, how entire cities, like Youngstown, Pennsylvania, Ohio, Indiana, Minnesota, and elsewhere were devastated when steel mills shut down and workers were suddenly unemployed.

The cost of allowing LTV Steel to go under will ultimately fall upon every taxpayer in Ohio and in America in the form of taxes to pay for unemployment insurance, food stamps, health care, job training and placement, and other services. These additional costs to the government will come at the very moment when we are in a recession and state and local tax revenues are plummeting.

The evidence of cleanup which would be necessary if this plant closes down would also create a tremendous burden for the City of Cleveland. The vendors who serve LTV Steel are also suppliers who would also be negatively impacted by the loss of jobs in a shutdown of LTV Steel.

LTV, like all other American steel manufacturers, has been charged with unfair and unbalanced trade practices in which they have permitted a flood of foreign steel, much of it “dumped” illegally, into the U.S. market. This flood of foreign steel has depressed prices so severely that no one can make money in this industry in America. With 29 companies, including LTV Steel, in bankruptcy, we know that time is running out. We do not want to see LTV join the ranks of those steelmakers who have shut down permanently.

On behalf of the workers and retirees of LTV Steel Company, I implore you in the Congress and the Administration to do all that you can to save LTV Steel.

Thank you.

PROPOSED RESOLUTION No. 2002-24

PRESERVATION OF U.S. STEEL INDUSTRY

WHEREAS, the United States steel industry is in the midst of a serious crisis that impacts not only steel producing states, but the security and economic well-being of the entire nation; and

WHEREAS, since the United States is experiencing a recession and, as a result of the tragedy of September 11, 2001, is embroiled in international military action, the loss of the capitol to foreign steel would greatly and unwisely pose a threat to national security and the nation’s ability to retain a manufacturing base; and

WHEREAS, America’s crumbling infrastructure needs to be rebuilt and domestically produced steel could be used to assist in the rebuilding of our cities and towns; and

WHEREAS, suppliers of raw materials from areas such as Minnesota, Michigan, West Virginia and Pennsylvania, and consumers such as automobile manufacturers in Michigan and aerospace manufacturers in Washington would be severely impacted if the domestic steel industry is permitted to erode; and

WHEREAS, by way of example, 3,200 steel industry-related jobs would be lost in Cleveland, 7,500 jobs would be eliminated in Ohio, Illinois and Indiana, 40,000 additional jobs would be affected nationally and 69,000 families nation-wide would have pensions and health care benefits reduced; and

WHEREAS, imports have spiked to 40 percent of the U.S. market, up from 20 percent just two years ago, by selling steel at prices that are significantly below the cost of production; and

WHEREAS, the U.S. Trade Commission has determined that illegal dumping of foreign-made steel has occurred and the administration is currently considering an appropriate remedy for this practice;

NOW, therefore, be it resolved, That the National League of Cities urges the President to consider action under international trade law to determine whether there has been dumping of foreign-made steel in the U.S.;

BE IT FURTHER RESOLVED, That the National League of Cities urges Congress and the Administration to consider federal programs to assist U.S. steel makers in gaining resources that would be used for reinvestment, retooling and restructuring.

STATEMENT OF BRUCE SIMON, COUNSEL TO UNITED STEELWORKERS OF AMERICA

Good afternoon.

My name is Bruce Simon. I am a partner in the firm of Cohen, Weiss and Simon, and we represent the United Steelworkers of America in the LTV Steel matter.

I’d like to start with a brief review of some of the key findings of the Emergency Steel Loan Guaranty Act of 1999, an overview of employment in the steel industry; an update on LTV itself, including the status of the bankruptcy proceeding, and then deal with the key application made before the Emergency Steel Loan Guaranty Board.

I will conclude with a suggestion about what the Steel Caucus, and the United States Congress can do about it.

First, a little congressional history:

1. [Sec. 101(b)(6)] of the Emergency Steel Loan Guaranty Act of 1999, provides: “Congress finds that [6] a strong steel industry is necessary to the adequate defense preparedness of the United States in order to have sufficient steel available to build the ships, tanks, planes and armaments necessary for the national defense”. And that was before September 11, 2001.

2. Congress’s findings in the 1999 law also recited the loss of 10,000 steelworker’s jobs in 1998, and 5 medium-sized steel bankruptcies (AME, LaClad, Genesee and USS)

Since then, literally tens of thousands more steelworkers have lost their jobs. Just last Friday, the Bureau of Labor Statistics reported that in the last 12 months alone, 17,600 Steelworkers lost their jobs—not including the 6,000 so far at LTV.

And, of course, we now have 28 steel companies in bankruptcy, including two of the very largest, LTV and Bethlehem.

SNAPSHOT OF LTV

1. 6,800 employees, + 2000 at LTV Tubular
2. 70,00 Retirees, surviving spouses and dependents on Retiree Health
3. Legacy costs $1.5B
4. Pension underfunding—$2.2B

UNITED STATES CONGRESS

Last week, on December 5, the Bankruptcy Court in Youngstown, Ohio issued an order which carried out an agreement made in Chambers—between the Company, its creditors, its noted Creditors Committee and the Steelworkers. I should note that Members Kucinich and Latourette were very effective witnesses on behalf of the Steelworkers. The Court’s Order, in effect, put LTV on a limited life support system, on a respirator, in the intensive care unit. The Order provides:

(a) the Company’s integrated steel units are to be maintained in a form of hot idle until the President issues Section 201 remedies by March, 2002.

(b) the coke plants in Warren, Ohio and Chicago are to be held alive for 3 weeks

(c) the Company is to support and cooperate in continuing efforts to secure the Byrd loan, and to report back to the Court on December 19—next Wednesday

Where do we stand with the Emergency Loan Board?

Let me start with a conclusion, and work backwards from there.

The power to save LTV, and the power to bury LTV rests in one place—the Emergency Steel Loan Guaranty Board.

The question for today is—what can the Steel Caucus do, what can the Congress of the United States do, to move the Loan Board to exercise its power to let LTV live—and exercise its power to let LTV live?
the past few months—and there are many, many candidates for the role of accessory-be-
fore-the-fact. But with all due respect, the
United Steelworkers of America believes this
not the time to pin the tail on the donkey for
the closing of LTV.

This is the time, perhaps the last time,
that something can be done to avoid the cat-
astrophic consequences of the closing of LTV
that you have just heard about from the steelworker members of this panel.

I'm going to spend a few minutes to sup-
port not that the focus now is on the Loan
Board—and then propose a course of action—immediate action—for the Steel
Caucus to take.

Here's what we're doing today.

There is pending on the desk of the
Emergency Steel Loan Guaranty Board an appli-
cation by the National City Bank, and Key
Bank, on behalf of LTV, for a $250 million
loan guarantee.

The application is supported by an analysis
by the big 5 Accounting Firm of Deloitte
Touche, for the Official Creditors Committee
of LTV, appointed by the Bankruptcy Court,
which states that the second, historic, labor
agreement between LTV and the Steelwork-
ers provides the fol-
lowing—and I quote: (1) “the Company is able
to fully repay the Byrd Loan by the end of
2002,” (2) “the Company is projected to
maintain positive liquidity over the five
year period with a low point of $35M in 2002”

Thus, the Loan Board has been told by one
of the most highly respected Accounting
firms, one of the “big 5,” that its primary
concerns have been met—that, if the $250M
loan is made, it will be paid back as the law
requires; and the Company will have the li-
quidity, the cash on hand, to carry on its
business.

Until now, there has been buck passing.
From management of LTV to its banks; from
the Byrd Bill banks to the DIP lenders; then
to the Union. And back and forth. Now, buck
passing is over, and there is one—and only
one, focus. The Loan Board has the power
to keep LTV alive, so that efforts already under
way to help the entire industry (by address-
ing the illegal dumping, by addressing legacy
costs) have a chance to click in. If the Board
fails to act, it will have pulled the plug be-
fore the doctor has had a chance to operate.

Finally, what must be done? The Steel
Caucus and the steelworker members of Congress,
must convey to the members of the Emer-
gency Steel Loan Guaranty Board, that the
will and intent of Congress in the Emergency
Steel Guaranty Act of 1999 was to ensure inst-
ances like LTV are precisely the instances
where guaranty should be issued. The Board
must be told, forcefully, that the time to act
is now, and that the Guaranty should be
issued forthwith.

ELIGIBILITY OF CERTAIN PER-
SONS FOR BURIAL IN ARLING-
TON NATIONAL CEMETERY

SPEECH OF
HON. MICHAEL K. SIMPSON
OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, December 19, 2001

Mr. SIMPSON. Madam Speaker, I rise today
in support of H.R. 3423, which extends burial
eligibility at Arlington National Cemetery to
those reservists who retire before age 80—the
age at which they become eligible for retired
pay.

H.R. 3423 also makes eligible for in-ground
burial at Arlington a member of a reserve
guard; instead, the Agency is only to provide
information once to community water sys-
tems (by March 1, 2002) regarding what kinds
of terrorist attacks are probable threats. EPA
is to coordinate to other agencies and depart-
ments of government who have expertise in this
area, to compile information readily available or already de-
veloped and to provide it this in-
formation. The statute does not provide a
continuing duty for EPA in this area past the
date specified in the bill.

In this regard, vulnerability assessments are
defined in statute only to the extent that
they include a review of certain specified
items. These items are those which make up
the physical structure of a public water sys-
tem (as defined in section 1401 of the Safe
Drinking Water Act (SDWA)), electronic,
computer or other automated systems, phys-
ical barriers, the use, storage, or handling of
various chemicals and the operation and main-
tenance of a drinking water system. Title IV recognizes that there are many dif-
ferent types and sizes of community water
systems (CWS) and gives CWS wide discre-
ion to devise and conduct a vulnerability
assessment. EPA is not the rule-
mander or other authority to define further
what is or is not a vulnerability assessment
meeting the requirements of sections 1433.

Title IV requires a community water
system utilize any particular vulner-
ability assessment tool, or conduct any spe-
cific type of analysis. Community water sys-
tems are not required to establish the con-
sequences of intentional acts or terrorist
acts, analyze their use of specific chemicals,
including chlorine, as opposed to other
chemicals, or to characterize the risk of any
offsite impacts. Further, the term “physical
barriers” does not necessarily include “buff-
er zones” or any other area around physical
distances.

Title IV does not contain any requirement
that the EPA or any other governmental body receive for review vulnerability assess-
ments conducted by water systems. Nor does
Title IV contain any requirement that com-
munity water systems provide such informa-
tion to EPA or to any other person or gov-
ernmental entity. It only requires that com-
munity water systems certify that they have
completed an assessment. Community water
systems are to convey the results of emer-
gency planning committees (LEPCs) in the
preparation or revision of emergency re-
sponse plans for the purpose of avoiding du-
plex arrangements of effort and taking advan-
tage of previous information developed by
the LEPCs for first responders and local govern-
ment response. There is no requirement that
community water systems disclose any of
the information developed by the vulner-
bility assessments to the LEPCs.

Vulnerability assessments could contain
very sensitive information about a drinking
water system which would be of assistance
to a terrorist or an individual contemplating
such an attack. Therefore, EPA is to have
decide and intentionally avoided to avoid trigger-
ing any requirement under the Freedom of In-
formation Act (FOIA) (Section 552 of Title 5,
United States Code) to disclose any informa-
tion developed in connection with a vulner-
bility assessment. The President should
carefully consider whether assessments and
related materials should be exempted from
the FOIA by executive order.

The legislation authorizes EPA to provide
financial assistance to CWS for several spe-
cific purposes. EPA may provide assistance
for vulnerability assessments, for developing
or revising emergency response plans and for
expenses and contracts designed to address
hazardous material or other potentially
important and significant threats to public
health. Title IV does not define either “basic
security enhancements of critical importance” or “significant threats to public health.” However, existing SDWA programs which provide assistance to water systems have not been adequate to address such threats and specifically contain provisions that are not limited to those acts, threats, or conditions described in the SDWA. EPA should not interpret the definition of “significant threat” (as defined in the SDWA) when the Agency has received information that includes a potential terrorist attack (but not necessarily a specific, identified threat) at a drinking water facility. In exercising this discretion, the EPA should only rely upon substantial, credible information.

Powers, of the Safe Drinking Water Act does not change this long-established public policy. EPA should not interpret “potential terrorist attack” to mean that there is merely some possibility or statistical probability of a terrorist attack. Neither should EPA interpret a general warning, general announcement or general condition to be sufficient information of a threatened or potential terrorist attack. Specific, credible information is required, and all other elements of section 135, including the existence of an imminent and substantial endangerment to the health of persons, that appropriate State and local authorities have not and cannot to protect the health of persons served by the drinking water system, and that the EPA Administrator has consulted with State and local authorities regarding the correctness of the information as it relates to both the specific threat and the actions which the State or local authorities have taken. The authority granted to EPA in section 135 is a limited, case-by-case, contingent emergency power.

Honorable DON YOUNG,
Chairman, Committee on Energy and Commerce,

Dear Mr. Chairman:
The Committee on Energy and Commerce has requested that the House Select Committee on Public Health Security and Bioterrorism Response Act of 2001, H.R. 3448. While the bill primarily contains provisions related to the matters in the jurisdiction of this Committee, I recognize that section 135, which amends the Stafford Act (42 U.S.C. §§5121, et seq.), to require release of emergency plans under the jurisdiction of the Committee on Transportation and Infrastructure. Allowing this bill to move forward in no way impairs your jurisdiction over that provision, and I would be pleased to place this letter and any response you may have in the Congressional Record when the bill is considered on the floor. In addition, if a conference is necessary on this bill, I recognize your right to request that the Committee on Transportation and Infrastructure be represented on the conference with respect to the provision amending the Stafford Act.

Sincerely,

Chairman.


Honorable DON YOUNG,
Chairman, Committee on Energy and Commerce,
Washington, DC.

Dear Mr. Chairman:
Thank you for your recent letter regarding The Public Health Security and Bioterrorism Response Act of 2001, H.R. 3448. As you know, this bill contains a provision related to matters in the jurisdiction of the Committee on Transportation and Infrastructure. Specifically, section 135 of the bill amends the Stafford Act (42 U.S.C. §§5121, et seq.), which is under the jurisdiction of the Committee on Transportation and Infrastructure.

In the interest of expediting consideration of the bill, the Committee will not seek a referral of this legislation and will support referral of this legislation to the House.

This action should not, however, be construed as waiving the Committee’s jurisdiction over future legislation of a similar nature.

Thank you for your cooperation on this matter.

Sincerely,

Chairman.

TRIBUTE TO BISHOP SAMUEL C. MADISON ON THE 75TH ANNIVERSARY OF THE UNITED HOUSE OF PRAYER FOR ALL PEOPLE’S CONVOCATION, HIS 61ST ANNIVERSARY AS MINISTER, AND 10TH ANNIVERSARY AS BISHOP AND CHURCH LEADER

HON. MELVIN L. WATT
OF NORTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. WATT of North Carolina. Mr. Speaker, I rise today to honor an exemplary leader, Bishop C. M. Madison. On the occasion of his 75th anniversary of the United House of Prayer for All People’s Convocation, his 61st anniversary as minister and his 10th anniversary as bishop of the United House of Prayer, Bishop Madison is an exceptional leader who has championed the causes of eliminating poverty, inadequate and unsafe housing, unemployment, illiteracy, economic disparities and spiritual deprivation. The magnitude, depth and substance of his contributions to improve human welfare and social reform have brought him national acclaim.

The leadership of Bishop C.M. Grace, Bishop W. McCollough and Bishop S.C. Madison has had a positive impact on the growth of the United House of Prayer since its earliest existence in tents and storefront locations. Currently, under the leadership of Bishop Madison, there has been expansion to 135 congregations in 26 states. The church’s massive nationwide building program has resulted in construction of over 800 units of low and moderate income housing. These housing complexes are located in Los Angeles, CA; Norfolk, VA; Charlotte, NC; Augusta, GA; Savannah, GA; and Los Angeles, CA. More than 100 units have been developed for senior citizens.

The extraordinary success of Bishop Madison has led to numerous honors and awards from national, state, and local organizations. Academic institutions have presented honorary degrees to him acknowledging his outstanding achievements in helping to overcome deplorable conditions that plagued people and cities.

He has received Doctor of Humane Letters from the Saturday College of Washington, DC and Bowie State University of Bowie, MD.

Bishop Madison continues to demonstrate outstanding leadership, dispense an abundance of love and philanthropy and support causes for young people and the elderly.” Bishop Madison’s ministry promotes higher education, exercises business acumen, improves the spiritual fiber of society and maintains the United House of Prayer as a beacon of light for those who need inspiration and a safe haven from the harsh realities of life.

It is my pleasure to stand before the House to pay tribute to Bishop S.C. Madison as he marks 61 years in the ministry and 10 years of service as the outstanding role model and leader of the United House of Prayer for all people.

DEBT-FOR-NATURE AGENDA OF BANK REGULATORS AT THE FDIC AND OTS

HON. JOHN T. DOOLITTLE
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, December 20, 2001

Mr. DOOLITTLE. Mr. Speaker, in the 107th Congress, I chaired a Task Force formed by then-Chairman DON YOUNG to examine whether bank regulators at the FDIC and OTS used their powers to leverage privately owned redwood trees, known as “debt-for-nature” schemes, from the Headwaters Forest in California, from an individual.

The task force, which included Representatives Pombo, Thorsenberry, Brady and Radanovich, undertook an 8 month review of the debt-for-redwoods matter. We held one and a half days of public hearing on the subject on December 12, 2000.

In the 107th Congress, Chairman HANSEN continued work on the subject and dedicated staff to draft a staff report to summarize the evidence of the FDIC and OTS redwoods debt-for-nature scheme and conclusions drawn from the oversight work. The report exposes how banking regulators took on an unauthorized, political agenda of leveraging redwood trees.

A member of the Task Force, Representative Pombo, inserted the text of the staff report into the Record on June 14, 2001. Just as important as the report itself, is the collection of evidence and documents, appended to the report. Those documents validate the accuracy of information presented in the report. Today, for the benefit of my colleagues, I have put those appendices into the Record. The Financial Services Committee should review this information as they deal with re-authorizing the FDIC and the OTS. These entities are clearly out of control, and I want to summarize why this is so.

Bank regulators at the FDIC and OTS have very specific statutory charges. They are to recover money from the owners of banks and thrifts when the institutions fail. This system keeps depositors whole through federally-backed insurance funds and collects money from the banks’ owners if they failed to properly manage the bank. I emphasize, bank regulators are to recover money.

We found boxes of evidence that clearly showed that the bank regulators at the FDIC and OTS deviated from their statutory charge and actually concocted a scheme, in concert with the Office of the Secretary of the Interior, to obtain redwood trees from an owner of the failed bank. The scheme was initiated, promoted, and lobbied by radical EarthFirst!
ecoterrorists. It was embraced by FDIC lawyers and facilitated by FDIC’s outside counsel, and it was sanctioned at the highest levels of the agency.

The cornerstone of the scheme was to bring legal and administrative actions that the regulators had not pursued at the OTS against Mr. Charles Hurwitz, a 24-percent owner of a failed bank called United Savings of Texas. The bank regulators own written analysis of its claims said that if the redwoods were not involved, their lawyers would have “closed out” the case. That means they would have dropped the case. Indeed, these actions of the bank regulators were discussed in detail, a highly inadmissible document used almost meritless banking claims against Mr. Charles Hurwitz. If the federal government can convert Mr. Hurwitz. It is clear that the scheme evolved as the administration of the Interior officials promoting a redwoods debt-for-nature scheme. They willingly injected themselves into the issue through actions—such as meetings with politicians and debt-for-nature urgings by environmental advocates, and meetings with Department of the Interior officials promoting a redwoods debt-for-nature scheme. They did these things well before their claims were authorized to be filed by the FDIC board, and it became clear and obvious that the regulators that there would be no “debt” and therefore no redwoods nature swap, if the claims were not brought or at least threatened.

The evidence of the FDIC’s participation in the debt-for-nature scheme is overwhelming and contradicts the testimony offered by the witnesses at the December 12, 2000, hearing of the Committee Task Force that reviewed the matter. That testimony was that bank regulators had no authority in law for them to pursue the debt-for-nature scheme. They did not have the means or capacity to defend himself, then imagine what the federal government can do to a person who does not have the means or capacity to defend himself.

The U.S. District Court Judge, The Honorable Lynn Hughes, who was assigned the...
FDIC case, after learning of just a fraction of what the FDIC and OTS had done to strong-arm Mr. Hurwitz, concluded that the agencies used tools equivalent to the cosa nostra (essentially the Mafia tactic). Judge Hughes was absolutely correct, and the documentation in this report provides additional basis that validates Judge Hughes conclusion. No one—including the Chairman of the Task Force, Mr. Doolittle, made a milioniardist or a laborer in a factory—should be subject to the unchecked tools of an out of control “independent” agency like the FDIC or the OTS, not in our republic.

The report makes the following conclusion: “The Directors of the FDIC and OTS should take ownership of and withdraw their authorization for the FDIC lawsuit and OTS administrative action against Mr. Hurwitz for matters involving USAT. The integrity of the bank regulatory system demands nothing less.”

I hope that the information in this staff report assists the Committee.

Sincerely,

DUANE R. GIBSON, Counsel.
2. Can a Committee on Resources task force generally have the powers and duties of a subcommittee?

3. Did the task force have the power and authority to exercise its charter and the applicable rules to discharge the duties and functions of the committee—such as holding hearings, receiving testimony, compiling staff reports, and preparing records and documents (into hearing records and publicly to document staff reports)? A committee is a coven of its parent House and only has the power to inquire into matters within the scope of the authority that has been delegated to it by that body. The study rule or the charting which gives the committee life is the charter which defines the grant and limitations of the committee’s power. In construing the scope of a committee’s authorizing charters, courts will look to the words of the rule or resolution itself, and then, if necessary to the usual sources of legislative history such as floor debate, legislative reports, past committee practice and interpretations. Jurisdictional authority for a “special” investigation may be given to a standing committee, to a Subcommittee of either of the Houses, or a special subcommittee of a standing committee, among other vehicles. As indicated in the above discussion, House Rules 

4. Regarding the unanimous consent request by Chairman Doolittle on December 12, 2000, the president pro tempore of the House, in the context of litigation. See, CRS Report a

5. Do litigation privileges apply to congressional hearings? If they do, what are the limits? If they do not, do other privileges, such as attorney-client or work product privileges, rest in the sound discretion of the courts? Any other method of a congressional committee to conduct an oversight investigation of an agency, the Supreme Court has long held that refusals to produce information on an ongoing or potential litigation would not be recognized. In Sinclair v. United States, 279 U.S. 263 (1929), the Court upheld the contempt of Congress conviction of a witness in the face of such a contention, holding that neither the laws directing such lawsuits be instituted, nor the law itself made to serve purposes other than its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits. In other words, those persons having evidence in their possession, including officers and employees of executive agencies, can not lawfully assert that the information they are withholding involving the government, “the authority of the [the Congress], directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.” Id. The courts have recognized that disclosures at congressional hearings may have the effect of jeopardizing the successful prosecution of civil and criminal cases, but in no instance has any court suggested that this provides a constitutional or legal limitation on Congress’ right to conduct an investigation, e.g., Delano v. United States, 165 F. 2d 107, 114 (1st Cir. 1952). Commenting on Congress’ power in this regard, Independent Counsel Lawrence E. Walsh, who saw successful prosecutions pursued because of public testimony at congressional hearings, observed that “[t]he legislative branch has the power to decide whether it is more important perhaps even to destroy a prosecution rather than to hold back testimony they need. They make that decision. It is a personal decision or a legislative decision or a political decision of the highest importance.” See Walsh, “The Independent Counsel and the Separation of Powers,” 25 Hous. L. Rev. 253 (1988), See also, Robert B. West and Robert V. T. Cline, Congressional Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry, 4, 23–29, CRS Report No. 95–461A, April 7, 1995 (CRS Report). Similarly, precedents of the House of Representatives and the Senate, which are founded on Congress’ inherent constitutional authority to investigate—acceptance of common law testimonial privileges, such as attorney-client or work product privileges, rests in the sound discretion of the courts. The question, whether a court would uphold the claim in the context of litigation. See, CRS Report a pp. 43–56. Indeed, Resources Committee Rule 1(b)(7) specifically provides that common-law privilege made by witnesses at hearings, or by interviewees or deponents in
investigations or inquiries, are applicable only at the discretion of the Chairman, subject to appeal to the Committee.

Next, we turn to the question whether public documents, reports, or other papers created during the course of your investigation will have the effect of waiving any privileges that might otherwise be asserted in any judicial or future litigation. Our review of the applicable case law, and the constitutional principles underlying congressional oversight and investigation, indicates that disclosure of such documents by a reviewing court is not likely to find that disclosure by your Committee, under the circumstances now obtaining, would effect a waiver of any privilege that might be asserted in a related court proceeding.

More particularly, once documents are in congressional hands, the courts have held that they are no longer the property of Congress. Further, Congress will exercise their powers responsibly and with due regard for the rights of affected parties. FTC v. Owens-Corning Fiberglas Corp., 626 F. 2d 966, 99 (D. C. Cir. 1980); Exxon Corp. v. FTC, 589 F. 2d 582, 589 (D. C. Cir. 1978), cert denied, 441 U.S. 943 (1979); Ashland Oil Corp. v. FTC, 458 F. 2d 977, 979 (D. C. Cir. 1976). Nor may a court block congressional disclosure of information obtained from an agency or private party, at least where disclosure would serve a legitimate legislative purpose. Doe v. McMillan, 412 U.S. 306 (1973); FTC v. Owings-Corning Fiberglas Corp., supra, 626 F. 2d at 970.

It is clear from our examination that when the production of privileged communications is judicially compelled, compliance with the order does not waive the applicable privilege in another context. This is as long as the Government has clearly established that the compulsion was resisted. See, e.g., U. S. v. De La Jara, 973 F. 2d 746, 749–50 (9th Cir. 1993) ("In determining whether the privilege was waived, the circumstances surrounding the discovery are to be considered."). Transamerica Computer Corp., 573 F. 2d at 656.

Westinghouse Electric Corp. v. Republic of the Philippines, 951 F. 2d 1414, 1427 n. 14 (3d Cir. 1991) ("We consider Westinghouse’s disclosure to the DOJ to be voluntary even though it was prompted by a grand jury subpoena. Although Westinghouse originally moved to quash the subpoena, it later withdrew the motion and produced the documents pursuant to subpoena."") Westinghouse continued to object to the subpoena and produced the documents only after being ordered to do so by the court ("Westinghouse’s request for the court to quash the disclosure to do so to be voluntary") (emphasis supplied); Jobin v. Bank of Boulder (In re M & L Business Machines Co.), 167 B.R. 631 (D. Colo. 1994) ("Production of documents under a grand jury subpoena does not automatically cull the attorney-client privilege, much less in an unrelentless civil proceeding brought by a non-governmental entity. This is especially true in a case such as this, where the record demonstrates that the Bank has consistently sought to protect its privileges. Such efforts have even included efforts to find waiver when the client’s production, although not compelled, is pressured by the court.") Transamerica Computer Corp. v. IBM, 576 F. 2d 1151 (9th Cir. 1978), cert denied, 439 U.S. 810 (1978); another court found that a client’s voluntary production of privileged documents during discovery did not effect a waiver because it was done over the objection of the client and the sitting judge. Duplan Corp. v. Deering Milliken, Inc., 979 F. 2d 1146, 1163 (S.D.S.C 1994). (finding no waiver “where voluntary waiver was not sought in an adversarial proceeding but in its place upon the suggestion of the court during the course of the in camera proceedings.”). Moreover, at least two federal circuits have held that a client’s response to a congressional committee does not waive claims of privilege elsewhere. See, Florida House of Representa-
the Committee on Resources has jurisdiction over the underlying law that initially authorized the purchase of the Headwaters Forest by the United States and management of the forests since the sale of the Land Management. That law was enacted in November 1997 and is P.L. 105-83, Title V, 111 Stat. 1610. That legislation was incorporated in an appropriations bill that funded the Department of the Interior.

Several conditions constrained the Headwaters Forest. One of those conditions was that any “funds appropriated by the Federal Government to acquire lands or interests in lands that enlarge the Headwaters Forest so that each acquisition shall be subject to specific authorization enacted subsequent to this Act.” This clause in the authorizing statute is incorporated to as the “no more” clause, because it prohibits federal money from being used to expand the Headwaters Forest after the initial federal acquisition. This was part of the agreement between the Administration and the Congress when funds were authorized and appropriated for the purchase of the Headwaters Forest. The federal agency that actually took place on March 1, 1999, the final day of the authorization, at which time all federal activity to acquire additional Headwaters Forest should have stopped. Thus, the FDIC’s decision and the OTS’s administrative action should be dropped.

The language, including the “no more” clause, is part of the Committee’s basis to compel bank regulators to provide documents and testimony about subjects related to the Headwaters Forest, debt-for-nature, redwoods, and related subjects. The sheer volume of material possessed by the banking regulators on subjects related to the Headwaters Forest, debt-for-nature, redwoods, and related subjects is so large that it is sometimes necessary to contextually verify the information and conclusions reached in this report. The documentation directly bears on subjects within and related to the jurisdiction of the Committee on Resources.

Use of Records and Documents

The FDIC and the OTS will undoubtedly complain that use of some of the records and documents disclosed in this report will jeopardize the litigation position. Hurwitz and his attorneys have claimed that certain litigation privileges or a court seal apply to the documents; however, as stressed above, all documentation in this report is public record unless the Committee has legislated on the Headwaters Forest, informing members also has legal basis under rule X 2(a) and (b) of the Rules of the House of Representatives. Members will be better able to discharge their responsibilities under such rules after reviewing the information in this report.

Some bank litigation privileges might prohibit use of the records not already part of the Task Force hearing records. However, litigation privileges do not generally protect the facts. They are delimited by the judicial branch of government for use in that forum. Assertions of any litigation privileges by the FDIC or the OTS or Mr. Hurwitz or other financial institutions disclosed in this report may still be made in the judicial forum.

Committee staff has redacted sensitive information (for example information unrelated to redwoods or debt-for-nature and information involving legal strategy) of certain data to preserve the integrity of the judicial and administrative proceedings. It is expected that the FDIC and OTS may erroneously say that disclosure of certain documents could undermine their litigation position. While many of the documents and records disclosed may be quite embarrassing to the bank regulators, embarrassment is a basis for keeping the information about the unauthorized redwoods debt for nature scheme secret. Some sunshine will expose the unauthorized redwoods debt for nature scheme in this case and sanitize the system in the future.

Background and Summary

On December 12, 2000, the Task Force on Headwaters Forest and Related Matters held a hearing that exposed an evolving redwoods “debt for nature” scheme undertaken by bank regulators—the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS). Presented at that hearing was substantial documentation and testimony showing how federal banking regulators, swayed by an intensive environmentalism, increasingly became integral to a “debt-for-nature” scheme to obtain redwood trees.

In short, banking regulators provided the other elements for a federal plan to extort privately owned redwood trees. The leverage used was the threat of “professional liability” banking claims against Mr. Hurwitz. Mr. Hurwitz, the defendant, was the owner of United Savings Association of Texas (USAT), a failed Texas savings and loan.

Mr. Hurwitz was a favorite target of certain environmental activists who wished to obtain the large grove of redwood trees in northern California, redwoods that belonged to a company, the Pacific Lumber Company, also owned by Hurwitz. The environmental interests pressured Congress, the Administration, and the banking regulators to bring the banking actions against Mr. Hurwitz and USAT. The idea was that the actions or threat of actions would lever or even force Mr. Hurwitz into transferring redwood trees to the federal government.

The FDIC suit (Federal Deposit Insurance Corporation, as manager of the FSLIC Resolution Fund v. Charles Hurwitz, Civil Action No. 93-3736) and the OTS’s administrative action (In the Matter of United Savings Association of Texas and United Financial Group, No. WA 94-01) against Mr. Hurwitz actually became what the environmentalists and political forces sought: the legal actions were the leverage for redwoods.

The bank regulators knew that their actions would be the leverage for such a debt-for-nature transaction. Between late 1993 and when the actions were initiated, the bank regulators were embroiled with the environmental groups, the Department of the Interior, and the White House in the redwoods debt for nature scheme. In the words of one intellectual analysis indicating that they would lose the USAT suit, so they teamed up to bring it administratively and in the courts.

Ultimately, the bank regulators and their hiring of OTS to bring the separate administrative action forced Mr. Hurwitz to the negotiation table. The bank regulators, in concert with members of the Interior and the White House, actually baited Mr. Hurwitz into raising the redwoods issue first, so it would not appear that the bank regulators were seeking redwoods’ rights. Indeed the bank regulators still try to propagate the fiction that Mr. Hurwitz somehow raised the issue first, but they can point to no document written evidence prior to September 6, 1995, when Mr. Hurwitz finally submitted and brought the possibility of swapping redwoods for bank claims.

After an intense banking regulator effort to get the redwoods that lasted from 1993 to 1996, the federal judge for the State of California switched the plan and purchased the redwood land owned by Mr. Hurwitz’s company at a cost authorized by Congress (P.L. 105-83, Title V, 111 Stat. 1610).

After the federal purchase, the residue was: (1) a flopped flawed bank suit; (2) bank regulators standing alone having been used politically by the White House and Department of the Interior; (3) a group of environmentalists still screaming “debt-for-more-nature;” (4) a federal judge who compared the tactics of the banking regulators to those of hired governments and the “Cosa Nostra.”

Mr. Hurwitz who was required to spend upwards of $40 million to fight the scheme. In short, the residue was a big mess.

However, not until the oversight review and December 12, 2000, hearing of the Task Force did the banking regulators’ redwoods scheme end. Having stumped their own negative evaluation of the merits of their case, become more fully understood. It was clear after the hearing that the “professional liability” claims would have been administratively closed—never even brought to the FDIC board by FDIC staff for action—had Mr. Hurwitz not over extends Pacific Lumber Company and the Headwaters Forest redwoods trees.

Instead, intense political pressure, intense environmental lobbying, pressure to pursue the banking claims as leverage for redwoods outweighed the standard operating procedure to administratively close the USAT case, which was no longer a USAT case. Two sets of banking regulators—the FDIC and the OTS—became willing instruments and partners in the debt-for-nature scheme, as they violated their own test for bringing “professional liability” claims. Bank regulators brought the claims against Mr. Hurwitz even though they were more likely than not to fail and were not cost effective.

The banking regulators’ own assessment with their action of the likelihood of failure on statute of limitation grounds alone. Even if the claims survive the statute of limitation challenges, their own cerebral assessment put less than a 50% likehood of success on the merits of their claims. These are not the conclusions of the Task Force, although some Members may well agree with them; they are the conclusions of the bank regulators themselves.

Moreover, the bank regulators (OTS and FDIC) had numerous meetings about the redwoods debt for nature scheme, and at a critical juncture right before they reversed their recommendation to the FDIC board, the bank regulators (with DOI) walked away from that meeting knowing that “[i]f we drop [our suit], [it] will undercut everything.” (Record 21). This is the meeting the DOI is likely executing leverage for the redwoods desired by the DOI and the Clinton Administration would become real through filing legal and administrative actions.

These contacts were far outside of normal operating practice for banking regulator and would not appear by the former FDIC Chairman of the FDIC as shocking and “highly inappropriate” (Hearing Transcript, 43–44).

In addition, the former FDIC Chairman to the Task Force redwood environmental reference to redwoods does not have “any relevance whatsoever on whether or not you
[the FDIC] sue[s] Charles Hurwitz and Maxxam over the failure of United Savings. Whether they own redwood trees or not is absolutely, totally irrelevant. (Hearing Transcript, page 833, lines 7-10) The FDIC Chairwoman presides over the debt-for-nature scheme—its own outside counsel, the law firm of Hopkins & Sutter—provided early and direct links into the environmental movement. They lobbied vigorously for federal acquisition of the Headwaters Forest through a debt-for-nature scheme. In fact, they were selected over as outside counsel because of their environmental connections and ability to handle a redwoods debt-for-nature swap.

In addition, the predisposition of the legal staff of the FDIC and OTS, the strong desires of Department of the Interior and the White House, the creative lobbying of the Rose Foundation and the radical Earth First! protestor community, and the FDIC Board Meeting discussions during consideration of the USAT matter all allowed the redwoods debt-for-nature scheme to proceed. The FDIC decision-making about the potential claims over USAT's failure was very little if any documentation provided to the Task Force justified, on a substantive basis, the decision to proceed with the redwood debt-for-nature scheme.

What remained at the end of the day were filed claims that would not have been brought unless Congress had authorized them in the FDIC Act. The FDIC's suit focused on preventing further problems. The USAT case is an exception to these statutory policies.

Nowhere in the statutes authorizing the OTS or FDIC is there a “professional liability” claims or other claims for purposes of obtaining redwood trees or “debt-for-nature” schemes. The sole purpose of such actions with respect to failed institutions is to recover funds or cash—not trees and not nature.

Whether they own redwood trees or not is absolutely, totally irrelevant. (Hearing Transcript, page 63, Ms. Seidman (OTS) answered: “Our restitution claim is brought for cash.” Ms. Tanoue (FDIC) answered: “The FDIC's suit focuses on preventing further problems.” The FDIC case is an exception to these statutory policies.

Interestingly, it was unknown early in that process whether or not it was set out for potential USAT claims would be viable at all or include redwoods, or whether the government would possibly purchase the redwoods. In any event, the FDIC lobby and action and OTS claims brought Mr. Hurwitz to the negotiating table. Prior to the claims being filed, the FDIC, in consultation with the White House, had already begun lobbying about the importance and role of the banking claims to advance the debt-for-nature redwoods agenda. The OTS was present during some of those meetings and was reportedly “amenable” to the redwoods debt-for-nature strategy.

Even after the outright federal acquisition, which was by purchase, the call became “debt for more nature,” through a continued use of the bank regulators leverage of suits and threats of suits continuing to be used by the federal government to lever Mr. Hurwitz for more nature, at that juncture arguably in violation of the authorizing statutes.

Whether framing this issue in such a way had generally greater than prior Pacific Lumber Company management undertook.

Mr. Charles Hurwitz owns Pacific Lumber Company. He acquired it in a hostile takeover on February 26, 1986, using high yield bonds. Pacific Lumber Company owned the Headwaters Forest, a grove of about 6,000 acres of old-growth redwood trees. To the contrary, the records produced were voluminous—and redwoods were even a topic discussed by the FDIC board when it reviewed whether to bring suit regarding the redwoods debt-for-nature scheme. The FDIC told Department of the Interior that they needed an “exit strategy” from the redwoods issue. If redwoods had nothing to do with bringing or pursuing the claims in the first place, then there was no reason for an “exit” strategy from the redwoods issue.

The documentation discovered by Chairman Man Doolittle, which is explained in this report, dispels the notion that Mr. Hurwitz raised the redwoods debt-for-nature first. To the contrary, the bank regulators included, actually bailed Mr. Hurwitz into raising it, and they became uncomfortable when he had not raised it nearly a year after the FDIC and the OTS suits were brought.

This report synthesizes records and information about the redwoods “debt-for-nature” scheme. It provides the information subpoenaed from the FDIC and OTS, and the information collected at the December 12, 2000, hearing of the task force.

As a starting point, it is helpful to understand the ordinary and authorized role of bank regulators when financial institutions fail. The FDIC is the independent government agency created by Congress in 1933 to maintain stability and public confidence in the nation’s banking system by insuring deposits. The FDIC is responsible for the safety and soundness of the nation’s commercial banks and other insured financial institutions and the Savings Association Insurance Fund.

Other than its deposit insurance function, the FDIC is the primary regulator for banks. It supervises, monitors, and audits the activities of federally insured commercial banks and other financial institutions. The FDIC is also responsible for managing and disposing of assets of failed banks and thrifts. When the FDIC sold deposit insurance funds, the Bank Insurance Fund for commercial banks and other insured financial institutions and the Savings Association Insurance Fund.

The OTS is the government agency that performs a similar functions to that of the FDIC for thrifts insured through a different regulator for thrifts. The responsibilities of the FDIC and OTS overlap in certain instances. The OTS has explained how the two agencies sometimes provide the same function: the OTS as “seek[s] restitution from wrongdoers associated with failed thrifts” and the OTS “focus[es] on preventing further problems.”

Mr. Hurwitz also owned 24% of USAT, a failed Texas-based thrift bank. He acquired it in a hostile takeover on February 26, 1986, using high yield bonds. Pacific Lumber Company owned the Headwaters Forest, a grove of about 6,000 acres of old-growth redwood trees. To the contrary, the records produced were voluminous—and redwoods were even a topic discussed by the FDIC board when it reviewed whether to bring suit regarding the redwoods debt-for-nature scheme.

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Nowhere in the statutes authorizing the OTS or FDIC is there a “professional liability” claims or other claims for purposes of obtaining redwood trees or “debt-for-nature” schemes. The sole purpose of such actions with respect to failed institutions is to recover funds or cash—not trees and not nature.

The mission of recovering cash was acknowledged by the FDIC. See, Hearing Transcript, page 63, Ms. Seidman (OTS) answered: “Our restitution claim is brought for cash.” Ms. Tanoue (FDIC) answered: “The FDIC's suit focuses on preventing further problems.” The FDIC case is an exception to these statutory policies.

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Chronological Facts and Analysis Regarding the FDIC and OTS Pursuit of USAT Claims

1986: Mr. Hurwitz Buys Pacific Lumber Company and Its Redwood Groves

Mr. Charles Hurwitz owns Pacific Lumber Company. He acquired it in a hostile takeover on February 26, 1986, using high yield bonds. Pacific Lumber Company owned the Headwaters Forest, a grove of about 6,000 acres of old-growth redwood trees. To the contrary, the records produced were voluminous—and redwoods were even a topic discussed by the FDIC board when it reviewed whether to bring suit regarding the redwoods debt-for-nature scheme.

After Mr. Hurwitz bought Pacific Lumber Company, he and the company became a target of several environmental groups when the company increased harvest rates on its land. Harvests were still well within sustainable levels authorized under the company’s state forest plan, but harvest rates were generally greater than prior Pacific Lumber Company management undertook.

Environmentalists framed the Hurwitz takeover of Pacific Lumber Company, as that by a “corporate raider” who floated “junk bonds” to finance a “hostile takeover” of the “company that cut down more old redwood trees. It is unclear whether framing this issue in such a way had more to do with intense fundraising motivations aligned with certain environmental groups described in the recent Sacramento Bee series about financing the environmental movement (www.sacbee.com/news/9301projects/environment/20010422.html) or more to do with ensuring that trees are not cut.

At this juncture, Mr. Hurwitz and Pacific Lumber Company were targets of environmentalists, but his opponents had little leverage to stop the redwood logging on the company’s land other than the traditional Environmental Protection Agency or State Forest Practices Act mechanism.

1988: Hurwitz’s 24% Investment in Texas Savings and Loan is Lost

Mr. Hurwitz also owned 24% of USAT, a failed Texas-based thrift bank. He acquired it in a hostile takeover on December 30, 1988, just like 557 banks and 302 thrifts failed in Texas between 1985 and 1995 resulting from the broad-based secular downturn of the Texas economy. As a result of the failure, the banking regulators said they paid out $1.6 billion from the
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insurance fund to keep the bank solvent and
secure another owner. That number has
never been substantiated by documentation.
Because Hurwitz owned less than 25% of
the bank, and because he did not execute
what is known as a ‘‘net worth maintenance
agreement,’’ he was not obligated to contribute funds to keep the bank solvent when
it failed. Such agreements (or obligations
when a person owns 25 percent or more of an
institution) are enforced through what is
known as a ‘‘professional liability’’ action
brought by bank regulators.
In certain cases, the FDIC and OTS are authorized by law to bring to recover money is
for the ‘‘professional liability’’ against officers, directors, and owners of failed banks.
The idea is to recover restitution—money—it
took to make failed institutions solvent.
This type of claim was brought against Mr.
Hurwitz by the bank regulators at OTS after
they were hired to do so by the FDIC. The
nature of ‘‘professional liability’’ claims are
explained well in bank regulator’s publication as follows: ‘‘Professional Liability [PL]
activities are closely related to important
matters of corporate governance and public
confidence. . . . [They] strengthen the perception and reality that directors, officers,
and other professionals at financial institutions are held accountable for wrongful conduct. To this end, the complex collection
process for PL claims is conducted in as consistent and fair a manner possible. Potential
claims are investigated carefully after every
bank and savings and loan failure and are
subjected to a multi-layered review by the
FDIC’s attorneys and investigators before a
final decision is rendered on whether to proceed. . . .’’ (Managing the Crisis: The FDIC
and the RTC Experience 1980–94, published by
FDIC, August 1998, page 266)
Indeed, the bank regulators at the FDIC
undertook an investigation of USAT beginning when USAT failed on December 31, 1988,
to determine what claims they might have
against USAT officers, directors, and owners.
1989-September 1991: Investigation Continues
The investigation of USAT proceeded, and
interim reports were issued by law firms investigating potential USAT claims for the
FDIC. Environmentalists initiated various
non-banking campaigns to block redwoods
timber activities of Pacific Lumber Company on their Headwaters land.
October 1991-November 1993: Bank Regulators
Find No Fraud, No Gross Negligence, No Pattern of Self-Dealing
By October 1991, the bank regulators determined that there was no ‘‘intentional fraud,
gross negligence, or pattern of self-dealing’’
related to officer, director or other professional liability issues related to the failure
of USAT (Document B, page 7). They also determined that there was ‘‘no direct evidence
of insider trading, stock manipulation, or
theft of corporate opportunity by the officers
and directors of USAT.’’ (Document B, page
7). They also determined that there was ‘‘no
direct evidence of insider trading, stock manipulation, or theft of corporate opportunity
by the officers and directors of USAT.’’ (Document B, page 14). Bank regulators said that
the USAT ‘‘directors’ motivation was maintenance of the institution in compliance
with the capitalization requirements and not
self gain or violation of their duty of loyalty.’’ (Document B, page 17). There being no
wrongful conduct, bank regulators concluded
that they had no valid basis to pursue banking claims against the owners of USAT to recover money for its failure.
In spite of the determination that there
was no basis to file a claim regarding USAT,
a determination that was unknown to Mr.
Hurwitz or the other potential defendants at
the time, the banking regulators and

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Hurwitz made numerous agreements beginning November 22, 1991, expiring July 31,
1995, to toll the statute of limitations. This
gave the bank regulators more time to investigate while they withheld filing of a claim.
These agreements are fairly routine in complex cases like USAT.
Beginning in August 1993 while the statute
was still tolled, several actions to attempt to
acquire the Headwaters Forest were taken in
Congress and urged by environmental
groups. For example, on August 4, 1993, Rep.
Hamburg introduced a bill to purchase 44,000
acres (20 percent) of the Pacific Lumber
Company’s land and make it into a federal
Headwaters Forest. In August 1993, the first
contact between the Rose Foundation (the
primary environmental proponent of advancing USAT claims against Hurwitz to obtain
Pacific Lumber redwoods) and attorneys for
the FDIC was made.
As early as November 30, 1993, FDIC attorneys were aware of the Hamburg Headwaters
bill and ‘‘materials from Chuck Fulton re:
net worth maintenance obligation’’ (Record
3A). The handwritten FDIC memo from Jack
Smith to Pat Bak notes that the professional
liability section ‘‘is supposed to pursue that
claim.’’ It reminds her not to ‘‘let it fall
through the crack!’’ And if the claim is not
viable, the banking regulators ‘‘need to have
a reliable analysis that will withstand substantial scrutiny.’’ (Record 3A).
Pressure to advance claims against
Hurwitz in connection with the redwoods in
a debt-for-nature swap came in a variety of
forms to the FDIC. It first came from Congress on November 19, 1993, in a letter to the
FDIC Chairman from Rep. Henry B. Gonzalez, Chairman of the House Committee on
Banking (Record 2). Numerous written Congressional contacts with the banking regulators, most urging FDIC or OTS to bring
claims against Hurwitz occurred in late 1993
when the debt-for-nature scheme was framed
and subsequently over the years.
On the same day, Bob DeHenzel, an FDIC
lawyer, got an e mail about a ‘‘strange call’’
regarding USAT (Record 1). It was received
by Mary Saltzman from a Bob Close, who
claimed to be ‘‘working with some environmental groups’’ and wished to talk to whoever was investigating the USAT matter. He
had detailed knowledge about the $532 million claim related to USAT and Charles
Hurwitz. He made the comment that ‘‘people
like Hurwitz must be stopped.’’ He said he
was working with an environmental group
called EPIC in Northern California. Paul
Springfield, an FDIC investigator, documented a conversation he had with DeHenzel
that day (Friday, November 19, 1993) about
the call from Bob Close. Mr. Springfield
verified that the FDIC lawyer, Mr. DeHenzel,
was familiar with a Hurwitz connection to
forest property: ‘‘He [DeHenzel] had some
knowledge of the nature of the inquiry [by
Mr. Close] as well as the attorney Bill
Bertain disclosed by Close. DeHenzel stated
that this group was involved in fighting a
takeover action of some company by Hurwitz
involving forest property in the northwestern United States. Apparently they are
trying to obtain information to utilize in
their efforts.’’ (Record 1).
Then on November 24, 1993, Mr. DeHenzel,
faxed a November 22, 1993, memo he received
on November 22, 1993, from the radical group
Earth First! to another FDIC staff member.
That memo laid out the ‘‘direct connection
between the Savings and Loans, the FDIC
and the clearcutting of California’s ancient
redwoods.’’ (Document E). The memo introduced the concept that the USAT ‘‘debt’’
(which were only potential claims that FDIC
internal analysis had already concluded had
no basis) should be traded for Pacific Lumber
Company redwoods. An excerpt of the memo

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lays out the scheme: ‘‘Coincidently, Hurwitz
is asking for more than $500 million for the
Headwaters Forest redwoods. So if your
agency can secure the money for his failed
S&L, we the people will have the funds to
buy Headwaters Forest. Debt-for-nature.
Right here in the U.S. That’s where you
come in. Go get Hurwitz.’’ (Document E)
The FDIC apparently took Earth First! seriously. Within one month, the FDIC lawyers
reported to the acting chairman in a memo
that they were ‘‘reviewing a suggestion by
‘Earth First’ that the FDIC trade its claims
against Hurwitz for 3000 acres of redwood forests owned by Pacific Lumber, a subsidiary of
Maxxam,’’ (emphasis supplied) (Document G,
December 21, 1993, Memorandum to Andrew
Hove, Acting Chairman, From Jack D.
Smith, Deputy General Counsel). The handwritten note on the top of the page indicates
that the acting chairman Hove was orally
briefed about the USAT situation prior to
the memo.
Thus, well before Mr. Hurwitz raised the
issue of redwoods and debt-for-nature directly with the FDIC in August or September 1996 with the bank regulators, its
lawyers had received written proposals from
the radical group Earth First!, and the FDIC
was undertaking a review of the proposals.
These were proposals making the connection
between Hurwitz, the redwoods, and USAT
bank claims.
Then in the close of 1993, a press inquiry
report to Chairman Hove on debt-for-nature
and the redwoods was received and documented from the Los Angeles Times. The
press question was whether FDIC lawyers
have considered whether ‘‘we could legally
swap a potential claim of $548 million
against Charles Hurwitz (stemming from the
failure of United Savings Association of
Texax) for 44,000 acres of redwood forest
owned by a Hurwitz controlled company.’’
(Record 3B)
The redwoods debt-for-nature scheme had
been introduced via these various venues
during 1993. At the same time FDIC’s own
analysis had shown absolutely no basis for a
banking claim lawsuit involving USAT. However, it was not until early 1994 when the
FDIC and their agent, the OTS, adopted the
redwoods debt-for-nature scheme, and it became inextricably intertwined in its USAT
bank claims. Ironically, it was political
forces that inticed the bank regulators, who
are supposed to act on bank claims without
political influence, into wholesale and willing adoption of the redwoods debt-for-nature
scheme.
1994: Undisclosed Congressional Meetings Lobbying on the Redwoods ‘‘Debt-For-Nature’’
Plan
By February 2, 1994, the FDIC attorneys
knew the weakness of several of its net
worth maintenance claims and it acknowledged that it ‘‘can point to no evidence
showing that either UFG or Hurwitz signed a
net worth maintenance agreement’’ (Record
5, page 6). They acknowledged the weakness
in a status memo (Record 5).
As a result, the FDIC teamed up with the
OTS to have OTS attempt to construct an
‘‘administrative’’ net worth maintenance
claim against Mr. Hurwitz and his company
that owned the redwoods. They believed (but
offered no proof that) ‘‘the actual operating
control of [MCO, FDC, and UFG] was exercised by Charles Hurwitz.’’ (Record 5, page 9).
In short, FDIC did not have a claim, but the
OTS may be able to bring an action in an administrative forum that was much more conductive to bank regulators, so the FDIC
would hire the OTS.
The net worth maintenance claim was important because if it could be established on
the facts (i.e., if Mr. Hurwitz owned 25 percent of USAT or he was somehow in control

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of USAT) it could mean he would be liable for that percentage of the USAT loss, which totaled $1.6 billion. In that way the bank regulators could conceivably get into Mr. Hurwitz and have him get their holding company assets which included the redwoods.

However, in written correspondence and at the Task Force hearing on December 12, 2000—Mr. Kroener had clearly indicated that the litigation concerning USAT and Mr. Hurwitz had anything to do with redwoods. They also denied that their discovery tactics were improper or that any leverage of any sort was the object of such discovery. One exchange at the hearing between Mr. Kroener, the FDIC’s General Counsel and Chairman Doolittle, however, typifies the response of the FDIC. It is from a letter (Record 2A) sent to the Department of Justice in 1994:

Dear Mr. Kroener,

We have received your letter of December 16, 2000. We appreciate the information you provided regarding the activities of the Task Force.

We wish to emphasize that our investigation of the USAT matter is not part of a scheme to force Mr. Hurwitz to sell the redwoods, but rather to ensure that he is held accountable for the losses suffered by his bank. We stand ready to provide whatever information is necessary to facilitate the achievement of this goal.

Sincerely,

The Department of Justice

Mr. Kroener. Mr. Kroener (as opposed to the fact that the FDIC lawyers, it shows when they promoted it at congressional and administrative officials about a possible claim against Mr. Hurwitz—its lawyers were then discussing the specifics their investigation of a potential claim in the context of the scheme that would use the potential claim to obtain redwood trees. The highly irregular nature of this early meeting injected a political dynamic to a case still in its development and absolutely erroneous to former FDIC Chairman Bill Isaac. He testified to the Task Force that the—discussions that occurred between FDIC staff and people internal and external to the bank raised redwoods with bank regulators. The contents of the meeting shows irre-
the FDIC to promote net worth maintenance claims to the OTS.

The clear implications of Ms. Tanoue’s answer is that Mr. Hurwitz was the first to bring the redwoods into a possible settlement, but we know that FDIC lawyers were scheming in February 1994 with a Member of Congress to convince the Treasury to promote the redwoods holding company owned by Mr. Hurwitz. Mr. Hurwitz was not the one who first brought the redwoods into banking claims through its environmental connections, FDIC lawyers, and certain Members of Congress had already done so by that point.

Perhaps Mr. Kroener did not read the meeting minutes in which the Task Force about the February 1994 meeting between FDIC lawyers and Rep. Hamburg when he told the Task Force that FDIC claims did not involve redwoods prior to February 1994. It ultimately overrode the fact that the FDIC knew its claim was weak and it led almost immediately to the FDIC hiring the OTS to promote the net worth maintenance claim against Mr. Hurwitz. This was done to avoid the possibility of any lawsuit against the FDIC prior to FDIC hiring OTS to pursue the net worth maintenance claim that FDIC knew it did not have. In the meeting minutes, the claim was sent immediately after the Rep. Hamburg meeting—

the meeting that tied Mr. Hurwitz’s holding company’s redwood trees to the USAT net worth maintenance claim against Mr. Hurwitz. The FDIC promptly then paid the OTS to pursue this claim by supposedly using its independent statutory authority.

In February 1994, in the middle of at least in February 1994, police the OTS action. What was a “hook” into the “holding company” that owned the redwoods for FDIC, was a “hook” into the holding company for the OTS. In fact, without the FDIC money (which by 1995 totaled $529,452 and by 2000 totaled $3,092,825), OTS’s five lawyers and six paralegals advancing the claims against Mr. Hurwitz would have been un-funded—and probably not advanced the claim. And without the net worth maintenance claim; (3) prodded OTS to review whether it could administratively fund the net worth maintenance claim against Mr. Hurwitz; (4) told OTS that there would be no hook into Mr. Hurwitz, therefore no hook into his redwoods.

It’s helpful to understand why Mr. Smith told Rep. Hamburg “very difficult to do a swap for trees.” It was very difficult for two reasons. First, the claims would not ordinarily be brought because they would be too difficult to bring on their own. Second, it had to exchange a claim that would not have been ordinarily brought. The bank regulators manual explains their policies from 1980 through 1994 in language that follows:

“No claim is pursued by the FDIC unless if meets both requirements of a two-part test. First, the claim must be sound on its merits, and the bank regulators believe that it is likely to succeed in any litigation necessary to collect on the claim. Second, it must be probable that any necessary litigation will be cost-effective, considering liability insurance coverage and personal assets held by defendant.” (Managing the Crisis: The FDIC and the RTC Experience 1980-94, published by FDIC, August 1998, page 265)

Second, the claims would be for restitution, and the FDIC could not accept trees in settlement. Furthermore, it appears that they would need “modest” legislation to accept trees, which is an admission that their purpose in seeking redwoods is indeed unauthorized.

However, it was political pressure, such as that applied by environmental groups in 1993 and 1994, that led the willing FDIC (and ultimately its agent, the OTS, after FDIC began paying OTS in May 1994) into ignoring the mission of recovering money on cost effective banking claims.

Instead the FDIC adopted unauthorized missions of providing leverage through law suits that at times were so weak that they would “convince” (the word used by Mr. Smith) Mr. Hurwitz that FDIC had a claim of “$400 million” so that they could get a “hook” into the redwoods and settle the claim for redwood trees. This was exercise of leverage pure and simple.

February 2 through 4, 1994, were important redwoods debt-for-nature days for the FDIC’s legal team. There was the FDIC memo admitting that it had no net worth maintenance claim. Then there was the meeting on the redwoods with Pacific Lumber and the FDIC at scheme. Then there was an odd, but revealing e-mail sent by FDIC’s congressional liaison, Eric Spittler, to Jack Smith on Feb ruary 3, 1994. In the e-mail, he had told Mr. Smith on February 3, 1994, the same day as the Rep. Hamburg meeting. The message was about the selection of an outside law firm to act as counsel on the USAT matter:

“Jack, I thought about over conversation yesterday. My advice from a political perspective is that it is still politically risky. We would catch less political heat from another firm, perhaps one with some environmental connections. Other firms might not agree but they might argue that the firm [Cravath] already got $100 million and we should spread it around more.” (emphasis supplied) (Document 15).

Indeed, “environmental connections” were a factor in selection of the outside counsel for the USAT matter (Record 15) from various FDIC lawyers to Douglas Jones, FDIC’s in-house General Counsel, to which the firm ultimately selected, Hopkins & Sutter, to handle a redwood debt-for-nature settlement: “The firm [Hopkins & Sutter] has a proven record handling high profile litigation on behalf of the (FDIC) and, drawing on its extensive representation of the lumber industry, will be able to cover all aspects of a potential redwoods settlement arrangements.” (Record 15, page 8).

The FDIC was clearly planning—even in February 1994 with the selection of an outside counsel—for a redwoods debt-for-nature swap as part of a settlement: This was before they even knew if their potential claims would be advanced. The FDIC Board had authorized filing of any claims. From the FDIC’s perspective, an outside counsel law firm with “environmental connections” that can “cover all aspects of any potentially unique debt for redwoods settlement” is the only choice. (Record 15)

In February 1994 in a meeting which denies to this day its litigation against Mr. Hurwitz has any linkage to a redwoods debt-for-nature scheme—selected the outside counsel for the USAT matter because it could handle a debt for redwoods settlement. This firm was an ideal choice for a bank regulator with an agenda to get a “hook” into a holding company that has redwood tree assets that might be traded for bank claims—if they can “convince” the other side that they have valid claims. Mr. Hurwitz’s redwoods debt-for-nature scheme began before the bank claims were authorized to be filed and seventeen months before he supposedly raised the issue of redwoods “first” with the FDIC.

The FDIC, its lawyers and acting chairman knew of the linkage between bank claims and redwoods, as did their outside counsel, Hopkins & Sutter, which even facilitated numerous contacts, information exchanges, strategy sessions, and meetings during the remaining 1994 between the bank regulators and environmental connections of a Hurwitz debt-for-nature redwoods swap.

But Ms. Tanoue and Mr. Kroener testified that it was a “strategic decision” paid off—to the environmentalists advocating a redwoods debt-for-nature scheme. F. Thomas Hecht, the lead partner at Hopkins & Sutter and on the USAT matter (Record 15), the attorney’s summarized the “intensive lobbying effort (beginning in about March 1994) by certain environmental activists led by the Rose and the other environmental advocates whose principal concern has been to conserve an area of unprotected old-growth redwoods in
northern California known as the Headwaters Forest.” (Document N, page 1)

The memo (Document N, page 3-4) details the following contacts:

On February 15, 1995, Thomas Hecht met with Jill Ratner of the Rose Foundation in San Francisco for an initial meeting at which Ms. Ratner outlined her groups’ concerns.

On October 4, 1994, Hecht, Jeffery Williams, Robert DeHenzel and the Rose Foundation and its attorney participated in a telephone conference at which the claims prepared by the Rose Foundation were presented in more detail.

On January 20, 1995, DeHenzel and Hecht met with J. Levin of the Natural Heritage Foundation (“NHF”) to discuss the possibility of cooperating with the Rose Foundation. The NHF was conducting much of the lobbying effort on behalf of the Rose Foundation and other environmental activists on this issue.

In addition to these more formal encounters, Williams, DeHenzel and Hecht have each been contacted repeatedly by the Rose Foundation and its attorneys to explore the theories in more depth and to urge the FDIC to take action. In each of these meetings and in subsequent telephone conversations and correspondences, the Rose Foundation and its attorneys have pressed for additional contacts and were pressing for the possibility of cooperating to leverage redwoods using potential banking claims.


In these words the FDIC’s attorneys were indirectly stating that, at least three months before the first exposure to the concept of the possible redwoods debt-for-nature scheme, the FDIC told OTS that the trees were being used as a bargaining chip in negotiating a settlement. This, indeed, may be the best evidence of the degree to which the FDIC and its attorneys were seeking to leverage redwoods debt-for-nature claims.

By April 3, 1995, FDIC lawyers were openly attempting to leverage Mr. Hurwitz into settling claims that were still not to be filed for redwoods. The redwoods debt-for-nature scheme was alive and active at the FDIC as indicated by the words in this e-mail from Mr. Jack Smith from Mr. Bob DeHenzel: “Jack: Just a note regarding our brief discussion on Charles Hurwitz and exercising creative options that may include a settlement involving the sequoia redwoods in the FDIC/OTS case.” (Record 9)

In these words the FDIC’s attorneys were indeed leveraging redwoods by sing their banking claims—at least three months before Mr. Hurwitz raised the redwoods-debt-for nature idea through his “representative agency” (presumably the DOI), attorneys, four months before the DOI began a suit against Mr. Hurwitz, and about five months before the FDIC maintains Mr. Hurwitz raised the redwoods swap idea directly with the bank regulators.

Thus, well before the notion of the redwoods debt-for-nature deal was introduced to the FDIC by Mr. Hurwitz (as the bank regulators religiously maintain) the bank regulators were indeed targeting Mr. Hurwitz’s redwoods and using their potential claims as leverage to the former. The repeated statements and the sworn testimony of Ms. Seidman, Ms. Tanoue, and Mr. Kroener to the Task Force (the Mr. Hurwitz introduced the redwoods into settlement discussions) is yet another example that directly contradicts what the FDIC lawyers were doing as evidenced by their own writing.

The notes of FDIC attorneys about what they were seeking and why the FDIC and the OTS were cooperating also contradict the FDIC’s statements when they say that redwoods had nothing to do with the litigation against Mr. Hurwitz. Some time in mid-1994 (but before July 20, 1994), Moskowitz and the other illustrative lawyers were thinking their trial strategy in terms of a claim and “a possible capital maintenance claim by OTS against Maxxam.” In illustrating the handwritten memo articulates why the FDIC lawyers wanted to hire the OTS and double team Mr. Hurwitz: “Why? (1) Tactically, combining FDIC & OTS strategy today is more likely to produce a large recovery/the trees than is a piecemeal approach.” (Record 10, Bates number JT 000145)

FDIC lawyer, Mr. John Thomas, contemporaneously wrote that their strategy with OTS would be more likely to produce “the trees.” But their Chair, Mr. Robert DeHenzel, General Counsel, and the FDIC Director repeatedly told the committee that the litigation had nothing to do with trees. Were the FDIC and OTS management and their board members so ill-informed about what their attorneys were seeking to achieve? “The trees” is not cash, period.

The other very alarming notion is how integral OTS is to the strategy to “produce” “the trees,” according to the FDIC attorneys. The strategy to “combine” FDIC’s weak claims with possible OTS claims on net worth maintenance further explains the February 4, 1994, letter from FDIC’s lawyers to OTS’s lawyers (Record 6).

It transmitted the net worth maintenance claims that OTS and the FDIC would consider if the FDIC was considering a redwoods debt-for nature swap scheme. The FDIC told OTS that they were about to report to Rep. Gephardt about the potential redwoods debt-for nature swap. The implication was that viable claims against Mr. Hurwitz (brought directly by the FDIC or indirectly through the OTS) would allow the FDIC to report back to Mr. Gonzalez that they could help get “the trees” because a swap would be more viable. Without the OTS, the FDIC would not have enough leverage to produce cause by its own analysis, the FDIC claims were losers.

The repeated intra-government lobbying of the FDIC and OTS also pushed the bank regulators into the political redwoods debt-for nature acquisition scheme. This intra-government lobbying began indirectly by at least May 19, 1993, and is first evidenced by notes (Record 11) from a phone call by Ms. Jill Ratner, who runs the Rose Foundation to Mr. Robert DeHenzel. (Record 11 is a copy of DeHenzel’s notes from that conversation.)

The notes (Record 11) indicate that Ms. Ratner told Mr. DeHenzel about the Department of the Interior (DOI) players who are “very interested in debt-for-nature swap”: Mr. Alan McReynolds, a Special Assistant to the Secretary of the DOI; Mr. Jeff Webb, the DOI’s congressional relations director; Mr. George Frampton, the Assistant Secretary for Fish and Wildlife and Parks at DOI, and Mr. Jay Ziegler, an assistant to Mr. Frampton who was also interested as redwoods debt-for-nature advocates. And Record 11A illustrates that the Rose Foundation had done substantial work regarding various mechanisms to transfer the redwoods to the government.

The notes indicate that Mr. McReynolds had flown over Headwaters during the week of May 8, 1995, with Ms. Ratner a primary advocate of various plans to acquire the Headwaters forest. This was the first indication that DOI was engaging on the redwoods debt-for nature scheme and probably Mr. McReynolds’ first exposure to the concept that bank claims could provide the leverage for the redwoods scheme. There is no mention in the notes that Mr. Hurwitz requested DOI to look at the issue of a swap or look into it: “Interior is . . . discussions will continue. Webb & Ziegler will continue doing preliminary work to explore whether debt-for-nature would work.”

By the time that the DOI engaged in May 1995, the FDIC lawyers were well aware of
the “debt-for-nature” transaction that various environmental groups have been advocating to resolve the claims involving Hurwitz and USAT. (Record 12) They were also satisfied by the FDIC's action, as shown by the environmentalists as described by the two-page FDIC memo about a redwoods debt-for-nature letter to the DOI and the Oklahomans by bombing and a “call to defuse this situation” by doing a swap (Record 12). The following excerpt of the memo shows detailed knowledge of the redwoods scheme and a perceived threat of violence related to environmentalists who had pushed the FDIC into it: “As you know, the above-referenced investigation has attracted the attention of organizations and individuals that have interests in environmental preservation. This has arisen as a result of Charles and his associates’ activities of the Sierra Club, Pacific Lumber, a logging company in Humbolt County, California, that owns the last stands of old growth, virgin redwoods. It has been widely reported that the company has been harvesting the virgin redwoods in a desperate attempt to raise cash to pay its and its holding company’s substantial debt obligations.‘The environmentalist’s issues are centered on preserving the old growth redwoods through the government, and this is how we intend to settle the government’s claims involving losses sustained on the USAT failure by, in part, the redwood scheme. As a result, the FDIC, or other federal agency responsible for managing such forest lands, FDIC has received thousands of letters urging FDIC to pursue this transaction.‘The environmental movement, like many others, is not homogeneous and contains extremes of elements that have reported to civil disobedience and even criminal conduct. As a result of the recent tragedy in Oklahoma City, everyone appears to be more sensitive to the possibility that people can and do resort to desperate depraved criminal acts. Accordingly, we take any references to such conduct, even ones that appear innocent, more seriously.” (Record 12)

This excerpt shows that FDIC attorneys were (1) probably somewhat intimidated and (2) also well-versed in the debt-for-nature scheme when Ms. Ratner told Mr. DeHenzel who the DOI players supporting the redwoods debt-for-nature were. The focus was keen to the motivations and methods of those who fed the scheme to them. Perhaps the intimate knowledge by the FDIC of the internal and environmental community came through the numerous pieces of correspondence and legal memos from the Rose Foundation to the FDIC through Hopkins & Sutter. The material showing the constant pummeling of FDIC by outside groups and Members of Congress on the completely unrelated issue of pursuing the redwoods debt-for-nature swap. However, when it came to the “call to defuse this situation” by doing a swap, they addressed these issues internally in a discussion on the USAT claims with the board apparently scribbling a few days later: “Dilemma (why they [the FDIC Board] get that extension was to expire on July 31, 1995, just thirteen days later. It was just three days after Mr. McReynolds contacted the FDIC for a meeting about the potential FDIC and OTS actions against Mr. Hurwitz that the FDIC was told that Mr. Hurwitz would not extend that deadline.” (Record 18)

The FDIC was unprepared for this action. They had enjoyed six years and eight months of inactivity. They were not warned of this action by outside groups and Members of Congress on the completely unrelated issue of pursuing the redwoods debt-for-nature swap. However, Mr. Thomas was saying that theFDIC attorneys were (1) probably somewhat intimidated and (2) also well-versed in the redwoods debt-for-nature scheme when Ms. Ratner told Mr. DeHenzel who the DOI players supporting the redwoods debt-for-nature were. The focus was keen to the motivations and methods of those who fed the scheme to them. Perhaps the intimate knowledge by the FDIC of the redwoods debt-for-nature swap. Clearly, the intense lobbying effort by the environmental groups, by their outside counsel, by the DOI, by the White House, and by other federal entities was effective! At that point the bank regulators bought the redwoods debt-for-nature scheme, but were unprepared then to totally disregard their what they knew they should do under their rules and guidelines, so the staff punted the issue to the board. The FDIC had already injected itself into a political issue. Their dilemma was summed up by Mr. Thomas in notes preparing for a discussion on the USAT claims with the board apparently scribbed a few days later: Dilemma (why they [the FDIC Board] get paid the big bucks)—Hit for dismissed suit—Hit for walking based on staff analysis of 70% loss of most/all on S of L (statute of limitations running), then the Board must intercede.

Importantly, the FDIC was deviated from ordinary operating procedures because of the intense lobbying campaign for the redwoods debt-for-nature swap. The USAT claims against Mr. Hurwitz were re-puted the issue to the board. Importantly, the FDIC was deviated from ordinary operating procedures because of the intense lobbying campaign for the redwoods debt-for-nature swap. The USAT claims against Mr. Hurwitz were re-}
as the environmental groups wished. This was not the ordinary case—it was going to the FDIC Board even though the FDIC admitted their case had a 70 percent chance of being dismissed on statute of limitations, and was more likely than not to fall off the merits if they were reached.

Applying, the FDIC legal staff was prepared to tell McReynolds and “the Hill” [Congress] the same thing—their course of action described in the July 20, 1995, meeting notes was not in accordance with the circumstances there still left the door open for the board to act against staff recommendations and authorize the suit anyway—something that may not have been the case if Mr. McReynolds had been present, but would still leave open the possibility of the leverage that DOI desired against Mr. Hurwitz.

Then something else changed on July 21, 1995, which was the day following the internal FDIC meeting on their potential claims against Hurwitz. The change caused the entire approach of the FDIC lawyers to evolve again. What changed was not any new information about the facts of the potential claims, but rather, what McReynolds had to say. What changed was not any favorable development in law that strengthened their potential claims against Mr. Hurwitz related to USATX, but wasn’t anything new about the nature or strength of the potential claims against Mr. Hurwitz. All of these things remained the same.

What changed was the realization by the FDIC lawyers, as communicated by a senior DOI official, that (1) the Clinton Administration, in particular, (2) the FDIC’s potential banking claims were critical to pulling off that redwoods debt-for-nature scheme and (3) the FDIC’s banking claims—the same claims that the FDIC lawyers would have dropped using “delegated authority” leverage that were critical to making the redwoods debt-for-nature scheme work.

That realization occurred when the FDIC lawyers met with Mr. McReynolds on Friday, July 21, 1995, at 11:00 a.m. (Record 19), just as he had requested on Monday, July 17, 1995. Meeting notes note McReynolds asked that he be updated about the redwoods and endangered species issues associated with Mr. Hurwitz’s redwoods were initially discussed (Record 20). Other than Mr. McReynolds’s task force and the willingness of California to participate in the deal were discussed, as were Mr. Hurwitz’s valuations of the property. Interestingly, McReynolds laid out some of the basics about the redwood acreage. He was familiar with the issue from first hand experience because he had flown over the redwoods with Jill Ratner during the week of May 8, 1995 (See, Record 11): “H[urwitz] values 8K [acres] at $500 m. Interior wants to deal it down. [H[urwitz] really wants—Calif. Delegation is really pushing on.” Dallas/Ft Worth—Base closure.

The FDIC asked McReynolds about the meeting that the FDIC lawyers had set for the following Wednesday, July 26, 1995, with the OTS to discuss the USAT claim. They told Mr. McReynolds about the fact that they were doing the memo to the Chairman (the 10 page memo they concluded they needed in their July 20, 1995, meeting amongst the FDIC lawyers) that the FDIC lawyers were drafting the memo. The handwriting on this in Record 20 is reproduced below: “Wed [July 26] 10:30 mtg w/OTS. Memo for Chairman.” (Record 20)

Eric’s memo from the July 21, 1995, meeting add helpful details, and they are reproduced below: $400,000 of OTS claims

Hurwitz had called from atty. Appraisal on property ($500m. Said they want to make a deal. Don’t think OTS lawyers are likely we will drop claims from them about a claim. At same time telling them to get rid of him. Can’t he do that? If we drop suit, will undercut everything.” (emphasis supplied) (Record 21)

So, the FDIC knew—according to the meeting notes—that if the FDIC dropped the suit by letting the OTS decisions run, “it will undercut everything” related to the redwoods scheme that was just discussed with McReynolds. In other words, letting the statute of limitations expire—“the ordinary procedure and recommendation of the FDIC lawyers at the time—meant the leverage for the redwoods debt-for-nature deal would evaporate, as long as Hurwitz got his redwoods. Thus, the notes confirm a redwoods debt-for-nature scheme and that FDIC did not really know whether Mr. Hurwitz believed the same thing—further evidence of the fact that the claims were indeed weak substantively and procedurally.

In this context—where the FDIC knew its claims (and the claims it was paying OTS to pursue) were the essential leverage for the redwoods—the FDIC lawyers began drafting the memo. Clearly, the agency was struggling with the fact that dropping the claims was inconsistent with what the DOI and the Administration would require to accomplish the redwoods debt-for-nature swap.

The handwritten outline of Mr. John Thomas’s (Record 22) review the major points in the contemplated memo to the Chairman. The outline reiterated the linkages between FDIC and OTS, and it reinforced staff conclusion that the USAT claims against Mr. Hurwitz should be left to expire otherwise the court would dismiss them. Mr. John Thomas’s outline clearly show that if this case were ‘ordinary’ it would be closed.

Pressure for redwoods was the justification the FDIC lawyers began drafting the memo. Cleary, the agency was struggling with the fact that dropping the claims was inconsistent with what the DOI and the Administration would require to accomplish the redwoods debt-for-nature swap.

May recall briefed re OTS—[FDIC is] paying the (OTS)—some months ago. OTS is making progress, but not ready. Thus, tolling again.

OTS staff hopes to have draft notice of charges to Hurwitz, et al. Aug./Sept. [Apologize for short notice] thought we would be able to at least get final decision until OTS acted. Hurwitz refused to toll.

Normal matter, we would close out under delegated authority w/o [without] bringing it to your Bd’s attention. However, given (a) visibility—tree people, Congress & press (b) [OTS] has told us we thought you-Bd—should be advised of what we intend to do—and why—before it is too late.

Bottom line: likely to lose on S of I [statute of limitation]—let it go or have ct. dismiss it.

Continue to fund OTS.

We’ll also write Congress re what & why rather than awaiting reaction

Redwood Swap—Interior/Calif. Forest—[military] base—FDIC/OTS claim(s)? (Record 22)

This outline reinforces the approach and dilemma described by FDIC lawyers in their July 29, 1995, meeting. First, there was coordination with the OTS claims to get redwoods. That’s because if the OTS claims were losers on substantive and procedural (statute of limitations) grounds. Second, ordinary procedures to close out the matter (the noncontentious third party) of the redwoods debt-for-nature campaign of the “tree people” (Earth First! and the Rose Foundation), Congress, and the press. Third, the implementation of the “Redwood Swap” was taking shape and FDIC lawyers were beginning to coordinate with DOI staff. All these factors combined to override the normal course of action, which was to close out the case. Instead, the Board would get the decision. All of this confirmed in John Thomas’s own handwritten outline (Record 22), and all of it adding up to show that the redwoods debt-for-nature scheme had a real impact on the approach of the FDIC’s lawyers. It had yet to skew the FDIC’s final decision of the OTS. By the time of the memo to the Chairman (Document X), but the version dated July 27, 1995, would reflect a skewed judgment.

The memo was drafted, and a version reflecting Mr. Thomas’s notes and all of the prior internal staff discussions was produced and dated July 24, 1995. The drafts are Document X, and the final before the reversal is Document 5, pages ES 0490–0495. It contains an unsigned signature block. Highlights of this memo are reproduced below and they tell exactly what the FDIC lawyers would advise the FDIC Board: “We had hoped to delay a final decision on this matter until after we have decided whether our claims against Hurwitz, et al. However, we were advised on July 12, 1995 that Hurwitz would not extend our tolling agreement with him. Consequently, if suit were to be brought it would have to be filed by August 2, 1995. We are not recommending suit because there is a 70 percent probability that most or all the FDIC cases will be dismissed today—there is a strong likelihood that the Board would get the decision anyway. Under the circumstances the staff would orderly conduct the investigation under delegated authority. However, (even if the OTS and numerous Congressmen and environmental groups) we are advising the Board in advance of our action in case there is a contrary view.” (emphasis supplied) (Document X).

And in discussing the merits, the memo again advised: “The effect of these latest adverse [court] decisions is that there is a very high probability that the FDIC’s two cases will not survive a motion to dismiss on statute of limiting grounds. We would also be at increased risk of dismissal on the merits. Because there is only a 30 percent chance we can avoid dismissal on statute of limitations grounds, and because even if we survived a statute of limitations motion, victory on the merits is still possible, we are likely to suffer a motion to dismiss on statute of limitations motion) is uncertain given the state of the law in Texas, we do not recommend suit on the OTS claims.” (emphasis supplied) (Document X, page ES 0493–0494)

The memo then discusses the redwood forest matter, an interesting notion given that the memo is that the redwoods were not at all connected to their litigation: “The decision not to sue Hurwitz and former directors and officers of USAT is likely to attract media coverage and criticism from environmental groups and member of Congress. Hurwitz has
a reputation as a corporate raider, and his hostile takeover of Pacific Lumber attracted enormous publicity and litigation because of his harvesting of California redwoods. Environmentalists have received considerable publicity in the last two years, suggesting exchanging our D&O [director and officer] claims for the redwood forest. Only July 27 final version rolled into the ATS memo also discusses the “Pacific Lumber—Redwood Forest Matter” (Document L, page EM 00129). Therein, it notes the July 21, 1995, meeting with Mr. Hurwitz. The July 27, 1995 version is the text that was incorporated into the Authority to Sue (ATS) cover Memorandum that was itself dated July 27, 1995. It, with the ATS memo (Document L, EM 00123-00135), went to the FDIC Board, and it recommended the suit against Mr. Hurwitz be brought.

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2. Claims.

Charles Hurwitz was a member of the board of three different corporations that had an interest in United Savings Association of Texas. After United Savings failed in 1988, the FDIC began investigating Hurwitz. Co-operating with the government, Hurwitz signed a succession of agreements to extend the deadline for the government to act. After eight years of investigation by the FDIC and the OTS with no resolution in sight, Hurwitz decided on its own to terminate the statute of limitations against him. The FDIC notified Hurwitz that a number of claims arising from the operation of United. When notified, the claims were that

• Hurwitz mismanaged United's mortgage-backed security portfolios.

In late 1995, the FDIC and OTS were deeply involved with promoting the redwoods debt-for-nature scheme, but they had still yet to receive any direct communication from Mr. Hurwitz about the redwoods swap for their claims. About March 3, 1996, the FDIC attorneys had begun to realize that the agency should not be involved in the redwoods scheme. He made the following note on what appears to be a “to do” list:

APPENDIX 1
DOCUMENT A
United States District Court—Southern
DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE CORPORATION
AND OFFICE OF THRIFT SUPERVISION, PLAINTIFFS,
VERSUS

CHARLES P. HURWITZ, DEFENDANT.

CIVIL ACTION H-95-3956
OPINION OF THE DISTRICT COURT OF OFFICE OF THRIFT SUPERVISION

1. Introduction.

The Federal Deposit Insurance Corporation sued Charles Hurwitz for improprieties as corporate officer that led to the failure of a bank Hurwitz's corporation owned. While the suit was in its preliminary stages, the FDIC procured the Office of Thrift Supervision to undertake an administrative action against the officer. Over the OTS's objection, this court joined the OTS as an involuntary plaintiff in this suit since it had decided to affect the outcome. Now, the FDIC has amended its complaint to abandon its claims that duplicate those in the OTS's action; although this is yet another manipulation of the court system by the FDIC, the OTS will be dismissed.

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the same claims in addition to violations of banking regulations. The court joined the OTS to minimize duplicative and—as it turns out—duplicitive proceedings and to avoid inconsistent findings about the same transactions.

The OTS was properly joined as a party. A party may be joined as an involuntary plaintiff without interest in the subject matter of the suit and its absence would leave another party at risk of incurring multiple or inconsistent obligations, Fed. R. Civ. P. 19(a)(1). The government argues that this court may not join the OTS because it lacks jurisdiction. It says that the statute creating the OTS created a limited district court of jurisdiction. The statute says that a district court may not issue an order that affects the administrative process. The government, reading its protection from independent examination broadly, says that any action taken by this court in this case will necessarily affect the OTS’s administrative proceedings, making it barred. See 12 U.S.C. §1818(1)(l).

The scope of the statutory prohibition of court jurisdiction is limited to suits brought by the court to impede the issuance or enforcement of a notice or order of the OTS; every determination of law affects the OTS. The government claims that if it pursues its precedents before a reading than a reading of them will support. Certainly, none of the cases indicates that a federal court has no authority to join the OTS as a party defendant. Compelling the OTS to participate in a case is far different from preventing it from continuing its own case. See Board of Governors of Federal Reserve System v. McCorr Fin. Corp., 562 U.S. 31 (1992); Board of Governors of Federal Reserve System v. DLG Fin. Corp., 29 F.3d 993 (5th Cir. 1994); RTC v. Ryan, 801 F. Supp. 1545 (S.D. Fla. 1992). Only when a court seeks to enjoin, not merely join, might the court exceed its jurisdiction. In fact, federal courts have exercised jurisdiction over the OTS when, as here, the relief sought does not prevent the OTS from pursuing its administrative proceedings. See, e.g., Far West Fed. Bank v. OTS, 930 F.2d 883, 886, 890-91 (9th Cir. 1991).

4. One Government.
These two agencies insist that they serve different statutory purposes and should not be compelled to work together. Despite the current overlap of the last “independent agency,” no agent can be independent; without a principal, there can be no agent. Here two limited agents of the United States government claim to be wholly unrelated. They are both parts of the executive branch, and it is one entity, operating under a restrictive charter and for an ultimate principal. This bureaucratic shell game is aggravated by each sub-unit’s active misrepresentations about the role each has played and the effect, its financial interest or role.

The government lawyers insisted that, although the investigations were perhaps parallel, the two subunits were acting completely independently from each other. That turns out not to be true.
The FDIC has hired the OTS. The OTS declined to do the same and wanted to pursue these claims, so the FDIC bought it by agreeing to pay its costs. Instead of exercising regulatory judgment about America’s interest, the OTS is hangering citizens at the direction of the FDIC.

Although the FDIC knew that an OTS administrative proceeding was imminent, it initiated this action. The federal court, OTS and FDIC worked in concert on the investigations, and the FDIC funded both investigations, the same parties and the same actions are involved. The money recouped by either agency will go to the FDIC. Hurwitz is not seeking to enjoin the OTS, directly or indirectly, “by any stay, injunction or otherwise” the administrative proceedings. Furthermore, this is not Hurwitz’s suit. The FDIC initiated this action, knowing that it had bought the initiative of the OTS.

In January 1997, during a pre-hearing conference with the hearing officer, the FDIC and OTS claimed that the administrative proceeding is no longer relevant. The government has judicially admitted what it now seeks to contradict. The law does not support the government’s position, and it has admitted that joining the OTS as a party to this suit “does not affect [the administrative] proceeding.” The government has judicially admitted what it now seeks to contradict. The law does not support the government’s position, and it has admitted that joining the OTS as a party to this suit “does not affect [the administrative] proceeding.”

The government’s briefs and motions are a public relations ploy to avoid jury trial and, thereby, to avoid a determination of law. The government lawyers insisted that, although the government is seeking to avoid jury trial and, thereby, to avoid a determination of law, it is, in fact, asking the court to make a determination of law. The government is hammering citizens at the direction of the FDIC.

In the amended complaint, the FDIC’s claims vanish. The FDIC drops its discussion of the connection between Hurwitz and Drexel—a public relations ploy—and its complaints about the mismanagement of the mortgage-backed securities portfolios. Hurwitz owes the government money regardless of the forum. Further, if Hurwitz is found to have no operational obligation, his fiduciary duty to the bank will be determinative and Maxxam. The FDIC now abandons its suit. The FDIC initiated this action. The FDIC now abandons its suit. The FDIC initiated this action. The FDIC now abandons its suit. The FDIC initiated this action. The FDIC now abandons its suit. The FDIC initiated this action. The FDIC now abandons its suit.
The lawyer communicated legal advice. The lawyer prepared a legal opinion in anticipation of litigation. The communication had no unlawful purpose.


5. Operating Lawyers & Counseling Operators.

In traditional analysis, legal counsel is a staff function, but directing operations is an operating function. In a governmental agency sometimes the entire operation looks like staff, but when one of the functions of the agency that is being owned through its defunct insurers, management of receivables and referral to legal counsel are operating decisions. The policy decision whether it is wise to use litigation is ultimately an operating decision.

The authors of this report were both the legal and operations departments. The approaches were by both departments. Neither the assistant director who co-authored the recommendation and request nor the director who concurred was acting as counsel to the bank. They were non-lawyers reporting their findings to the board.

This report is not a lawyer’s opinion letter; it is an internal operating document. The subject of the report is claims and regulatory action, litigation and probable recovery, but that does not make it advice of counsel. The FDIC never hired or fired it at its underwriting-review or supervisory- assistance functions, it is now in the liquidation business. Everything about a failed bank is about claims; the FDIC’s stock in trade is debts and credits of uncertain value in a litigious society.

A client that obtains its advice in a mixed form—legal and internal operating—must be able to disentangle the two strands clearly and reliably, or it loses its privilege as it would with any confusion or accession. The legal analysis in the report was commingled with everything from malicious gossip to historic data.

6. Exclusions.

In disclosing the part of the report that it knew was not privileged, the FDIC excited the public interest. However, these were non-lawyers reporting their findings to the board.

The agency cut the discussion of the wholeheartedly holding of Pacific Coast redwood forests. It makes the bulk of the exclusions were simply a lack of candor.

The agency cut a personal description of Hurwitz as a “corporate raider.” The agency cut the admission that the FDIC had already paid $4 million to its outside counsel and expects to pay another $6 million.

The agency cut the admission that the savings and loan was hopelessly insolvent when it was sold by the FDIC to Hurwitz’s company.

The agency cut the OTS’s involvement in discussions about “pursuing these claims.”

The agency cut the regulatory background and general history.

The report completely discusses the wholly unrelated matters about Maximm’s indigent holding of Pacific Coast redwood forests.

The agency cut the discussion of Hurwitz’s control of companies. These things have no relation to the legitimate categories of attorney-client confidences. There are some exclusions that were estimates of success and disclosure in the claim at the time, but the bulk of the exclusions were simply a lack of candor.


The FDIC says that it is fully independent from the rest of the government. It used this argument to avoid the complaint from Hurwitz that he is being attacked by the same government of the United States in the case and in an action by the Office of Thrift Supervision for the same act. Moments later, the FDIC argues that it is all the same. The FDIC must make this argument because it has disclosed its analysis and strategy to the Office of Thrift Supervision, which disclosure destroys the pretense of an attorney-client relationship.

The Office of Thrift Supervision is a middle function within the Department of Treasury; it was created by federal law to supervise the operations of the FDIC—the life of the FDIC’s—function parallel to the FDIC’s with banks.

Another federal statute created the Federal Deposit Insurance Corporation. The FDIC insures deposits of banks and savings associations by charging premiums. Although it has a corporate name, it is merely an agency of the federal government. The president appoints the five-member board of directors of the FDIC. The director of OTS is automatically a member of the FDIC board.

The FDIC has legislative authority under federal statutes, the FDIC’s revenues are undistinguishable from ordinary taxes. In court it maintained that it was separate from the corporations proceedings, except for some tens of billions of dollars it used to pay its insurance losses in the eighties.


The report furthers a misrepresentation to the court. The FDIC has represented to the court that the Office of Thrift Supervision is proceeding entirely separately from this case. The FDIC never disclosed that it had actually hired the OTS to front for it in attacking Hurwitz administratively.

In November of 1996 the FDIC was telling the court it had an independent agency. But in February 1996, the district court held that the FDIC was an operating function. In a governmental agency, the policy decision whether it is in the public interest to use litigation is ultimately an operating decision.

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9. The Board Resolves.

After the report was presented to the board of directors of the FDIC, the board adopted the report as its resolution. The board resolution approved to authorize this lawsuit. The board could have authorized legal action against Hurwitz by a separately written resolution; and that resolution would have needed to contain no attorney-client advice, but the board chose the expedient of adopting as its resolution the whole text of the report, making it a formal statement of public policy.

While the board may not have intended that Hurwitz or the public know of its decision in this form, its practices made its staff legal advice into an operating document, totally unprivileged. The resolution is not a client asking for legal advice nor an attorney advising a client. It is the embodiment of a governmental agency’s final decision about public business.

An analogy: A report of advice from the government counsel of the relations committee to its chairman may be privileged, but if the committee adopts the report as its resolution, no privilege survives. This is the report written jointly by the architect of the capital and committee counsel and then was adopted by the public works committee.

DOCUMENT B

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED

COMMUNICATIONS—REPORT AND LITIGATION RECOMMENDATIONS ON DIRECTOR, OFFICER AND PROFESSIONAL LIABILITY CLAIMS ARISING OUT OF THE UNITED SAVINGS ASSOCIATION OF TEXAS RECEIVERSHIP

[Prepared by: Brill, Sinex & Stephenson, a Professional Corporation]

I. BACKGROUND

United Savings of Texas (“USAT”) was closed on Friday, December 30, 1988, upon the determination by the Federal Home Loan Bank Board that the institution was insolvent and engaged in or about to engage in hazardous lending practices. The institution failed as a result of excessive growth, substantial underwriting practices and internal controls; poor investment strategies and portfolio management regarding the mortgage-backed securities portfolio; the failure of USAT’s holding company, United Financial Group, Inc. (“UFGI”), to maintain sufficient minimum regulatory capital in USAT; and the severe economic slump in the Houston/Galveston area.

USAT was a state chartered, federally insured savings association located in Houston, Texas. The association was a wholly owned subsidiary of a savings and loan holding company called United Financial Group, Inc. (“UFGI”). UFGI’s principal shareholders were corporations controlled by Charles Hurwitz, who has a national reputation as a “corporate raider.” USAT and UFGI were majorly owned by virtually the same core group of individuals.

From 1983–1986, as the oil industry declined and the value of real estate in the Houston market slipped, USAT changed its income strategy from traditional real estate based lending to high profile investments in real estate, buying different types of real estate, UFGI’s investment strategies and portfolio management. At October 31, 1988, USAT reported negative capital of $272,791,000. At September 30, 1988, USAT reported assets of $4,646,240,000, and total liabilities of $4,849,373,000. An initial review indicates that since June 30, 1987, there had been a market loss in the MBS portfolio of $235,000,000. In addition, the estimated commercial real estate loan losses exceeded $500,000,000. Demand was made by the supervisory agent upon UFGI to honor its agreement to maintain the regulatory net worth of USAT, however, no new capital infusion was made.

Ownership of USAT

On the date it was closed, USAT was solely-owned by UFGI. According to the UFGI stockholders, dated April 1, 1986, UFGI was owned by: (1) Cede & Co. (42.3%); (2) Hurwitz-controlled entities (23.29%); and (3) Drexel (9.7%). The Hurwitz-controlled entities were: MCO Investments Corporation (“Federated”), MCO Holdings ("MCO") and Maximm Group, Inc.
By Bank Board Resolution 83–252, dated April 29, 1983, approval was given to merge First American Financial of Texas into UFGI and merge their subsidiary savings associations. The commercial loan portfolio was conditioned on UFGI stipulating to maintain the regulatory net worth of USAT.

Sale of Branches to Independent American

In 1984, USAT sold several branches to Independent American. When Independent American purchased the branches, it assumed liabilities of $1 billion in deposits. In order to do so, USAT issued cash flow bonds in five series, labeled A–E, with coupon rates at 10%. Since the market price was at a yield of 15%, the spread between the “paper gain” and the fair market value. Although the gain was in paper, it had time value. The total “paper gain” was $90 million. The bonds were collateralized by mortgages. As mortgages under the bond paid down, the proceeds of the collateral were paid to the bond.

Following the branch sale to Independent American and the booking of the paper gain, a $32 million dividend payment was made to UFGI. The regulators approved a dividend for a certain percent of the amount, if the institutions dividend was maintained in an USAT certificate of deposit.

Change in Real Estate Investment Strategy and Start-Up of Securities Trading Activity

It is apparent that United changed direction in 1982 after it was acquired through a purchase of its holding company, UFGI, by Charles Hurwitz and his related corporations. Prior to that time, United was a traditional savings association making residential and commercial real estate loans, primarily in large urban areas. United made an attempt to remedy the problems caused by the Texas real estate depression and cope with the pressures of deregulation and interest rate limitations. The association changed its lending policies and began investing in securities.

In hindsight, it appears that United’s staff was not equipped for a transition from the lending activity of a traditional savings and loan under a regulated industry to a deregulated industry, utilizing high profile commercial lending and securities investments.

David Graham and Gem Childress are examples of this situation. Both were highly respected and the thrift industry and had extensive experience in commercial real estate lending. Each held the position of executive vice-president in charge of the entire department at the time of their departure in July, 1987. A new lending policy was created in 1983 directed toward high profile, glamorous commercial loan transactions, together with sophisticated securities investments. Some of the individuals who fit this high profile image were Jenard Gross, Charles Hurwitz, and spent the bond department. The portfolio was generally limited by policy to 15% of the total assets of which were included in the commercial loan section. The portfolio was not hedged with options because 70%–75% were fixed assets. The decision was based on liquidity in the retail share, which generally consisted of government securities, were also handled by Stodart.

On June 1985, the board of directors decided that the junk bond department carried a modest net profit on the securities it traded. Because USAT booked the bonds at cost, the actual value of the bonds, which would vary from day to day, was not reflected. The estimated unrealized losses for 1987 were $47.9 million. Our focus has been on the trading strategies, the possibility of insider trading, and the possibility of insider trading and stock manipulation.

Equity Arbitrage

The equity arbitrage area was managed from inception in 1985 through January 6, 1989 by Ron Huebsch. The trading strategy involved the purchase of stock in a corporation which was undergoing a merger, acquisition, or tender offer. Profits were based on the market movement or sale of the securities. The portfolio consisted of 50%–90% cash and 3%–5% preferred securities, debentures, and common stocks. The portfolio was not hedged in stock market crash of 1987, UFGI lost in a $75 million loss over a two day period. Because of the profit prior to October, the
overall net profit or loss for the year was even. While the equity trading was profitable, our reconstruction of equity transactions in 1987 show an additional $25.5 million in profits for the period.

Mortgage-Backed Securities

Aside from the small portfolio previously held, MBS activity was initiated approximately in early 1985 by United. UMBS was formed in 1987. The MBS portfolio had three managers: Joe Eddings managed the portfolio originally and was replaced by Sandra Laurenson around October 1988. Laurenson resigned prior to February 1988 and was replaced by Dominick Bruno who resigned in January 1989.

Our review to date indicates that two basic MBS activities were pursued. The initial program was initiated in 1985. United purchased MBS for use assets and borrowed the funds from various broker-dealers (reverse repos) to finance the securities using the same securities as collateral. The spread between the MBS and the reverse repos was approximately 200 basis points. The maturity of the short-term financing was extended through interest rate swaps and “dollar rolls.” When interest rates fell, the securities with higher coupon rates were sold which resulted in a profit to the association. We discovered that the money realized from the sale of those securities was reinvested, the new securities yielded a lower rate while the costs of funds remained fixed. Thus, the association, which had reduced or eliminated losses from the sale of those securities, was reinvested, the new securities yielded a lower rate while the costs of funds remained fixed. The assets of the United have been dramatically reduced. Regular accounting did not require an adjustment of value of the securities to market and the securities were carried on the books at cost. Therefore, unrealized losses existed as the value of the securities fell. The unrealized loss at that time, based on the market value of the MBS portfolio and hedges, was in excess of $200 million.

In early 1987, the second phase of trading began, which was called risk control arbitrage (“RCA”). RCA is a growth, leveraging strategy which consists of purchasing MBS and its derivatives financed by short-term liabilities, unusually reverse repos or dollar rolls. Since an interest rate risk exits between the long-term MBS and the short-term financing, hedges in financial futures, financial options, interest rate swaps, caps, collars and other derivatives were utilized.

When interest rates declined in the initial phase described above, the association realized a profit on the assets over the cost of short-term liabilities. When interest rates increased, the association did not realize the losses. In addition, the risk of the lower coupon rate MBSs was not adequately hedged. Without discussing in detail each of the securities and financing types and how each related to the portfolio, the total unrealized loss at year-end for 1988 was in excess of $900 million.

II. DESCRIPTION OF INVESTIGATION

A. Scope of Investigation

The investigation of USAT began on December 31, 1988 with Hutcheson & Grundy (“H&G”) and Brill, Sinex & Stephenson (“BS&S”) conducting investigations as joint fee counsel on behalf of the USAT. In the autumn sales program, the following items were given to the USAT: (1) Drexel Burnham Lambert deal manager products chart; (2) 1986 and 1987 securities portfolio reconstruction charts and the related securities portfolio listings for 1986-1988; (3) possible quid pro quo analysis of Pacific Lumber note purchasers; (4) high-yield securities portfolio review of unrealized losses as of September 19, 1988; (5) directors and officers purchase recommendation review; (6) interview recaps for Russell McCann, Eugene R. Sanger and Mary McDonnell regarding Transcontinental Services Group’s TSG Holdings, Inc.; and (9) a memorandum regarding the credits chosen for sale in the autumn sales program. In addition, the preliminary conclusion of the investigation was submitted to the FDIC on September 20, 1991.

FDIC Drexel Task Force

In the fall of 1989, we noted a pattern of activity in the investment area of USAT. This pattern involved the potential use of USAT by Hurwitz and Miliken Drexel as part of a network. On December 19, 1989, we wrote to Thomas Loughran at Finkelstein, Thompson and Lewis and Marta Berkley regarding this matter. At that time, we provided Loughran with various initial organizational documents including: (1) Pacific Lumber initial debt securities purchasers; (2) high-yield securities portfolio review of unrealized losses as of September 19, 1988; (3) directors and officers timeline; and (4) USAT chronology.

In September, 1990, we were contacted by the FDIC Drexel Task Force on securities activity at USAT. Our initial meeting was with Frank Sulger, Gari Powder and Bill Carpenter of Thacher, Proffitt and Wood, Gary Maxwell of Kenneth couple, Meckler, Hazel & Burkle, and Jamey Basham of the FDIC. During the meeting we discussed the possibility of a memorandum regarding the use of financial institutions by the corporate raiders. We also supplied the Task Force with the following: (1) expanded selected names mention list; (2) Drexel Burnham Lambert deal manager products chart; (3) 1986 and 1987 securities portfolio reconstruction charts and the related securities portfolio listings for 1986-1988; (4) possible quid pro quo analysis of Pacific Lumber note purchasers; (5) high-yield securities portfolio review of unrealized losses as of September 19, 1988; (6) interview recaps for Russell McCann, Eugene R. Sanger and Mary McDonnell regarding Transcontinental Services Group’s TSG Holdings, Inc.; and (9) a memorandum regarding the credits chosen for sale in the autumn sales program.

At the meeting, the following items were given to Jamey Basham: UFGI ownership interests breakdown chart, and directors of USAT furnished a list of files removed from USAT by Berner.

In October, 1990, we were contacted by Cravath, Swaine and Moore. We discussed the UFGI ownership interests breakdown chart and the same issues discussed in our earlier meeting in September. At this time, we provided photocopies of the exhibits to the USAT’s shareholders. We also provided photocopies of the original documents produced to the Task Force in September. Additional documents provided to the Task Force included a report conducted by the trustee of the bankruptcy Hurwitz and related entities flow chart; review of certain UFGI shareholders; UFGI ownership interests; joint proxy statement—Apollonian vs. Berner grand conspiracy — and other documents.

Our investigation of the brokerage firms continued through December 31, 1986, as well as selected audit plans of PM&M for those years. We also obtained and reviewed an investigation report conducted for the FSLIC; and, to a lesser extent, we reviewed certain work papers of the national accounting firm of Ernst & Young (“E&W”) acting as joint fee counsel on behalf of the Chapel Creek Ranch. The results of our investigation of the auditors are contained in a report submitted to the FDIC on September 20, 1991.

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The following documents have also been included in the record:

- 10-K excerpts; chronology of UFGI—First American merger; several newspaper articles; interview recaps pertaining to the January 12, 1989, interview of Brenda Bese, Michael Buckley (Krebs & Kassar); Leonard Lepidus report; consent agreement, dated November 7, 1988; Caywood-Christian document evidencing the standard of care; Drexel gap analysis chart; high yield and MBS speed call lists; consultant records pertaining to Walter Muller; MCO Holdings, Inc. and Maxxam Group, Inc. excerpt dated February 12, 1987; correspondence regarding the board of directors of UFGI 1985-1987; correspondence dated January 31, 1989, and March 17, 1989, from Amy Hohmann regarding utilization of the time lines (sent to Gene Golman). We have also been contacted by Sandra Wysocki; USAT snapshot investigation report, dated January 24, 1989 and March 7, 1989, from Amy Hohmann regarding utilization of the time lines (sent to Gene Golman).

In October, 1990, we were contacted by Robert J. DeHenzel, Jr. requested that we update the file with information to The Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, April 27-28, 1988; summary of minutes of the meetings of the executive committee of UFGI 1986-1988; summary of minutes of the meetings of the executive committee of the board of directors of USAT 1983-1987; summary of minutes of the meetings of the board of directors of USAT 1989-1991; summar of minutes of the board of directors of UFGI 1985-1987; correspondence dated January 15, 1985 and February 19, 1987; Securities Market Oversight and Drexel Burnham hearings before The Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, October 5, 1987; correspondence dated September 19, 1989, to the Drexel task force. In addition, we sent correspondence, dated September 19, 1989, to the investigative unit at the FDIC: Robert J. DeHenzel, Jr. requested that we complete the investigation and provide a written report and litigation recommendations. In completing the investigation, we conducted several more interviews, including the former Vice-President and General Counsel of USAT and UFGI, Arthur Berner. We also completed the analysis of the commercial loan and joint venture transactions, most notably by obtaining title company documents, and the transactions. We then reviewed, analyzed and coordinated all data obtained from the earlier investigation to the present. Finally, H&G and BS&H attorneys reviewed the results of their respective portions of the investigation and to reach a consensus on conclusions and recommendations.

In April 1988, we received a memorandum in charge of the professional liability investigation, Robert J. DeHenzel, Jr. requested that we include the investigation to The Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, October 5, 1987; summary of minutes of the meetings of the executive committee of UFGI 1987; summary of minutes of the executive committee of the board of directors of USAT 1983-1987; summary of minutes of the meetings of the board of directors of USAT 1989-1991; summary of minutes of the board of directors of UFGI 1985-1987; correspondence dated January 15, 1985 and February 19, 1987; Securities Market Oversight and Drexel Burnham hearings before The Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, October 5, 1987; correspondence dated September 19, 1989, to the Drexel task force. In addition, we sent correspondence, dated September 19, 1989, to the investigative unit at the FDIC: Ross J. DeHenzel, Jr. requested that we complete the investigation and provide a written report and litigation recommendations. In completing the investigation, we conducted several more interviews, including the former Vice-President and General Counsel of USAT and UFGI, Arthur Berner. We also completed the analysis of the commercial loan and joint venture transactions, most notably by obtaining title company documents, and the transactions. We then reviewed, analyzed and coordinated all data obtained from the earlier investigation to the present. Finally, H&G and BS&H attorneys reviewed the results of their respective portions of the investigation and to reach a consensus on conclusions and recommendations.

A. Applicable Standards CLAIMS AGAINST OFFICERS AND DIRECTORS

The standards applicable to the directors of USAT require a showing of gross negligence or worse, a breach of fiduciary duty, a violation of statutory duty, or the receipt of an unlawful benefit. The officers are held to the ordinary corporate duty of care and loyalty. Section 212(k) of FIRREA (18 U.S.C. 1821(k)) provides that a director or officer of an institution may be held personally liable for damages for “gross negligence, including any similar conduct or conduct that demonstrates a gross deviation from the standard of care (than gross negligence), including intentional tortuous conduct, as such terms are defined and determined under applicable State law.”

Under FIRREA, therefore, an officer or director is liable for those standards imposed by the common law of the applicable jurisdiction, or in the absence of a higher standard, gross negligence or worse conduct as defined by state law. The U.S. Supreme Court in Texas defines gross negligence as “that entire want of care which would raise the belief that the act or omission complained of was the result of a deliberate indifference to the right or welfare of the person or persons to be affected by it.” Williams v. Stevee Industries, Inc., 699 S.W.2d 570, 572 (Tex. 1986).

We also found that the Texas Miscellaneous Corporation Laws Act or other applicable law (herein collectively referred to as the “Act”), herein amended and recomstructed, provides:

- “An act or omission not in good faith or within the scope of the director’s duties, or the receipt of an unlawful benefit, or the violation of statutory duty, or the receipt of the benefit arising out of the USAT receiver’s claim arising out of the USAT receivership.”

In April 1991, the FDIC attorney-in-charge of the investigation on the Texas Miscellaneous Corporation Laws Act or other applicable law (herein collectively referred to as the “Act”), herein amended and reconstructed, provides:

- “An act or omission not in good faith or within the scope of the director’s duties, or the receipt of an unlawful benefit, or the violation of statutory duty, or the receipt of the benefit arising out of the USAT receivership.”

If the Texas Miscellaneous Corporation Laws Act or other applicable law (herein collectively referred to as the “Act”), herein amended and reconstructed, provides:

- “An act or omission not in good faith or within the scope of the director’s duties, or the receipt of an unlawful benefit, or the violation of statutory duty, or the receipt of the benefit arising out of the USAT receivership.”

The following documents have also been included in the record:

- 10-K excerpts; chronology of UFGI—First American merger; several newspaper articles; interview recaps pertaining to the January 12, 1989, interview of Brenda Bese, Michael Buckley (Krebs & Kassar); Leonard Lepidus report; consent agreement, dated November 7, 1988; Caywood-Christian document evidencing the standard of care; Drexel gap analysis chart; high yield and MBS speed call lists; consultant records pertaining to Walter Muller; MCO Holdings, Inc. and Maxxam Group, Inc. excerpt dated February 12, 1987; correspondence regarding the board of directors of UFGI 1985-1987; correspondence dated January 31, 1989, and March 17, 1989, from Amy Hohmann regarding utilization of the time lines (sent to Gene Golman). We have also been contacted by Sandra Wysocki; USAT snapshot investigation report, dated January 24, 1989 and March 7, 1989, from Amy Hohmann regarding utilization of the time lines (sent to Gene Golman).

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the performance of their duties which must be carried out with ordinary care and diligence, First State Bank v. Metropolitan Casualty Ins. Co., 79 S.W.2d 835, 839 (Tex. 1935), and was not delegated to strangers. Brand v. Fernandez, 91 S.W.2d 932, 939 (Tex. Civ. App.—San Antonio 1935, writ dism’d).

In summary, while officers are held to an ordinary standard of reasonable care, it could be argued that a claim against a director must allege at least gross negligence or breach of fiduciary duty (duty of loyalty), self-dealing (receipt of improper benefit), or violation of a statutory duty.

Many legal actions against directors and officers are application of the business judgment rule, reliance on counsel or consultants or management, lack of causation, contributory negligence, or failure to mitigate. The business judgment rule, a common-law principle recognized in Texas, provides that an officer must discharge his duties with the care of an ordinary prudent man under similar circumstances. Therefore, honest mistakes of judgment are not actionable.

B. Securities Investment and Trading

The directors and senior officers of USAT were primarily people who understood the savings and loan industry in Texas when it was based in real estate and mortgage. After the collapse of the real estate market and the refocus of the institution on the securities market, the directors and officers were not bold enough to meet the challenge of adequately directing and supervising investments in the incredibly complex and sophisticated securities available and marketed to the savings and loan industry then.

We focused primarily on those senior officers and directors who had ties to UFGI and Hurwitz, including Gross, Berner, Crow, Heubsch and Muniz, and specifically on evidence of speculative trading, theft of corporate opportunity, insider trading, and stock manipulation. While we did find evidence of speculative trading as outlined below, we found no direct evidence of insider trading, stock manipulation or theft of corporate opportunity by the officers and directors of USAT. We did find evidence that Charles Hurwitz may have used USAT in connection with insider trading or stock manipulation, and those findings have been turned over to the appropriate task force in Washington.

Specifically, our review disclosed evidence of acts and omissions which could form the basis of claims of fiduciary duty or fraud claims, which are fully outlined in the Interim Report on the Securities Investigation of United Savings Association of Texas dated April 28, 1991. First and foremost among those possible claims is the apparent relinquishment of direction and control of the investment policy of USAT to Charles Hurwitz.

1. the statements of Mike Crow, Mike Canant, and Jeff Gray;
2. the views of the financial world at the time;
3. the fact that James Paulin, who established the investment department at USAT, was not a USAT employee, but an employee of Hurwitz controlled Federated, Inc.;
4. the location of the securities trading area as well as the offices of Mike Crow, Financial Vice President, Bruce Williams and Jim Wolfe on the twenty-second floor of MCO Plaza, the same floor which housed Hurwitz offices of MCO Plaza, Inc., and Hurwitz controlled entities while other upper level management was located on the sixth floor of MCO and in Phoenix;
5. the employment by USAT of Hurwitz employees and associates, and dual employment of certain officers and key personnel by USAT and UFGI or Hurwitz controlled entities;
6. the lack of control or supervision of the equity arbitrage transactions completed by Ron Heubsch for the USAT subsidiary, United Financial Corporation, and for Maxxam and other Hurwitz controlled entities;
7. the fact that the Investment Committee minutes were created after the fact and were not an accurate record of deliberations or actions of that Committee;
8. the fact that the Investment Committee was a joint USAT and UFGI committee;
9. the Unionsal Services Group transaction.

To the extent it is acknowledged at all, the directors and officers stated that they were willing and able to consult with Hurwitz on the basis of Hurwitz’s expertise in the securities area and his status as the ultimate controlling shareholder. While circumstantial evidence of this delegation is good, the testimony of the witnesses will vary as to the extent of Hurwitz’s influence. Given the actual or perceived necessity of turning from traditional investments in real estate to the fast paced, more complicated securities arena and the lack of expertise on the part of the directors, the fact that the chairman of the sole shareholder, was allowed to fill the gap does not seem to pose an extreme degree of risk to the institution or its creditors. Nor does the fact that the officers rely on the available expertise of a party they have every reason to believe has no conflict with the institution necessarily violate the prudent man rule.

Secondly, our review disclosed that the officers and directors approved transactions designed to defeat or evade safety and soundness regulations. Our investigation disclosed that the officers and directors of USAT authorized and directed a profit-taking strategy requiring significant speculative trading, and allowed the accounting department to book the securities as investment accounts rather than trading accounts. Since the securities booked as investments were carried at cost rather than market value, the books of USAT failed to reflect the true value of USAT’s assets. Perhaps more importantly, the officers and directors not only authorized and directed the trading, i.e., the taking of profits in the portfolios and holding unrealized losses at cost, regardless of future income stream loss, to meet the capital regulatory capital requirement, at the same time the taking strategy is well established, the directors’ motivation was maintenance of the institution in compliance with the capitalization requirements and not self gain or violation of their duty of loyalty. The business judgment rule will be the primary defense to this cause of action. It will be difficult to show gross negligence on the part of the directors, and the efforts at control undertaken by the officers may not be far from that which would have been undertaken by reasonably prudent persons faced with the same volatile market.

Finally, we found some evidence of self dealing, or misappropriation of funds. Under the business judgment rule, this standard is applicable only for transactions which resulted in “improper benefits” to individual directors. The evidence of questionable payments included Jenard Gross, Barry Muniz and Robert Kuhn.

The payments each have some ostensible purpose and the totals for those payments we discovered are small, amounting to approximately $50,000. We do not find this a strong claim.

There were also significant salary increases for Hurwitz officers beyond 1988, as well as unusually substantial bonus packages. These increases and bonuses have been justified as necessary to retain the officers for the benefit of the institution and will be discussed later in this report.

We also carefully reviewed the securities transactions to determine if the relationship between USAT and Hurwitz and UFGI resulted in the diversion of USAT opportunities available to other Hurwitz entities. Although Heubsch traded equities for numerous Hurwitz entities and we believe Hurwitz directed certain purchases to further his takeovers, we found no evidence of direct diversion of opportunities. Heubsch often worked for the same benefit of all Hurwitz companies and when there were differences, they were generally related to the
status of the other investments in the portfolio.

We found that several of the officers and directors had invested in the same entities as USAT through their personal or corporate capital arms. There was no evidence that the benefits would have otherwise accrued to USAT. Our investigation did not disclose a sufficient basis for a claim in equity or to arrest a breach of duty.

We also reviewed the relationship between the traders and the securities industry to determine if there were payments, prizes or rewards that could constitute even with respect to real estate lending and joint ventures. Various federal regulations were given special consideration to real estate lending and direct to Hurwitz, and the authorization of speculative trading and accounting procedures which did not reflect the true value of the institution. While it is extremely difficult to evaluate these claims at this time, we believe the likely percentage of success on liability issues is in the 40-60% range.

C. Compensation Arrangements

We received the significant salary increases which the officers and directors provided to the officers as well as the substantial bonuses. These compensation arrangements are the subject of separate lawsuits and are not addressed in this report due to the passage of other claims which could be brought.

D. Real Estate Transactions

After investigating transactions which represent 85% of the value involved with substandard loans, no clear trends have emerged to uncover any pattern of self-dealing with respect to real estate lending and joint ventures. Various federal regulations were given particular scrutiny; those regulations include:

3. 12 U.S.C. §375b—Prohibition on preferential loans to directors of subsidiaries and holding companies. Limits on loans to executive officers and shareholders of 10% or more.
5. 12 CFR §636.9-3—Loans to one borrower.
6. 12 CFR §563.17—Safe and sound management practices.
7. 12 CFR §563.48—Prohibition on affiliated person from receiving fees or other compensation with their procurement of a loan.
8. 12 CFR §563.41—Places restrictions on real property transactions with affiliated person; and
9. 12 CFR §571.7—Deals with conflicts of interests.

The following are summaries of our investigations and recommendations:

1. Park 410. The transactions involving Mr. Stanley Rosenberg were strongly criticized by the FHLB examiners, particularly the Park 410 transaction in San Antonio, Texas. Mr. Rosenberg is related to USAT because he is a shareholder and director of MCO Holding, Inc. which owns the largest single shareholder interest (13.5%) in UFG, the parent company of USAT. M. Rosenberg is a close personal friend of Charles Hurwitz, who is also a shareholder and director of MCO Holding, Inc. and a director of UFG. Mr. Rosenberg can be considered an affiliated person for purposes of interpreting and applying 12 C.F.R. Section 571.7, unearned transactions (12 C.F.R. §563.41). It is our preliminary opinion that Mr. Rosenberg would be an affiliated person who is a direct or indirect owner of 10% or more of the capital stock of another corporation. The officers as well as the substantial loan to officers and directors; Mr. Rosenberg may have gotten these funds from his own limited partnership agreement with the loan by the Senior Loan Committee of the loan, the appraisal prepared, although slightly optimistic.

2. Gateway Joint Venture. This transaction also involved Stanley Rosenberg but primarily as a Guarantor for the 25% of the $2,200,000 loan. The terms of the loan were E. John Justenia, Gordon A. Woods and Lee R. Sandoloski. Stanley Rosenberg was a '…' with 12 C.F.R. Sections 563.9-8 and 563.43. Yellow Cab, at its option, had the right to cause WMI to convert its warrants to stock at $2,200,000 loan.

The documentation does not support the concept of a standard loan transaction. Yellow Cab did not have cash flow sufficient to service the debt incurred in acquiring the Eagle stock, no payments are required or even permitted on the $2,200,000 note prior to the sale of Yellow Cab to WMI, which WMI has made it possible to make an equity investment in Equus Transportation, Inc., without violating the
equity risk investment and loans-to-affiliates rules. Equus was perceived as a candidate for an initial public offering of its stock which would allow USAT the opportunity to get significantly enhanced return on its investment.

Almost from inception, Yellow Cab experienced cash flow problems. In order to fund additional cash flow requirements, WMI loaned Equus an additional $500,000, evidenced by a promissory note dated July 25, 1985 and required USAT to purchase all additional shares of Equus’ common or preferred stock at a purchase price of $1.25 per share. The interest rate on this $500,000 loan was 12.75%, and the maturity date was specified in the note. Equus has the right to sell principal and accrued interest on the first through fourth anniversary dates and, on the fifth anniversary date and any subsequent anniversary date, the equity owner of Equus and USAT were to have the option to purchase all additional shares of Equus’ common or preferred stock at a purchase price of $1.25 per share. The interest rate on this $500,000 note was paid, however, USAT lost money on the sale of the condominium units. Concerns have been raised that the properties were purchased by which the units were marketed, involving a sale and lease-back of the units by USAT. However, during the time period in which the units were marketed and leased, Houston had an extremely soft market for luxury high-rise condominium units. No wrongdoing or self-dealing was discovered in this transaction, but there were several violations of regulations, including 12 C.F.R. §563.17 (failure to obtain appraisals prior to making a loan).

8. North Lake (â€œWestgate). This was a joint venture of USAT’s subsidiary, UPG, and was carried on the general ledger account of UPG. The first $500,000 loan was made by Warwick Towers on August 1, 1984, and the maker of the note was United Financial Corporation. Principal was to be repaid when cash was available. The stated purpose of the joint venture was to develop tracts of land totalling 272.4 acres located in the northeastern portion of San Antonio, Texas. United Financial Corporation was obligated to fund all principal and interest in this transaction, which was originally estimated to have run $7.5 million to $8 million. The note set the interest rate at 8% per annum to servicer the first, second and third liens against the subject property. An appraisal was prepared by Love & Duggan, M.A.I., of San Antonio, Texas, and Incorporated Property Appraisers had a “developed” value of $17,800,000 and an “as is” value of $14,840,000 as of January 13, 1987. No analysis of UFC’s credit was revealed in a search of the USAT files, likely to exist, as UFC owns the property 100%. There is no collateral in the usual sense of the word, as UFC owns 100% of the property. There have been no land sales and therefore no repayment.

9. Eagle Hollow. This loan was dated September 16, 1982, and was in the principal amount of $9.7 million. The makers of the note were Eagle Hollow Partners, Ltd., Walter B. Eeds, David C. Hetherington, and The Greystone Group. The term of the note was eight years at an interest rate of 12.75% plus 50% of cash flow and 50% of profits due at sale or time of refinancing. The stated purpose of the loan was to provide a portion of the funds necessary to acquire a real property consisting of 10.003 acres which located 12 miles west of downtown Houston. In order to support the Collateral潜水, USAT’s senior lender, Equus, acquired 100% interest in the property and improvements to be valued at $14,840,000. Prior to the financial problems of the USAT and Equus, the property was appraised at a property value of $17,800,000 by a local Houston appraiser. In addition, USAT filed the report and documentation in support of the property, including the property’s financial statements and USAT’s approval of the mortgage. The property was appraised for $17,800,000, of which USAT was to receive a 15% interest in the property as additional compensation. USAT’s participation in the Eagle Hollow transaction was evidenced in USAT’s financial statements, reflecting poor business judgment.

10. The Market at Hunting Bayou. This transaction involved two separate loans, approved in February 1985, one for $7,050,000, which was for the retail portion of the Market at Hunting Bayou, and the other for an adjacent tract of land. Makers on the note were Larry Schulgen and the Market at Hunting Bayou, Ltd. Guarantors were Larry Schulgen, Leo Womack, and Dan Sharp. The $7,050,000 loan was approved for the acquisition of 12.603 acres of land and to develop a shopping plaza. The second loan of $10 million was approved for the acquisition of 9 acres of land and 2.497 acres of leasehold interest in the term of that lease being 99 years. In early 1985, USAT and Equus were collaborating the $2 million loan were contiguous to the 12.603 acres previously purchased for the development of the shopping plaza.

The approval of the total loan package of $9,050,000 was subject to an appraisal indicating a maximum loan-to-value ratio of 80%. The original appraisal for USAT was completed by Edward B. Schul & Company on January 31, 1985. The appraiser, Lot Braley, issued an opinion based on the fair market value of $11,500,000 and the proposed shopping complex. The appraisal value of the land and proposed shopping center was estimated to be $11,500,000. The report was issued to USAT; and, based on that report, USAT recommended a loan ratio of 80%. The total loan package of $9,050,000 was paid by the Senior Loan Committee of USAT and accepted by the Market at Hunting Bayou, Ltd. The construction loan checklist makes reference to the compliance of the loan with R. 41B, but this is the only notation of compliance of the Regulations. There was no other mention in any of the Senior Loan Committee reports about the accuracy and compliance of the conditions and compliance with the standard set down in 12 C.F.R. Section 563.17-1a.

At the time the Senior Loan Committee was anticipating an amendment to the project at the Market at Hunting Bayou, it requested an appraisal from Cushman & Wakefield. The appraisal was completed by an appraiser with experience in the Houston retail market, and indicates that the property had an extremely soft market for luxury high-rise condominium units. No wrongdoing or self-dealing was discovered in this transaction, but there were several violations of regulations, including 12 C.F.R. §563.17 (failure to obtain appraisals prior to making a loan).
Southern District Bankruptcy Court in Houston. The case number is 87-07584-H-11. The plan contemplates that certain payments to other creditors will be made out of the cash flow of the partnership's commercial contracts totaling 379.83 acres within Cinco Ranch for a purchase price of $33,345,434. Twenty percent of the total purchase price was to be paid as a down payment, and the non recourse note was executed in the amount of $26,676,347. Makers on the note were Cinco/Watson Joint Venture, and the payee was Waverly Associates and managed its investment partnerships. Waverly Development Limited Partnership and Criswell Development Company had been successful in purchasing the equity interest in the Dorchester Hotel in London.

The Remington Hotel opened in November 1982 and was built by Rosewood Hotels, Inc., in conjunction with the Caroline Hunt Trust Estate at a cost of $48 million. Cost for the building and property totalled more than $65 million. Additional collateral securing the note included a tract of land in Tarrant County, Texas, of 57,937 acres and stock certificates for 360 shares of National Tubular Systems, Inc., a privately held company controlled by Crest Holdings, Inc., a Cayman Island corporation controlled by Isaac Stein.

The loan performance history on this transaction was excellent due to the fact that $9,083,251 were held in escrow by USAT on which to draw the interest payments. Remington Partners, however, did not make the principal payment. A lawsuit was filed and settled out of court on December 21, 1988. Releases on the underlying promissory note and deed of trust were executed by USAT on December 22, 1988.

E. Couch Mortgage

The background of the Couch Mortgage transactions is described in the BS&S Report of September 20, 1991 to the FDIC. The September 20, 1991 Report focuses only on the liability of third parties for the Couch Mortgage losses. A case could certainly be made that the officers and directors of USAT were negligent in entering into and monitoring the Couch transactions. In the course of investigating the Couch transactions, we have found no evidence of wrongdoing or complicity on the part of any USAT officers, directors or employees. The FDIC decided to pursue its claims against third parties for the Couch Mortgage losses, then it would seem to be counterproductive to attack the officers and directors that USAT officers and directors were negligent with regard to the transactions. In fact, it is likely that the third parties sued will attempt to raise as a defense the negligence of USAT’s officers and directors.

Because of the lack of evidence of affirmatively wrong doing and the much greater likelihood that damages could be recovered from third parties, we do not recommend initiating litigation against officers and directors of USAT for the Couch Mortgage losses. It is possible that some of these individuals could be joined as third-party defendants if FDIC elects to sue others for the Couch losses.

F. Authorization of Dividend to UFSI

In 1984, USAT sold several branches which resulted in significant increase in capital. According to Mary Mims ("Mims"), operations manager of the treasury department of USAT, the branch sale after the previous merger created a branch overlapping situation. However, an October 1984 Texas Business article regarding Hurwitz stated that Waverly has a competitive plan to sell off up to 48 bank branches (including deposit liabilities and all branch properties). If he pulls it off, the deal would amount to $350 million, more than doubling equity in one shot."
The branches were sold to Independent American Savings. According to Crow, Independent American paid a “ridiculously high price” for the USAT branches—15% premium. According to Mills & Grossberg, when Independent American purchased the branches, it assumed liabilities of $1 billion in deposits. In order for Independent American to do so, USAT sold $200 million of cash flow bonds with a coupon rate at 10%. Since the market price was at a yield of 15%, the spread between the two was a “paper gain” in fair market value. Although the gain in paper, it had time value. The total “paper gain” was $90 million. USAT issued a cash flow bond to Independent American Savings which included five series, labeled A to E, in the amount of the total customer balances. As mortgages under the bond paid down, the proceeds of the collateral were paid to the bond. Crow stated that the objective of the sale was to build equity. Although the sale did not result in any cash, it created a “paper gain” of approximately $90 million.

Following the branch sale to Independent American, a $32 million dividend payment was made to UFGI. The dividend payment was handled by C.E. Bentley, Jim Pledger and others. "The regulatory agencies approved a dividend for a certain percent of the amount, if the institution was profitable. According to Crow, the reason USAT was profitable solely because of the branch sale. The FHLBB was upset because it was not made aware, at the time of the regulatory approval, of the reason for the capital payment. Moreover, at our interview that the treasury department maintained the dividend in an USAT certificate of deposit. She added that had the funds from the branch sale not been available, based on the cash flow at the time, UFGI would have been bankrupt within one to two years after the merger. The funds were utilized by UFGI to begin its equity arbitrage activities and to pay the PennCorp debt from the 1983 merger.

Because this dividend payment was made three years before the institution was closed and because it was approved by the appropriate regulatory agency, we believe it will be difficult to prove gross negligence on the part of the directors. It would be less difficult to prove a lack of prudence on the part of the officers, but we cannot estimate the probability of success on the liability issues at greater than fifty percent (50%). We are also unable to make an assessment of actual probability of success on the liability issues. We are unable to make an assessment of actual probability of success on the liability issues. We are unable to make an assessment of actual probability of success on the liability issues. We are unable to make an assessment of actual probability of success on the liability issues.

A. Corporate Raider Scheme

The primary conclusion we have drawn from our investigation of the securities area is that Charles Hurwitz used USAT as a deep pocket or source of funds for favors to facilitate the execution of the Weingarten Realty transactions. According to Crow, Independent American purchased the branches at the time of the regulatory approval. The branches were sold to Independent American and the proceeds of the collateral were paid to the bond. Crow stated that the objective of the sale was to build equity. Although the sale did not result in any cash, it created a “paper gain” of approximately $90 million.

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which Hurwitz is currently clearingcutting, a process in which every living thing is cut down. All to pay off a junk bond debt? It’s great that we’re going to protect this land from Hurwitz and federal dollars to go into his pocket while he owes the taxpayers $548 million. Coincidentally, Hurwitz is asking for more than $500 million for the Headwaters Forest. So if your agency can secure the money for his failed S & L, we will have the funds to buy Headwaters Forest. Debt for nature. Right here in the U.S. That’s where you come in.

Go get Hurwitz. He and people like him have been traitors to this country, ripping apart the fabric of this country for personal gain. Now our nation is on the verge of collapse, thanks to guys like Hurwitz. For five years your agency has had this $548 million dollar claim against Hurwitz’s United Financial Group, the holding company for United Savings Association of Texas. The statute of limitations runs out at the end of 1993. He can actually get away with this robbery if your agency doesn’t act soon. Justice delayed is justice denied. After five years of waiting it’s time to say: ‘Charley Hurwitz, your time is up!’

Here’s what you can do: Write and talk to your political representatives at the FDIC, in particular your Chairman, Andrew C. Hove, Jr., and ask them to re-prioritize your case against Hurwitz’s United Financial Group. Offer new, creative strategies of protecting the economy and ecology of this precious land of ours. Write to your Congressional Representative and Senator in DC and ask them to support the Headwaters Forest Act (HR2866). Lastly, we’d like to invite you to come out to the redwoods and see trees taller than your building and as wide around as a room in your house. Give us a call at 707-488-1600 in California. We’d love to show you around the magnificent redwood forest, as well as show you the appallingly clearcuts Hurwitz is performing. Don’t delay. The junk bond traitors must be brought to justice. Debt for Nature and Jail for Hurwitz. Thank you.

VI. SUMMARY AND PROBABILITY OF SUCCESS
A. Claims Against Officers and Directors of USAF

In summary, we believe the following claims could be made against the directors and controlling officers of USAF:

Gross negligence—failure to institute and require compliance with prudent lending practices; violation of federal regulations relating to lending and investment transactions; failure to implement policies or supervise the securities investment department of the institution; and allowing the institution to . . .

DOCUMENT E
MEMORANDUM
To: All the good, hardworking employees of the FDIC.
From: The people of the United States of America.
Re: Redwood Forests and Failed S & L’s.
Date: November 20, 1991.

You may not be aware that there is a direct connection between the Savings and Loans, the FDIC and the clearcutting of California’s ancient redwoods, but there is and we’d like to tell you in and ask for your help. It just so happens that a man named Charles Hurwitz, who took over the Pacific Lumber redwoods in 1985 through a Drexel Burnham junk bond buyout, also was responsible for the collapse of United Savings Association of Texas (USAT). In fact, Drexel-Burnham helped Hurwitz take over 200,000 acres of magnificent redwood forest in exchange for Hurwitz’s United Savings buying over billion dollars’ worth of Drexel’s junk bonds.

Unfortunately, Hurwitz has been والسافنيسدقント، and the redwoods are still crashing. Your agency did outstanding work in nailing Drexel’s Michael Milken on this very scam. The FDIC has even filed a suit against Hurwitz for the failed S & L. In addition, Hurwitz’s bank owes the taxpayers $548 million for misappropriating depositors’ funds. But for some reason, the FDIC hasn’t gotten around to taking action. Hurwitz is the head of the failed S & L, and the FDIC has more than doubled the cut of the ancient redwoods. Over 40,000 acres have been liquidated already. HR 2866 provides for a restoration program and gives protection to the old growth and wilderness designation for the 3,000 acres Headwater Forest.

Please write your representative today and ask them to support the Headwaters Forest Act. The failure of United Savings of Texas (USAT): Fact Sheet

1. The FDIC has an outstanding claim against United Financial Group, holding company for USAT, of $548 million dollars. (United Financial Group 10-K Report, year ending December 31, 1992, p. 1 and

2. Five years have passed since this claim was asserted in 1988, and while the FDIC has extended the statute of limitations through tolling agreements, the current statute of limitations ends on December 31, 1993 (UFG, 10-Q Report, Quarter ending June 30, 1993, p. 6).

3. When it was seized in 1988 by the FDIC, USAT was a wholly-owned subsidiary of UFG, whose controlling shareholders at the time were Charles Hurwitz-run companies MAXXAM, MCO, and Federated Development Corp. Also, Drexel Burnham Lambert was a 9% shareholder (Washington Post, “Thrift Regulations Slipping...” by Allan Sloan, 4/16/91; MAXXAM Prospectus, 1988; and FDIC vs. Milken, 1/18/91, pp. 82–84).

4. From 1985 to 1988, USAT purchased over $1.3 billion worth of Drexel-underwritten junk bonds. During that same period of time, according to an FDIC lawsuit against Michael Milken, “the Milken group raised about $1.8 billion for financing for Hurwitz’ takeover ventures,” which included the 1985 takeover of Pacific Lumber. Pacific Lumber was the world’s largest private owner of old growth redwood (FDIC vs. Milken, 1/18/91, pp. 82–84).

5. The failure of USAT constituted the fifth-largest S&L failure (1/18/91, p. 82). The closing price of UFG’s common stock on December 31, 1987 was $7/16 per share.

6. Hurwitz has been sued by the Securities & Exchange Commission in 1971 for alleged stock manipulation; sued by investors for alleged stock manipulation; charged by New York & Exchange Commission in 1971 for alleged world takeover of Pacific Lumber Company, the redwood (FDIC vs. Milken, 1/18/91, pp. 82–84, etc., etc., etc. (Wall Street Journal, in Rancho Mirage, CA; and sued (8 times) by MAXXAM shareholders for a land swindle One More Deal, Michael Milken, $1.3 billion worth of Drexel-underwritten USAT was a wholly-owned subsidiary of the Federal Home Loan Bank Board (the “FHLBB”) for approval to acquire more than 25% of the outstanding shares of common stock of UFG and thereby become savings and loan holding companies. Such application was denied by the FHLBB on December 6, 1984, subject to compliance with several conditions, including that so long as MCO and Federated control USAT, they shall not sell the Series C Stock (approximately 13.5% of the outstanding shares of UFG and all of the Series A Stock, MCO owned 1,104,098 shares of UFG common stock (approximately 9.8% of the outstanding shares). Pursuant to a rights offering made by UFG to the holders of its common stock, 1,128,571 shares of UFG’s common stock (approximately 9.8% of the outstanding shares) were sold for $50 per share to new investors, $1.37 billion and an actual cost that’s probably much higher.

7. To prevent the RTC from trying to collect from the United Financial Group, owner of the failed United Savings Association of Texas, although Hurwitz didn’t technically control United Financial or its S&L, he was chair of the RTC, which liquidates dead S&Ls. The RTC, which has bad loans for foreclosed properties, is a good place for the RTC to sell its foreclosed properties. The RTC was supposed to make the FDIC go away, reorganize United Financial and use the tax loss created by the seizure of United Savings to shelter income from new and profitable acquisitions. The proposal settlement was canceled by the FDIC, according to United Financial, in a logical world, you try not to do business with people who have already cost you money. As they say, “Fool me once, shame on you. Fool me twice, shame on me.” And in this case S&L banks need a proviso that seems to bar anyone who has stiffed deposit insurance funds for more than $50,000 or more can’t be a contractor to the bailout folks, but it can buy property from them. That apparently includes Hurwitz, who has more than a little to say about how the place was run.

8. The FDIC wants United Financial to fork over some dough because, its says, United Financial agreed to keep the now-defunct United Savings Association of Texas adequately capitalized. United Financial denies that United Savings was closed at a stated cost of $9.9 billion (based on its holdings of UFG) of any additional infusion of capital that may be necessary for USAT to maintain its regulatory net worth. In addition, if MCO and Federated acquire the Series C Stock, MCO and Federated control USAT, they shall also sell the Series C Stock, and MCO and Federated shall make a profit from the sale of Series A Stock. The idea was to make the FDIC go away, reorganize United Financial and use the tax loss created by the seizure of United Savings to shelter income from new and profitable acquisitions. The proposal settlement was canceled by the FDIC, according to United Financial.

9. In a logical world, you try not to do business with people who have already cost you money. As they say, “Fool me once, shame on you. Fool me twice, shame on me.” And in this case S&L banks need a proviso so that no one who has stiffed deposit insurance funds for more than $50,000 or more can’t be a contractor to the bailout folks, but it can buy property from them. That apparently includes Hurwitz, who has more than a little to say about how the place was run.

10. The RTC wanted to sell their foreclosed properties. The RTC, which has bad loans for foreclosed properties, is a good place for the RTC to sell its foreclosed properties. The RTC was supposed to make the FDIC go away, reorganize United Financial and use the tax loss created by the seizure of United Savings to shelter income from new and profitable acquisitions. The proposal settlement was canceled by the FDIC, according to United Financial.

11. There are days when you wonder whether the federal government’s right hand knows what its left hand is doing—or even whether the government has two left feet, which is why we keep tripping over itself. The federal government—what its left hand is doing is why it keeps tripping over itself. There are days when you wonder whether the federal government has two left feet, which is why we keep tripping over itself.
tie Hurwitz’s pending deal with the RTC to the failure of United Savings. One spokesman stressed that Hurwitz owned only 23.3 percent of United Financial and wasn’t an officer of the bank. However, Hurwitz’s actions would possibly have been unhappy with Hurwitz, the spokesman said, because when United Savings was failing, the regulators asked another officer of First City Bancorporation—Mr. Hurwitz—to put in a bid. (A competing bidder won.)

Maxxam spokesman said that the unconventional investments—among them junk bonds and a partnership in a Hollywood company—that Hurwitz recommended made money for United Savings. He also said that the S&L failed not because of wrongdoing, but because many thrift regulators didn’t do their jobs and couldn’t pay their mortgagees. “This is a human tragedy caused by economic conditions,” he said.

In the end, enough, the RTC had a chance to take a $181.5 million Maxxam note containing escape clauses, but opted instead for $130.1 million cash. So, you see, deposit insurance regulators are indeed uncoordinated. But I never said they were stupid.

DOCUMENT F

FEDERAL DEPOSIT INSURANCE CORPORATION

Memo to: Chairman Hove.

From: Alan J. Whitney, Director.

Subject: Staff’s inquiries and related activities, week of 11–29–93.

REGULATORY CONSOLIDATION: Several news organizations have asked that the FDIC’s position is on the agency consolidation proposal unveiled last week by Treasury. They were told you believed that with Board appointments imminent, it would be inappropriate to give out an agency position until the full board is in place.

THIRTY CONVERSIONS: CRAIN’S NEW YORK BUSINESS, PHILADELPHIA INQUIRER, and AMERICAN BANKER ran an article in the Nov. 26 edition reporting on Rep. Gonzalez’ legislation to limit thrift management profits from the conversions. We have received several inquiries about our response to Cong. Neal’s letter of November 22 to you on the same subject, to which we have not yet responded.

O MEXICO? On Monday, the Supreme Court agreed to hear this case, involving the FDIC’s ability to sue attorneys who represented banks that failed. The petition to hear the case prompted a flurry of press inquiries about similar cases past and present. We provided some statistical data and limited information about the Jones Day case, which is still active.

FIRST CITY BANCORPORATION: Bloomberg Business News, Houston Bureau, called regarding real estate investment in the First City Bancorporation’s claims case. It seems someone is talking, because the reporter asked about a December 14 FDIC Board meeting to discuss the settlement. The reporter wanted to know: If the FDIC committee working on the agreement approves the plan, does that mean the Board is in the midst of negotiations? The answer: Yes, the Board is in discussions about the settlement.

The reporter wanted to know: If the FDIC asked about a December 14 FDIC meeting, whether we could legally swap a potential claim of $548 million against Charles Hurwitz, (stemming from the failure of United Savings Asen. of Texas) for 44,000 acres of redwood forest owned by a Hurwitz-controlled company. We advised Parrish we were not aware of any formal proposal of such a transaction. However, we noted that a claim can be satisfied by relinquishing title to assets, assuming there is agreement on the value of the redwood timber with Parrish, but Dough Jones notes that even if Hurwitz satisfied our claim by giving us the redwoods, it wouldn’t result in what Earth First (the folks who demonstrated in front of the main building last month) apparently is proposing, i.e., that we then deed the redwoods property to the Interior Department. That would require an extensive legal analysis and, since any claim we might assert against Hurwitz would be a FRF matter, would likely entail Treasury Department concurrence.

DOCUMENT G

Maxxam, Inc., is a publicly traded company with market capitalization, as of November 16, 1995, of $230 million and total assets of $3.5 billion. We are reviewing a suggestion by “Earth First!” that the FDIC trade its claims against Maxxam for 3000 acres of redwood forest owned by Pacific Lumber, a subsidiary of Maxxam.

DOCUMENT I

Jack, I thought about our conversation yesterday. My advice from a political perspective is that the “C” firm is still politically risky. We would catch less political heat for another firm, perhaps one with some environmental connections. Otherwise, they might not be able to argue that the firm already got $100 million and we should spread it around more. Those are just my unsolicited thoughts.

DOCUMENT L

ATTORNEY CLIENT PRIVILEGE

Memorandum To: Board of Directors, Federal Deposit Insurance Corporation

From: Jack D. Smith, Deputy General Counsel; Stephen N. Graham, Associate Director (Operations)

Date: July 27, 1995

Subject: Authority to institute PLS suit; Investigation into the massive losses at the Texas, Fin #1815; Proposed Defendants: Former directors and officers, de facto director and controlling person Charles Hurwitz.

In addition to presenting the attached authority to sue memorandum for Board action, this memorandum reports on the status of the continuing investigation of the failure of United Savings Association of Texas (“USAT”), the separate investigation of USAT being conducted by the Office of Thrift Supervision (OTS) and the settlement negotiations with United Financial Group, Inc. (UFG), USAT’s first tier holding company.

We were advised on July 21, 1995 that Charles Hurwitz would not extend our tolling agreement with him. Consequently, if suit is to be brought it must be filed by August 2, 1995. We hope to delay a final decision on this matter until after OTS decides whether to pursue claims against Hurwitz, et al. However, Hurwitz’s actions have precluded that possibility. Thus, we must now decide whether to authorize suit. While we would only sue Hurwitz at this time, rather than dividing the memo and, possibly, harassed our other investigators individually at a later time, the attached ATS seeks authorization to sue all of the individuals against whom we would expect to assert claims. In addition to the claims asserted against the group of defendants, Hurwitz would be sued individually for failure to maintain net worth maintenance (NWM) agreements.

Recommendation: That the FDIC, as receiver for United Savings Association of Texas (USAT), Houston (a $4.6 billion loss and to the FDIC of $1.9 billion) authorize suit for approximately $300 million in damages against the proposed defendants identified on Exhibit A.

In our view, Hurwitz and the other proposed defendants were grossly negligent. However, we also estimated that most or all of the conventional claims that could be made in the FDIC’s case would be dismissed on statute of limitations grounds. Hurwitz’s failure to comply with the NWM agreements has a better probability on the statute of limitations issue, but there are numerous obstacles to successful prosecution of that claim. Nonetheless, we believe the litigation risks are worth taking because of the egregious character of the underlying behavior in this case and because a successful resolution will further our ongoing efforts to shape the law evolving in this area.

I. Background

USAT was placed into receivership on December 30, 1988. After a preliminary investigation into the massive losses at USAT, the FDIC negotiated tolling agreements with UFG, controlling person Hurwitz and ten other former directors and officers of USAT. UFG who were either senior officers or directors that were perceived as having significant responsibility over the real estate and investment functions at the institution.

In May 1994, after a series of meetings with the potential defendants and the exchange of considerable documents and other information, we prepared a draft authorization to sue memorandum recommending that we pursue claims against Hurwitz and certain USAT former officers and directors for losses in excess of $200 million. The recommended claims as then proposed involved significant litigation risk. Most notably, the principal loss causing events occurred more than two years prior to the date of receivership, and were therefore at risk of dismissal on statute of limitations grounds. In light of the Fifth Circuit’s decision in Dawson, a split of authority in the federal trial courts in Texas on the level of culpability required to toll limitations and the Supreme Court’s refusal to consider whether the limitations statute should be adopted under which negligence by a majority of the directors would toll the statute of limitations, our strategy at that time was to assert that gross negligence was sufficient to toll the statute of limitations. However, BAS after full briefings with the Deputies to the Directors and further discussion with the potential defendants, we decided to wait for OTS’s decision on whether to assert our claims, in order to further investigate the facts, give time for the Texas law on adverse possession to take its course, shape and ascertain the views of OTS. Therefore, the tolling agreements were continued.

II. OTS’s Involvement

Prior to deferring a decision on the FDIC’s recommendations, we had considered OTS’s possible involvement with OTS the possibility of OTS pursuing these claims (plus a net worth maintenance agreement claim) through administrative enforcement actions. As it happens, we had meetings with senior staff of the OTS Office of Enforcement, we entered into a formal agreement with the OTS, who began an independent investigation of various directors and officers of USAT, Hurwitz, UFG, as well as USAT’s second tier

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DOCUMENT WW

DOCUMENTXX

DOCUMENTYY

DOCUMENT ZZ

DOCUMENTAAA

DOCUMENTBBB

DOCUMENTCCC

DOCUMENTDDD

DOCUMENTEEE

DOCUMENTFFF

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holding company Maxxam, Inc, a publicly traded company that is largely controlled by Hurwitz. The FDIC is paying OTS’s costs in connection with this matter.

The OTS has reviewed extensive documents and has recently conducted a series of administrative depositions. We have been informed that OTS staff is currently preparing a broad-based draft Notice of Charges against Maxxam, Hurwitz and others, including Hurwitz, for substantial restitution for unsafe and unsound practices and for enforcement of a net worth maintenance agreement. In terms of our agreement with OTS, FDIC will be the beneficiary of any recovery from the OTS enforcement action through settlement or litigation against the proposed respondents. All the potential respondents in the OTS investigation, including Hurwitz, have signed tolling agreements with OTS which expire on December 31, 1995. OTS staff’s current expectation is that they will seek formal approval for this case before the tolling agreements expire on December 31, 1995.

III. Significant Caselaw Developments Have Further Weakened the Viability of Suit by the FDIC

Although we have continued to investigate and refine our potential claims during the pendency of the OTS investigation, two significant court decisions, and the failure of Congress to address the statute of limitations issues, have further weakened the FDIC’s prospects for successfully litigating our claims in the United States District Court for the Southern District of Texas.

A. Statute of Limitations

In the recent decision of RTO v. Acton, 49 F.3d 1382 (5th Cir. 1995), the Fifth Circuit held that under Texas law, only self-dealing or fraudulent conduct, and not gross negligence, is sufficient to toll the two year statute of limitations under the doctrine of adverse domination. As a result of this opinion, we cannot rely on an argument that gross negligence by a majority of the Board members is sufficient to toll the statute of limitations. There is very little, if any, evidence of self-dealing. Most, if not all, of the affirmative acts that would form the basis for an FDIC suit occurred more than two years before USAT failed.

B. The Merits

The law has also moved against us on the merits. The Fifth Circuit has held that under Texas law, only self-dealing or fraudulent conduct, and not gross negligence, is sufficient to toll the two year statute of limitations under the doctrine of adverse domination. As a result of this opinion, we cannot rely on an argument that gross negligence by a majority of the Board members is sufficient to toll the statute of limitations. There is very little, if any, evidence of self-dealing. Most, if not all, of the affirmative acts that would form the basis for an FDIC suit occurred more than two years before USAT failed.

The Texas law has essentially eliminated liability for negligence in the name of applying a very expansive business judgment rule defined by the conduct here. Gross negligence is not a statutorily defined gross negligence as that term is normally defined. The law of gross negligence in Texas is currently unsettled, but a recent decision by the Supreme Court of Texas in 1995 defined gross negligence as constituting two elements: (1) viewed objectively from the standpoint of the actor, the act or omission must involve an extreme degree of risk, considering the probable result or degree of risk involved, or consequences to others, and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the rights, safety, or welfare of others. That case involved a bad faith claim against an insurer but the language of the opinion is broad. This new standard, if applied, would make it very difficult, if not impossible, to prove our claims.

The effect of these recent adverse decisions is that there is a very high probability that any of the potential conventional claims will not survive a motion to dismiss on statute of limitations grounds. We would also at increased risk of dismissal, or loss at trial on the merits.

IV. The Pacific Lumber—Redwood Forest Matter

Any decision regarding Hurwitz and the former directors and officers of USAT is likely to affect media coverage and comment from environmental groups and members of Congress. Hurwitz has a reputation as a corporate raider, and his hostile takeover of Pacific Lumber attracted enormous publicity and litigation because of his harvesting of California redwoods. Environmental interests have received considerable publicity in the last two years, suggesting exchanging our D&O claims for redwood forest. On July 21, 1995, we met with representatives of the Department of Interior, who informed us that they are negotiating with Hurwitz about the possibility of swapping various properties, plus possibly the Redwood Forest. They stated that the Administration is seriously interested in pursuing such a settlement. We plan to follow up on these discussions with the Department of Interior in the coming weeks.

If the Hurwitz tolling agreement expires without suit being filed, we would recommend that we update those members of Congress who have inquired about our investigation and make it clear that we do not lose the matter of Hurwitz’s liability for the failure of USAT because of the ongoing OTS investigation.

Theory of suit: The claims are for gross negligence, breach of fiduciary duty and breach of the duty of loyalty. The claims are:

(1) USAT officers and directors, and Hurwitz as a de facto officer and director, were grossly negligent in failing to act to prevent $50 million of additional losses from USAT’s first MBS portfolio. The positions were sold at a significant discount before USAT declared bankruptcy. Our analysis indicates that they should have begun to cut their losses, and wind down this set of positions, starting two years before failure.

(2) USAT officers and directors, and Hurwitz as a de facto officer and director, were grossly negligent in causing USAT to invest approximately $180 million in its subsidiary, United MBS, leveraging the investment in subprime MBSs and losing approximately $97 million, including interest, when USAT had already suffered disastrous results in its first MBS portfolio and was in a critically weakened financial state. Approximately $80 million of the $180 million was advanced within two years of the failure.

(3) Hurwitz, as a de facto officer and director of USAT, breached his duties of loyalty to USAT by failing to insist that UFG and Maxxam honor their net worth maintenance obligations. While this breach may have first occurred two years after the first MBS failure, it was a breach that continued and escalated within two years of failure.

Finally, the Park 410 loan, in which USAT lost approximately $57 million, is included in the list of claims. The FDIC staff is in the process of deciding whether to file suit on the Park 410 loan to recover the full amount of the loss.

Assessment of Defenses: We expect business judgment rule and standard of care defenses and serious statute of limitations issues based on recent Fifth Circuit and other Texas court cases. Absent a change in law, there will be at least a 70% chance that much or all of the claims relating to mortgage backed securities and derivatives trading will be dismissed based on the net worth maintenance agreements be honored is more likely to survive statute of limitations motions, but raises a series of different merits issues.

Suit Profile: The suit will attract media and Congressional attention because of Hurwitz’s reputation in corporate takeovers, and his ownership of Pacific Lumber, which is harvesting redwoods. Environmental interests have received considerable publicity, often suggesting exchanging these claims for trees. The Department of Interior recently informed us that the Administration is seriously interested in pursuing such a settlement.

Timing and cost-benefit analysis: We intend to use Hopkins & Sutter (Chicago/Dallas) and the minority firm Adorno & Zeder (Miami). The estimated cost of litigation by outside counsel is $4 million up to trial, and an additional $2 million through trial. We have incurred outside counsel fees and expenses of $500,000. In-house costs to date are approximately $600,000. No insurance coverage appears to be available. The proposed defendants have a combined net worth of approximately $150 million (Exhibit A). If the suit is not otherwise settled, we still face significant adverse caselaw in Texas on the standard of care and the business judgment rule. For these reasons, there is no better than a 50% probability of obtaining a substantial judgment even if we survive statute of limitations defenses in tact it would have an estimated settlement value of $20–40 million.

If suit is authorized we would expect to offer Hurwitz one final opportunity to toll. We would not sue the other proposed defend- ents before 1995 if they do not clear a tolling agreement with us and OTS in place.

Contacts: Jeffrey Ross Williams, Counsel, (202) 736-0668; Robert J. DeHenzel, Jr, Counsel, (202) 736-0685, PLS; Betty Shaw, Investigations Specialist, Southwest Service Center, (214) 851-3042.

Concurrence:

Date: July 27, 1995.

WILLIAM F. KRONER III,
General Counsel.

JOHN E. BOVENZI,
Director, DAS.
Privileged and Confidential Attorney Work Product

Chairman Helfer, Vice Chairman Hove, Director Ludwig, Acting Director Fiechter, Mr. Geer, Mr. Mason, Mr. Hood, Mr. Zars, Mr. Jones, Mr. J. Smith, Mr. Rose, Mr. Thomas, Mr. Graham, Mr. Newton, Mr. Whitney, Mr. O'Keefe, Mr. Taylor, Ms. Anderson, Mr. Monahan

Memorandum: to Board of Directors, Federal Deposit Insurance Corporation

From: Jeffrey Ross Williams, Counsel, Professional Liability Section

Robert J. DeHenzel, Jr., Counsel, Professional Liability Section

Subject: United Savings Association of Texas Houston, Texas—In Liquidation Request for Authority to Initiate Litigation

I. Introduction

United Savings Association of Texas ("USAT") presents a graphic picture of what can happen when: two hopeless in overexposed thrifts are combined (resulting in USAT); a key officer is infected with self-inflicted wounds; and, directors and officers outline in this memorandum may ultimately be insulated by the Texas business judgment rule standard. Consequently, such additional claims are not recommended. We have also negotiated an agreement in principle with United Financial Group, Inc. ("UFG"), USAT's first tier holding company, to settle a separate part claim for approximately $9.6 million, which we hope to finalize within the next 90 days.

II. Background

In 1982, Hurwitz, a well-known Houston investor active in leveraged corporate acquisi-
tions, acquired USAT in connection with a merger of two Houston savings and loan holding companies, namely, UPJ which owned 100 percent of USAT, and First American Financial of Texas ("First American"). From the outset of the Hurwitz regime, USAT was in serious financial trouble. It struggled with a portfolio of under-performing and non-performing loans; it had the burden of $300 million in goodwill as a result of the loss to the FDIC is estimated at $150 million.

The admittedly high cost, high risk claims against Hurwitz and the former directors and officers outlined in this memorandum may result in a significant recovery. After balancing the merits of the claims, the likely recovery sources, and the fact that the statute of limitations defense may be tested early in the litigation, thus reducing the likely cost if the litigation is ultimately unsuccessful on that basis, we recommend that these claims be pursued.

Under Hurwitz's control, USAT made a large number of, at best, questionable real estate loans, both made and lost money on its junk bonds, and suffered huge losses on two successful attempts to create paper profits through mortgage backed securities ("MBS") and instruments that supposedly hedged the MBS.

We recommend three basic claims: the first for $97 million in (net) losses in the second MBS trading scheme, the second for approximately $300 million in additional losses which could have been avoided but were incurred with respect to the institution's first MBS portfolio, and the third for in excess of $150 million for failure to comply with net worth maintenance obligations of USAT. While we believe that some additional claims (involving losses on the first MBS portfolio, a partially impudent $32 million dividend by UFG, grossly excessive salaries, and commercial lending losses) could pass the Rule 11 test of good faith, our conclusion is based on the facts now known to us that ultimately we could expect to lose on those additional claims under a gross negligence/Texas business judgment rule standard. Consequently, such additional claims are not recommended. We have also negotiated an agreement in principle with United Financial Group, Inc. ("UFG"), USAT's first tier holding company, to settle a separate tax claim for approximately $9.6 million, which we hope to finalize within the next 90 days.

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III. Theory of the Claims

The proposed litigation consists of three claims which are summarized briefly below and set out in more detail in Section V, infra.

A. Claims Against Hurwitz and the Core Group

The claims against Hurwitz and the proposed officer and director defendants will be based upon losses resulting from USAT’s decision to engage in two significant transactions: (1) the purchase of $180 million in a United MBS subsidiary, United MBS ("UMBS"), to facilitate what were billed as risk controlled arbitrage activities; and (2) the hedging against the risks of declining interest rates through the use of interest rate swap agreements. The third claim is against Hurwitz only for failure to maintain the net worth maintenance obligations of USAT.

1. The $180 Million Investment in United MBS

The claims against the proposed defendants for UMBS losses are predicated upon strong warnings from regulators and USAT’s outside auditor concerning USAT’s securities investments, the defendants’ knowledge of USAT’s deep financial trouble and USAT’s disastrous mismanagement of and demonstrated inability to control its MBS investments, and the losses sustained by USAT in the UMBS transaction against most of the proposed defendants is twofold. First, the USAT Board was grossly negligent in abdicating its supervisory role over the investment affairs of the institution by failing to carefully analyze, approve, and assure adequate controls on the investment in UMBS. Second, certain directors and senior officers of the Executive Committee, Investment Committee; and Strategic Planning Committee (including Hurwitz) were grossly negligent by virtue of their having orchestrated the formation of UMBS and caused substantial UMBS funds to be lost due to UMBS’s high-risk trading strategies.

2. Failure To Prevent Further Losses From United MBS—Hurwitz’s Portfolio

The claim against the proposed defendants arising from USAT’s first portfolio—Joe’s Portfolio—is based on the failure to take action in a timely and appropriate manner to prevent further losses. Joe’s Portfolio itself has been described by one USAT analyst as a disaster. USAT set up the portfolio without hedging against the risks of declining interest rates and, when interest rates declined, USAT was left with interest rate swap agreements requiring fixed interest payments well in excess of current interest rates on UMBS. As a result, USAT received no return. Rather than recognizing the loss inherent in the swap agreements, USAT engaged in a roll-down strategy (a negative-coupon MBs with more stable current coupon issues). The result was that USAT ended up with MBs yielding substantially less than the rates USAT was required to pay on its swap agreements.

By December 31, 1986, it was obvious that USAT’s strategy for Joe’s Portfolio made no sense. Yet, despite a negative-coupon MB strategy, the low coupon MBs exposed USAT to substantial risk of loss in the event that interest rates increased. Peterson Consulting has advised USAT that Joe’s Portfolio and the low coupon MBs exposed USAT to substantial risk of loss in the event that interest rates increased. Peterson Consulting also advised USAT that Joe’s Portfolio and the low coupon MBs exposed USAT to substantial risk of loss in the event that interest rates increased. Peterson Consulting recommended that USAT should have terminated the swaps and sold the MBs in January 1987. If it had done so, the ultimate losses USAT suffered as a result of Joe’s Portfolio would have been reduced by approximately $50 million.

B. The Drexel Connection

A principal motive for Hurwitz’s acquisition of United MBS was to avoid regulatory intervention and to ensure favorable publicity and criticism from FHLBB regulators. Ultimately, to avoid regulatory intervention, Hurwitz then thereafter utilized USAT to support his takeover activities through less direct means.

In 1984, Hurwitz entered into what appeared to be a quid-pro-quo arrangement with Drexel Burnham Lambert, Inc. ("Drexel") pursuant to which Drexel would assist Hurwitz’s takeover activities in exchange for USAT’s investment in Drexel underwritten junk bonds. This conclusion is supported by the timing and nature of the transactions entered into with Drexel, consistent with Drexel’s work with other lending institutions. In 1992, USAT Director and Executive Committee member Barry Munitz stated in an interview that an ongoing relationship with Drexel was important to USAT. According to Munitz, Hurwitz needed to have other entities he owned or controlled act as a junk bond purchaser of the risk. We believe that many of the accounting driven gains taken by USAT to artificially maintain net worth were undertaken to avoid regulatory intervention. We further believe that USAT would continue to provide Hurwitz with access to Drexel—even at the cost of operating the institution at a loss. USAT eventually became the eighth largest purchaser of Drexel-underwritten junk bonds among all savings and loans nationwide. By December 1986, 69% of USAT’s entire junk bond purchase portfolio, valued at $441 million, was Drexel underwritten.

During this period, Drexel arranged junk bond financing for Hurwitz’s takeover activities and USAT purchased junk bonds and other investments from Drexel. From 1984 through 1988, Hurwitz obtained approximately $1.8 billion in junk bond financing through Drexel for his takeover activities, and USAT purchased approximately $1.8 billion of Drexel junk bonds, and other Drexel bonded securities. Drexel also assisted Hurwitz’s efforts to insulate his key entities FDC and MCO from regulatory intervention with the FHLBB to acquire a controlling interest of as much as 35 percent of UFG and thus to become a savings and loan holding company. USAT’s losses on Drexel junk bonds were substantial, amounting to approximately $50 million.

Charles Hurwitz exercised control over most of the activities of the Association. He was responsible for the Association’s strategic planning, overseeing the Association’s relationships with Drexel, and making investment decisions. Hurwitz also exercised control over USAT’s acquisition of United MBS through FDC and MCO (the Hurwitz entities which held a substantial stock interest in FDC). Hurwitz devised and approved USAT’s business strategies. He worked with other MCO/FDC employees to direct USAT’s securities investments.

Further, Hurwitz hand-picked certain prior business and social friends for key positions at USAT to carry out his plans for USAT, and he rewarded others, paying salaries despite their limited experience in the savings and loan industry. The relationships these individuals had with Hurwitz and the Hurwitz entities paid off with their loyalty to the institution. This group of Hurwitz associates—the "core group"—included Crow, Munitz, Kometsky, Gross, and DiPace, and Hurwitz shielded them from regulatory intervention and, where appropriate, held them out as experts in the junk bond field.
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t. . .
USAT invested approximately $180 million in the UMBS, leveraged the investment into a $1.8 billion portfolio of MBSs and ended up losing about $97 million, taking into account the cost of the funds invested. Although we do not recommend naming all the Board members as defendants, we believe the entire Board abdicated its responsibility to adequately supervise USAT as required by its duty to consider, approve, or control the risk inherent in the $100 million investment in UMBS. The decision by certain directors and officers to engage in speculative activities was grossly negligent. The risk of the UMBS investment was especially obvious and totally imprudent in light of USAT’s disclosures and experience with its highly leveraged “risk-controlled” MBS portfolio, particularly in light of USAT’s weakened financial condition. The decision was a breach of the defendants’ fiduciary duties of loyalty and care. This decision was grossly negligent and the purpose of its leverage was to extend the life of USAT for the benefit of Hurwitz’s interests regardless of cost or risk. Moreover, once the investment was made, USAT’s Investment Committee authorized UMBS to engage in speculative strategies, gambling that large profits could be achieved without hedging to protect USAT’s investment in the event that the strategies failed. The authorization of these strategies was grossly negligent and a breach of the defendants’ fiduciary duty of loyalty.

The April 1986 Texas Examination and the May 1986 FHLM Examination reported that USAT’s MBS activities and investment strategies were characterized by a lack of adequate control. Either the attempts to hedge the MBS activities or to engage in what was described as the “book of the business of selling such transactions—what you buy is what you get.” In that context, the transactions underlying our proposed claim display a common thread—namely, the willingness of USAT to commit substantial resources regardless of obvious long term risk of loss so long as there was a potential for reporting short term gains. For example, on August 7, 1986, the Board approved a resolution authorizing the investment of $100 million in UMBS. The decision was made by the Board, the Audit Committee, and the Investment Committee minutes that USAT’s MBS trading was in a confused and troubled state. Remarkably, despite this, and in what appears to be an attempt to abdicate its responsibility, the Board never considered or voted upon resolutions authorizing the investment of any specific amount in UMBS, let alone the $100 million initially invested in UMBS. The failure of Board members Munitz and Gross (who were members of Hurwitz’s core group) to act to protect USAT from these investment strategies, to take steps to control USAT’s MBS activities and to prevent the initiation of a new, even larger phase of such activities, warrants prosecution. Even before we knew that Thomas A. Munitz was a Board member and a member of Hurwitz’s core group, we do not recommend naming him as a defendant.

The claims against Hurwitz and the core group must be viewed against this background. By 1986 it was readily apparent to the officials of USAT that the institution’s takeability was in doubt. Yet within a four month period in 1986 (May to August) USAT approved major transactions with extraordinary and unacceptable risk. These activities evidence blatant disregard for the officers’ and directors’ duties to the institution and illustrate the degree to which certain members of the Board deferred to the interests and goals of Charles Hurwitz. Both of the transactions underlying our proposed claim display a common thread—namely, the willingness of USAT to commit substantial resources regardless of obvious long term risk of loss so long as there was a potential for reporting short term gains. For example, on August 7, 1986, the Board approved a resolution authorizing the investment of $100 million in UMBS. The decision was made by the Board, the Audit Committee, and the Investment Committee minutes that USAT’s MBS trading was in a confused and troubled state. Remarkably, despite this, and in what appears to be an attempt to abdicate its responsibility, the Board never considered or voted upon resolutions authorizing the investment of any specific amount in UMBS, let alone the $100 million initially invested in UMBS. The failure of Board members Munitz and Gross (who were members of Hurwitz’s core group) to act to protect USAT from these investment strategies, to take steps to control USAT’s MBS activities and to prevent the initiation of a new, even larger phase of such activities, warrants prosecution. Even before we knew that Thomas A. Munitz was a Board member and a member of Hurwitz’s core group, we do not recommend naming him as a defendant.

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include a recommendation to increase assets through service corporations which will purchase MBSs and hedge against interest rate risk. The materials mention a $100 million advantage (utilizing probably UMBs) and a related asset increase of $1 billion. A memorandum dated October 6, 1986 to Crow, Phillips, Sandy Laurenson (who was hired by subsequent management and others (with copies to Gross and others) states that a new subsidiary had been established and capitalized at $100 million to be utilized by Sandy Laurenson’s strategy to vintage UMBS portfolio, as indicated by an attached memorandum. USAT followed USAT and USAT to follow USAT strategies. The Investment Committee also failed to follow USAT’s investment to loss. USAT incurred losses on its investment in UMBS of at least $64.9 million (plus interest). The UMBS operation involved numerous risks, which Laurenson understood and which she disclosed to members of the Board of Directors, including Laurenson in her weekly meetings. The decision to undertake those risks was reckless and grossly negligent. The result was that, when USAT’s investments were significantly impaired by subsequent management, $172,171,894 of USAT cash was invested in UMBS’s operations and USAT recovered only approximately $107,330,000 by the time that USAT incurred losses on its investment in UMBS of at least $64.9 million (plus interest). The UMBS operation involved enormous risks, which Laurenson understood and which she disclosed to members of the Board of Directors, including Laurenson in her weekly meetings. The decision to undertake those risks was reckless and grossly negligent. The result was that, when USAT’s investments were significantly impaired by subsequent management, $172,171,894 of USAT cash was invested in UMBS’s operations and USAT recovered only approximately $107,330,000 by the time that USAT incurred losses on its investment in UMBS of at least $64.9 million (plus interest). The UMBS operation involved enormous risks, which Laurenson understood and which she disclosed to members of the Board of Directors, including Laurenson in her weekly meetings. The decision to undertake those risks was reckless and grossly negligent. The result was that, when USAT’s investments were significantly impaired by subsequent management, $172,171,894 of USAT cash was invested in UMBS operations and USAT recovered only approximately $107,330,000 by the time that USAT incurred losses on its investment in UMBS of at least $64.9 million (plus interest). The UMBS operation involved enormous risks, which Laurenson understood and which she disclosed to members of the Board of Directors, including Laurenson in her weekly meetings. The decision to undertake those risks was reckless and grossly negligent. The result was that, when USAT’s investments were significantly impaired by subsequent management, $172,171,894 of USAT cash was invested in UMBS operations and USAT recovered only approximately $107,330,000 by the time that USAT incurred losses on its investment in UMBS of at least $64.9 million (plus interest). The UMBS operation involved enormous risks, which Laurenson understood and which she disclosed to members of the Board of Directors, including Laurenson in her weekly meetings. The decision to undertake those risks was reckless and grossly negligent. The result was that, when USAT’s investments were significantly impaired by subsequent management, $172,171,894 of USAT cash was invested in UMBS operations and USAT recovered only approximately $107,330,000 by the time that USAT incurred losses on its investment in UMBS of at least $64.9 million (plus interest). The UMBS operation involved enormous risks, which Laurenson understood and which she disclosed to members of the Board of Directors, including Laurenson in her weekly meetings. The decision to undertake those risks was reckless and grossly negligent. The result was that, when USAT’s investments were significantly impaired by subsequent management, $172,171,894 of USAT cash was invested in UMBS operations and USAT recovered only approximately $107,330,000 by the time that USAT incurred losses on its investment in UMBS of at least $64.9 million (plus interest).
hedges to protect against loss in the event that interest rates increased. USAT exposed itself to losses in the future if interest rates increased. In fact, rates did increase beginning in 1985, and the ultimate sale of the MBSs from Joe’s Portfolio resulted in a loss of $107 million. Even after deducting $12 million of gains USAJ extracted from the portfolio because the MBS portfolio had been sold on December 31, 1986, a gain of approximately $9 million would have resulted. Thus, the failure to liquidate on December 31, 1986, increased USAT’s MBS losses by about $89 million.

When both the swaps and the MBSs from Joe’s Portfolio are taken into account, the net loss incurred by USAT as a result of its failure to liquidate Joe’s Portfolio on or about December 31, 1986, was about $51 million. Peterson Consulting has concluded that the swap agreements could have been terminated at a cost of $149 million on December 31, 1986. By not terminating the agreements, USAT self-inflicted $52 million worth maintenance obligation of the Board of Directors of the Association by a pattern of deceptive financial reporting and balance sheet manipulation. Gains were taken on certain securities and (c) invested in complex financial instruments whose manipulation could have increased the liabilities of the Association by a level consistent with that required by Section 563.13(b) of the Rules and Regulations for Insurance of Accounts, as now, and hereafter in effect, of institutions insured 20 years or longer and, as necessary, will infuse sufficient additional equity capital, in a form satisfactory to the Supervisory Agent, to effect compliance with such requirement.

Pursuant to the commitment, USAT agreed that it would infuse equity capital in a form satisfactory to the Supervisory Agent to maintain compliance with regulatory net worth requirements.

On June 1, 1988, USAT and MCO and Federated filed an application with the Bank Board for approval to acquire control of USAT through the acquisition of up to 35% of USAT’s shares. On December 6, 1984, the Bank Board granted unconditional approval of the application of MCO and Federated to acquire control of USAT. The condition the Bank Board imposed on MCO’s and Federated’s acquisition was that:

b. USAT’s, MCO’s and FDC’s Net Worth Maintenance Obligation

In early 1986 Hurwitz began to acquire UFG shares. In his capacity as a director and controller of UFG, Hurwitz owned to USAT a duty of loyalty and a duty to protect and care for the interests of the institution. By virtue of his position as a board member and officer at UFG and MCO (two of USAT’s holding companies), and as a director and control person of Federated Development Company ("FDC") Hurwitz was a de facto officer and director of USAT. He functioned as an active member of the Board, if not its de facto chairman. He directed and controlled USAT’s investment activity; he regularly attended Board and Committee meetings; he selected USAT officers and directors; he controlled and dominated virtually all of USAT’s activities. No significant decision concerning USAT’s affairs was undertaken without his approval.

Hurwitz controlled the affairs of USAT both through direct participation and through the actions of a core group of USAT officers, directors, and their colleagues. This core group included Barry Munitz (USAT Director), Michael Crow (USAT’s Chief Financial Officer), Arthur Berner (USAT’s Executive Vice President and General Counsel) and Ronald Heubach (USAT’s Executive Vice President for Investments). Members of the core group held positions not only with USAT but also with UFG and MCO. Barry Munitz ("Munitz") was a director of MCO and was also a director of USAT from 1983 through 1988 and served on USAT’s Executive Committee from 1983 and 1988. He was Chairman of the USAT Executive Committee from February, 1985 through 1988. Janen Gross ("Gross") was a member of the UFG Board of Directors from 1985 through 1988. He was President and Chief Executive Officer of UFG during the same period. Michael Crow ("Crow") was a director of UFG in 1988 and the Chief Financial Officer of UFG from 1984 through 1988. Arthur Berner ("Berner") became USAT’s Executive Committee Chairperson. USAT’s Executive Committee, George Kosmetsky was a director of MCO and UFG. He also served on USAT’s Audit Committee. d. USAT’s Net Worth Decline

From the outset of Hurwitz’s involvement with USAT, the institution was deeply troubled. Under his control, it grew steadily worse. As the institution’s financial condition plummeted and its net worth declined, USAT Board members serving at his request undertook greater and greater risks. Rather than confront USAT’s problems and confront them constructively, Hurwitz, through these USAT officers and directors (a) dramatically increased the liabilities of the Association; (b) gambled on large, cumbersome real estate projects with no realistic chance of success, and (c) invested in complex financial instruments which were manipulated to produce reported profits while in fact generating multimillion dollar losses to USAT. To avoid being called upon to comply with the performance of USAT’s obligations to USAT to maintain the net worth of USAT, Hurwitz and his colleagues covered up the true state of the Association by a pattern of deceptive financial reporting and balance sheet manipulation. Gains were taken on certain securities transactions, while losses were left
imbedded in the portfolio; subsidiaries were used to skirt liability restrictions; losses on real estate investments were repeatedly understated; and maturity matching credits were not taken into account. The Bank, there- ther, payments of the loan was not made. Hurwitz was responsible. On May 13, 1988, the Bank Board advised USAT and UFG that USAT did not meet its regulatory capital re- quirements. On November 31, 1988, the Board of Directors directed UFG and UFG's Board to infuse capital sufficient to meet those re- quirements. UFG refused to abide by the written commitment to maintain USAT's net worth. Similarly, MCO failed to infuse additional capital in accordance with its ob- ligation.

Hurwitz took no steps to encourage or compel UFG, MCO or FDC to honor their commitments although he had the power, in fact, to do so. On December 30, 1988, the Bank Board advised USAT that USAT was grossly imprudent. It was made the investment decision based on lit- tle, if any, independent due diligence. In- stead, the REIC relied on wildly optimistic profit projections prepared by GMR (Rosen- berg's client and partner) and a totally dis- torted appraisal that gave a cumulative, undiscounted market value of $72.5 million only if (and when) the property was subdivided and ready for development. The REIC described the appraisal as being "on an as is" basis, but the appraisal expressly warned that it "does not represent the present as is value of the land," such a valuation being "beyond the scope" of the appraisal. Hurwitz's influence was evident from the begin- ning of USAT's involvement with the Park 410 project. Promoters of Hurwitz's core group served on the REIC—

Gross and Crow.

Major R. Whatley confirmed in his interview that the Park 410 in- vestment decision committing USAT to $35 million was never presented to the Board of Directors. The REIC's authority to commit the institution to an investment, without prior Board approval, was limited to $2.5 mil- lion. The Board took no steps to exercise its right to review the real estate decision or, indeed, to even monitor what the REIC was doing. The fact that a commit- ment of such magnitude could be made without any regulatory oversight demonstrat- ed the Board's lack of care and its conscious indifference to the need to establish effective internal controls. USAT's inde- finable investment in Park 410 set the stage (and perhaps the excuse) for it to more than double its financial exposure in the Park 410 project. In the Spring of 1986, and a few months after closing the purchase from Lim- ited, USAT committed to become the lender for the entire project, with an exposure of up to $80 million dollars.

The SLC chairman now admits that the Park 410 project "got off to a slow start," that the project was "too big, too diffi- cult," that there was trouble in the San Antonio real estate market, and that Joint Venture could not get outside funding to de- velop the project. In the Fall of 1985, Joint
Venture applied to USAT for a $77.8 million loan to pay off the acquisition debt still owed Alamo and McClintick, to provide funds for development and to pay the holding costs of the property. Again, Hurwitz was involved from the start. Crow recalls Hurwitz presenting the loan proposal to Graham and Childress. Graham reportedly stated that Hurwitz, as an officer of the SLC and one of the board members of the SLC concerning negotiations in late 1985 and early 1986, and Hurwitz and Rosenberg participated directly in some of the negotiations. Hurwitz also participated in the 12/9/85, 1/6/86 and 3/17/86 SLC meetings where the loan was discussed and ultimately approved. Hurwitz, as always, was being widely known and understood among senior officials that Hurwitz wanted USAT to make the Park 410 loan.

Despite advisories from its Texas regulator regarding its real estate lending problems and in the face of Peat Marwick's repeated warnings in August 1984, February 1985 and October 1985 that ABC loans were a problem for USAT and that real estate markets were declining, the SLC approved the loan on March 17, 1986, and thereby agreed to lend USAT $80 million, requiring USAT to advance funds beyond $70 million contingent upon first receiving Board approval. Hurwitz and the SLC approved the loan because of concerns about the loan and the declaration of a deficiency. The guarantors were allowed to credit their personal guarantees for any amounts drawn against their millions of dollars of credit. In addition, various improper disbursements were made (without objection from USAT) out of the loan proceeds, including a $400,000 "loan fee," a $10,000 establishment management fee to Rosenberg of $62,500 at closing and $75,000 per year thereafter. The transaction allowed the borrowers to avoid minimizing virtually all additional "hard dollar" commitment to the project.

The deficiencies described above and the actions and inactions of USAT's Board and SLC provide ample support to assert claims for gross negligence and breach of fiduciary duty. Clearly the Board's conduct constituted conscious indifference to the financial safety and well-being of the Association, particularly in view of the fact that (i) this was the largest loan ever made by USAT and, in the face of the warnings from Peat Marwick, Hurwitz and SLC were disposed of a careful scrutiny (ii) SLC members knew that other lenders had refused to finance the project (iii) the financial projections were wildly optimistic and the appraisals flawed (iv) market conditions were getting worse not better and, (v) USAT could have walked away from its initial involvement had Hurwitz and Marwick and state regulators, required careful scrutiny. As a consequence of its conduct USAT was at the core of Park 410's failure, there is a serious statute of limitations on the claims. We do not believe we can overcome. In light of the Fifth Circuit's opinion in Dawson, the Supreme Court's refusal to consider whether a federal court should apply a negligence standard, and the Fifth Circuit's recent opinion in Action, we do not believe there is a basis under existing law for defeating a statute of limitations problem. Consequently, we do not recommend going forward with claims arising out of Park 410.

VI. Applicable Legal Theories and Defenses

We recommend pursuing these claims with the following legal theories: (A) breach of fiduciary duty of loyalty, (B) gross negligence and breach of fiduciary duty of care, and (C) knowing participation in and aiding and abetting breach of fiduciary duty. Our reasons are summarized below.

A. Breach of Fiduciary Duty of Loyalty

Because of the role that USAT played in maintaining Hurwitz's relationship with Drexel, the recent court decisions in Texas interpreting Texas law preclude recovery for simple negligence. Therefore, we will have to contend that the defendants were guilty of gross negligence—a more rigorous standard. Although we believe that the decisions to make the Park 410 loan and the UMBS investment, and those with respect to Joe's Portfolio, were grossly negligent, a recent decision by the Texas Supreme Court announced a new standard of gross negligence—that if applied—will make it much more difficult to prove our claims.

B. Gross Negligence and Breach of Fiduciary Duty of Care

Many of our claims against Hurwitz and the other proposed individual defendants will be based on allegations of gross negligence and breach of fiduciary duty. Many of the recent federal court decisions in Texas interpreting Texas law preclude recovery for simple negligence. Therefore, we will have to contend that the defendants were guilty of gross negligence—a more rigorous standard. Although we believe that the decisions to make the Park 410 loan and the UMBS investment, and those with respect to Joe's Portfolio, were grossly negligent, a recent decision by the Texas Supreme Court announced a new standard of gross negligence—that if applied—will make it much more difficult to prove our claims.

C. Knowing Participation in and Aiding and Abetting Breach of Fiduciary Duty

Under Texas law, secondary liability theories as Knowing Participation and aiding and abetting breach of fiduciary duty can be used to reach the activities of culpable persons, like Hurwitz or Rosenberg, who themselves may not satisfy all of the elements of the duty of care. Hurwitz can be held liable for the breaches of duty of Munitz, Gross, and the others where he had knowledge that the other breaches of fiduciary duty by USAT provided substantial assistance, direction or encouragement. Based on the facts, Hurwitz
should be sued for his knowing participation in breaches of fiduciary duty by the officer and director defendants.

D. Anticipated Defenses

Business Judgment Rule

The defendants will argue that the decisions we challenge were business judgments for which they cannot be held liable under Texas law. Recent decisions in federal courts in Texas suggest that a business judgment rule is applied liberally to protect directors and officers from claims for bad management decisions, even when large losses result. The presence of motives, such as Hurwitz’s relationship with Drexel, his desire to avoid net worth maintenance claims, and his relationship to Mr. Rosenberg would be relevant to a defense of application of the business judgment rule.

The defendants will contend that the decision to invest in UMBS was a reasonable business decision under the circumstances. They will argue that the absence of alternative investments, given the downturn in the Texas real estate market, and USAT’s need for earnings, made a leveraged investment in MBS risk controlled arbitrage completely appropriate. They will point out that USAT had a positive spread and reported profits from its formation until the date a decision in RTC v. Acton, 49 Fd.3 1086 (5th Cir. 1995), holding that under Texas law, only self-dealing or fraudulent conduct, and not gross negligence, will toll the statute of limitations under the doctrine of adverse domination.

The first $100 million of USAT’s equity interest in UMBS was recorded on the books of UMBS in November and December, 1986—more than two years before a receiver for USAT was appointed. After December 30, 1986, the parties dispute the amount of the contribution made by USAT and its equity contribution in UMBS by a total of $80 million. In March 1987, USAT’s equity in UMBS increased from $100 million to $150 million. In May 1987, it increased from $150 million to $380 million. We evaluated whether a claim could be made for USAT investments in UMBS after December 30, 1986, within the two year statute of limitations. We have to establish that losses resulted from the investments USAT made in UMBS in 1987. Because USAT was “out of the money” on the UMBS, its potential contribution was only $61,997,000, we would have to argue that the last money invested was the first money to be lost. The logic of that position was rejected by a court. If it is not, it appears that our claim will fail because, arguably, USAT recovered its entire 1987 investment when UMBS was liquidated and the “loss” suffered was a loss of $61,997,000 of the contribution it made before December 30, 1986, prior to the two year statute of limitations.

Regulatory Approval—The defendants also are likely to contend that the regulators knew about or approved USAT’s investment activities and did not prevent USAT from participating in MBs investments, but neither did they direct or authorize USAT to do what it did. Moreover, the evidence will show that USAT did not affirmatively disclose (1) the losses inherent in its interest rate swaps from USAT Mortgage Finance in late 1985 or from USAT’s “Joe’s Portfolio” in early 1986, (2) that they could continue to invest in UMBS, and (3) that the “Joe’s Portfolio” resulted in a negative spread between the income on the MBs and the cost of the swaps, and that the swap losses were exorbitantly expensive and with less risk for USAT, (3) the fact that $100 million was invested in UMBS despite the disastrous experience with “Joe’s Portfolio” and (4) USAT’s gross negligence if one knew about the swap dimension of the problem and (4) the fact that an additional $80 million was invested in UMBS in 1987 after the initial investment had already begun to turn sour.

Hurwitz’s Involvement—Hurwitz will assert that he cannot be held liable because he was never an officer or director of USAT. He will also argue that even as a director of USAT, he never had control over USAT and did not knowingly participate in breaches of fiduciary duty by USAT’s officers and directors. Because Hurwitz’s involvement was virtually every aspect of USAT’s business, and especially in the management of its securities portfolio, we have a reasonable chance of overcoming this defense.

VII. Cost Effectiveness and Assessment of Proposed Litigation

If approved, a lawsuit against the proposed defendants would be filed in the U.S. District Court for the Southern District of Texas, Houston, seeking approximately $300 million in damages. We propose using the law firm of Hopkins & Sutter and the minority owned director at Ace and Legal Services Agreements with the FDIC and do not exceed any fee cap.

Potential recovery will include the proposed defendants, who have an aggregate net worth of $150 million. In addition, the by-laws of MCO (now Maxxam), provide for the indemnification of any person who serves as an officer or director of a subsidiary (which would include UFG and possibly USAT) or, at the request of MCO, serves as an officer or director of any other subsidiary of MCO. Thus, Munitz (who was an officer and director of MCO and/or PDC), may be entitled to indemnification from Maxxam for his wrongful acts as a USAT director and officer. Hurwitz may also be entitled to indemnification for his wrongful acts as a director and officer of UFG and because of his activities at USAT as a member of the UFG/USAT Strategic Planning Committee. Maxxam is a publicly traded company with market capitalization, as of March 15, 1994, of $223 million and total assets of $3.2 billion.

The claims described in this memorandum arising out of the misconduct of officers and directors are subject to a number of recent adverse decisions by the Fifth Circuit Court of Appeals, the Southern District of Texas and other federal courts. In the event the actions are not successful, we will have to argue that we have a reasonable probability that the defendants, who have an aggregate net worth of $150 million, will be relevant in our effort to avoid application of the statute of limitations issue. To date we have in-house investigation and in-house attorney costs. Claims of this nature are vulnerable to motions to dismiss and motions for summary judgment. There is at least a 70% chance that these claims will be disposed of adversely to the FDIC on such motions relating to the statute of limitations. If, however, the claims survive summary judgment and proceed to jury trial, the outcome of favorable or unfavorable (plaintiff or verdict) improve, but do not exceed 50%. These variables make it difficult, if not impossible, to quantify the chances of success overall.

It is estimated that pursuing this matter to trial will cost approximately $1 million in fees and expenses, and an additional $2 million in fees and expenses will be incurred through trial. Our downside risk is limited somewhat by the likelihood of an early statute of limitations motion. It is thus likely that we will incur substantially less than the full cost of a trial if we are not going to prevail on the statute of limitations motion. We expect that $600,000 for in-house investigation and house attorney costs. Claims of this nature
and magnitude are very difficult to value. That noted, if the case survived statute of limitations defenses, the estimated settlement value would be $30-$40 million.

July 28, 1985

Memorandum to: Catherine L. Hammond, Office of the Executive Secretary.

From: Robert J. DeHenzel, Jr., Counsel, Professional Liaison Section.

Subject: Authority to Institute PLS Suit, Institution: United Savings Association of Texas, Fin #1815, Proposed Defendants: Former directors and officers, defacto director and controlling person Charles Hurwitz.

The enclosed memorandum requesting authority to institute a PLS suit is on the Board agenda for Tuesday, August 1, 1985. Because Mr. Bovenzi is out of town and has not had the opportunity to sign, we are not enclosing the original with the distribution tools, but anticipate securing his signature on Monday morning, and will then promptly have the original forwarded to your office.

The Deputies to the Directors and the General Counsel are aware that Mr. Bovenzi has not had the opportunity to sign and have no objection to this procedure.

Please tell me if you have any questions whatsoever.

Jack D. Smith
Richard Romero

Resolution

Whereas, pursuant to authority contained in the Federal Deposit Insurance Act and/or pursuant to applicable state or federal law, the Federal Deposit Insurance Corporation (“FDIC”), acting as conservator or receiver or in its corporate capacity has the authority to bring civil actions for monetary damages against directors or officers, outside professionals, and third parties (and their successors, heirs or assigns) of insured depository institutions who fail to fulfill their responsibilities (“professional liability claims”); and

Whereas, the FDIC has investigated and evaluated professional liability claims that it may have arising from the failure or conservatorship of United Savings Association of Texas, Houston; and

Whereas, based on such investigation and evaluation, the Legal Division and the Division of Depository and Asset Services believe there is a sufficient basis to prosecute such claims; and

Whereas, the Legal Division and the Division of Depository and Asset Services have recommended that the Board of Directors (“Board”) of the FDIC authorize the filing of a lawsuit seeking damages based on such claims; and

Now, Therefore, Be It Resolved, that the Board hereby approves the filing of a lawsuit against former directors and officers Barry Munzinger, Michael Crow, Charles Hurwitz, and controlling person Charles Hurwitz, arising out of the failure of United Savings Association of Texas and authorizes the General Counsel (or designee), on behalf of the FDIC, to take all actions necessary or appropriate to prosecute such lawsuit, including any additional litigation necessary to protect or assure the collectibility of the claims to be prosecuted in such lawsuit.

Document M

Draft

To: William F. Kroener, III, General Counsel.

Subj: Meeting with Vice President Gore on Friday, Oct. 20, 1986, at 11:00 a.m.

Discussion Points

1. Background

1. United Savings Association of Texas, Houston, Texas (“USAT”), was acquired in 1983 by Charles E. Hurwitz. Hurwitz leveraged the institution through speculative and uncontrolled investment and trading in large mortgage-backed securities portfolios, with total unrealized gains and losses at $1.6 million in asset sets. Investments lost value and USAT was declared insolvent and placed into FSLIC receivership on December 30, 1988. Loss to the FSLIC Resolution Fund.

2. While Hurwitz was a controlling shareholder and de facto director of USAT he acquired, through a hostile takeover and with the strategic and financial assistance of Drexel Burnham Lambert, Inc., Pacific Lumber Company, a logging business based in northern California. As a result, Hurwitz was named as a defendant in a lawsuit seeking damages based on such investigation and evaluation.

3. The FDIC has no direct claim against Pacific Lumber through which it could successfully obtain the assets or seize the officers of the Headwaters Forest.

4. There is no direct relationship between Hurwitz’ actions involving the insolvency of USAT and the Headwaters Forest owned by Pacific Lumber. Pacific Lumber was acquired by Maxxam but does not appear to have owned any interest in USAT or United Financial Group, USAT’s first-tier holding company.

5. FDIC’s claims alone are not likely to be sufficient to cause Hurwitz to offer the Headwaters Forest, because Maxxam, Inc. (which owns Pacific Lumber and is controlled by Hurwitz) or Pacific Lumber are defendants in FDIC’s suit. There is no direct relationship between Hurwitz’ actions involving the insolvency of USAT and the Headwaters Forest owned by Pacific Lumber.

IV. Settlement Discussions

1. FDIC has had several meetings and discussions with Hurwitz’ counsel prior to the filing of the lawsuit. Hurwitz has never, however, indicated directly to FDIC a desire to negotiate a settlement of its claims.

2. As a result of substantial attention to Pacific Lumber’s harvests of the redwoods by the environmental community, media inquiries, Congressional correspondence, and the state of California, Pacific Lumber has issued various press releases stating it would consider various means of preserving the redwoods.

IV. OTS Investigation

1. Since July 1994, the Office of Thrift Supervision has been investigating the failure of USAT for purposes of initiating an administrative action against Hurwitz, five other former directors and officers, and three Hurwitz-controlled holding companies. The OTS may allege a violation of the Net Worth Maintenance Agreement and unsafe and unsound conduct relating to the two MBS portfolios and USAT’s real estate lending practices. If the OTS files its administrative action, it may allege damages that total more than $250 million.

2. OTS has met with Hurwitz’ counsel; no interest in settlement has been expressed to OTS.

3. OTS is likely to formally file the charges within 45 days.

4. Appears to OTS inappropriate to include OTS representatives in the meeting to discuss possible settlement of its claims against Hurwitz since OTS has not yet apprised any suit against Hurwitz or his holding companies and OTS’ participation at such meeting may be perceived by others as an effort by the Executive Branch to influence OTS’ independent evaluation of its investigation.

V. FSLIC Resolution Fund (“FRF”) Issues


2. To date, FRF owes the Treasury approximately $46 billion.

3. FDIC has decided that if Hurwitz offered the redwoods to settle the FDIC claims, we would be willing to accept that proposal. Because any assets recovered from FRF institutions are required to eventually be turned over to Treasury, the trees (i.e., the land conveyance) could conceivably be transferred to Treasury.

4. May need legislation to assist in transfer of land and other debt conveyance. The mechanisms of such a transfer is not a focus of FDIC’s current efforts, which are to persuade Hurwitz of liability and to serious ascribe settlement.

VI. Impediments to FDIC Direct Action Against Trees

1. FDIC has no direct claim against Pacific Lumber through which it could successfully obtain the assets or seize the officers of the Headwaters Forest. Neither Maxxam, Inc. (which owns Pacific Lumber and is controlled by Hurwitz) nor Pacific Lumber are defendants in FDIC’s suit. There is no direct relationship between Hurwitz’ actions involving the insolvency of USAT and the Headwaters Forest owned by Pacific Lumber.

2. FDIC’s claims alone are not likely to be sufficient to cause Hurwitz to offer the Headwaters Forest, because Maxxam, Inc. (which owns Pacific Lumber and is controlled by Hurwitz) or Pacific Lumber are defendants in FDIC’s suit. There is no direct relationship between Hurwitz’ actions involving the insolvency of USAT and the Headwaters Forest owned by Pacific Lumber.

Memorandum

To: File.

From: F. Thomas Recht.

Re: Environmental Developments.

CC: Jeffrey R. Williams and Robert J. DeHenzel.

Over the past year the FDIC has been subject to an intense lobbying effort by certain

Document N

On January 20, 1996, DeHenzel and Hecht met with Julia Levin of the Natural Heritage Foundation ("NHF"), a group closely associated with the Rose Foundation. NHF is concerned primarily with the protection of half the Rose Foundation and other environmental activists on this issue.

In addition to these more formal encounters, Williams, DeHenzel and Hecht have each been contacted repeatedly by the Rose Foundation and its attorneys to explore the possibility of imposing a constructive trust on Pacific Lumber to take action. In each of these meetings and in subsequent telephone conversations and correspondence, the Rose Foundation and its attorneys have repeatedly touched on the following components of the problem: (a) the imposition of a constructive trust over Pacific Lumber’s redwoods, (b) the seizure of redwoods using an unjust enrichment theory, and (c) obtaining rights to the forest or, at a minimum, an environmental easement, as part of a negotiated settlement. The Rose Foundation and its attorneys have urged three general approaches to the potential FDIC actions: (a) that Hurwitz and Maxxam continue to avail himself of Drexel underwritten projects at the front end of the junk bond market; (b) that the FDIC, as successor to the failed Pacific Lumber or its hardwoods; the FDIC has no entitlement to the assets of Pacific Lumber of which the FDIC was deprived; and (c) wrongful conduct by the defendant. See GHK Associates v. Myer Group, Inc., 274 Cal.Rptr. 168 (Cal. Ct.App. 1991). The FDIC is not an entity who would otherwise have had Pacific Lumber or its hardwoods; the FDIC has no entitlement to the assets of Pacific Lumber of which the FDIC was deprived; and the imposition of a constructive trust over those assets. Nor is it clear what the FDIC would be able to obtain in such a case.

This is a difficult case. First, although there was obviously a reciprocal course of conduct between Hurwitz and Drexel, it is not at all clear that such a course of conduct (or event) caused any damage to the Rose Foundation. The case law on constructive trusts raises the difficult question whether the conduct of Hurwitz and Drexel, under any legal sense, caused significant damages to USAT including its insolvency. The argument is that the acquisition of Pacific Lumber was the fruit of certain fraudulent or improper conduct, and that the FDIC, as successor to the failed USAT, has standing to impose a constructive trust on Pacific Lumber as a result of the losses sustained.

As noted above, the Rose Foundation and other environmentalists have repeatedly urged that the FDIC engage in a “debt for nature” transaction to acquire the old growth redwoods in the Owlet Creek area—about five miles from the Headwaters Forest. After a two week trial the Court held that the old growth redwoods posed a threat to the nesting areas of the marbled murrelet. Among other matters, the case raises the issue of the ability of the Endangered Species Act to reach private holdings. Apparently, the decision will be appealed.

B. FDIC CONTACTS WITH THE ROSE FOUNDATION

As noted above, the Rose Foundation and other environmentalists have repeatedly urged that the FDIC engage in a “debt for nature” transaction to acquire the old growth redwoods in the Owlet Creek area—about five miles from the Headwaters Forest. After a two week trial the Court held that the old growth redwoods posed a threat to the nesting areas of the marbled murrelet. Among other matters, the case raises the issue of the ability of the Endangered Species Act to reach private holdings. Apparently, the decision will be appealed.

1. The Constructive Trust and Unjust Enrichment Theories

The possibility of acquiring Pacific Lumber’s redwoods by the imposition of a constructive trust as an alternative to compelling the FDIC to take action. In each of these meetings and in subsequent telephone conversations and correspondence, the Rose Foundation and its attorneys have repeatedly touched on the following components of the problem: (a) the imposition of a constructive trust over Pacific Lumber’s redwoods, (b) the seizure of redwoods using an unjust enrichment theory, and (c) obtaining rights to the forest or, at a minimum, an environmental easement, as part of a negotiated settlement. The Rose Foundation and its attorneys have urged three general approaches to the potential FDIC actions: (a) that Hurwitz and Maxxam continue to avail himself of Drexel underwritten projects at the front end of the junk bond market; (b) that the FDIC, as successor to the failed Pacific Lumber or its hardwoods; the FDIC has no entitlement to the assets of Pacific Lumber of which the FDIC was deprived; and (c) wrongful conduct by the defendant. See GHK Associates v. Myer Group, Inc., 274 Cal.Rptr. 168 (Cal. Ct.App. 1991). The FDIC is not an entity who would otherwise have had Pacific Lumber or its hardwoods; the FDIC has no entitlement to the assets of Pacific Lumber of which the FDIC was deprived; and the imposition of a constructive trust over those assets. Nor is it clear what the FDIC would be able to obtain in such a case.

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that it does not depend on difficult seizure theories. This approach would require that both the FDIC and OTS undertake to make the redwoods part of any settlement package, which would attract considerable attention if successful. It is, however, not without serious problems. For example, Maxxam is a publicly held corporation and the value of its holdings which is profitable. Minority shareholders may be reluctant to allow a substantial portion of the most profitable asset of the company to be traded away to satisfy debt—particularly debt associated with Charles Hurwitz and the operation of USAIF. Stefano argues that since ESA mandates recognition of the existence of discretion, the FDIC must not only assess whether a violation has occurred, but whether agency resources are adequate to undertake the action at all. . . . The agency is far better equipped than the courts to deal with the many varied issues involved in the protection of its priorities. . . . [An agency’s refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor . . . not to sue. De Stefano argues that the decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion. [citations omitted]. This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement. . . . The reasons for unsuitability are many. First, an agency decision not to enforce involves a complicated balancing of a number of factors which are peculiarly within its expertise. An agency must not only assess whether a violation has occurred, but whether agency resources are sufficient to perform the action at all. . . . The agency is far better equipped than the courts to deal with the many varied issues involved in the protection of its priorities. . . . [An agency’s refusal to institute proceedings shares to some extent the characteristics of the decision of a prosecutor . . . not to sue. De Stefano argues that the decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion. [citations omitted]. This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement. . . .

5. The Endangered Species Act (“ESA”) In a November 18, 1994 letter, Richard De Stefano, on behalf of the Rose Foundation, raised for the first time the possibility that the Endangered Species Act may be used to challenge the FDIC’s failure to initiate litigation against Maxxam and Hurwitz. De Stefano argues that since ESA mandates that all Federal agencies shall seek to conserve endangered species . . . and shall utilize their authorities in furtherance of the purposes [the Act], 16 U.S.C. § 1531(c)(1), the FDIC must not only assess the environmental impact on endangered species associated with Pacific Lumber’s logging of the redwoods in the agencies decision to sue or not to sue. He argues that the decision not to pursue recoveries of the redwoods when there is a legal basis to do so may be a violation of the Act. The cases cited by De Stefano in support of his position involve instances where the link between environmental action and agency action is much clearer. . . .

MEMORANDUM TO: Board of Directors, Federal Deposit Insurance Corporation.
From: Jack D. Smith, Deputy General Counsel.
Date: July 24, 1995.
Subject: Status of PLS Investigation; Institution: United States Association of Texas Mutual Fire Insurance Company.

This memorandum reports on the status of the continuing investigation of the failure of United Savings of Texas, the association of which is being conducted by the Office of Thrift Supervision (“OTS”), current tolling agreements, settlement negotiations with United Financial Group, Inc. ("UFG") - a United Group holding company, and our decision not to recommend an independent cause of action by

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**Document X**

**Attorney Client Privilege Attorney Work Product**

**Memorandum To:** Board of Directors, Federal Deposit Insurance Corporation.

**From:** Jack D. Smith, Deputy General Counsel.

**Date:** July 24, 1995.

**Subject:** Status of PLS Investigation; Institution: United States Association of Texas Mutual Fire Insurance Company.

This memorandum reports on the status of the continuing investigation of the failure of United Savings of Texas, the association of which is being conducted by the Office of Thrift Supervision (“OTS”), current tolling agreements, settlement negotiations with United Financial Group, Inc. ("UFG") - a United Group holding company, and our decision not to recommend an independent cause of action by
the FDIC against the former officers and directors of USAT and controlling person Charles Hurwitz.

I. Background

As you know, USAT was placed into receivership on December 30, 1998 with assets of $4.6 billion. The estimated loss to the insurance fund is $1.6 billion. After a preliminary investigation into the massive losses at USAT, the FDIC entered into tolling agreements with UFG, controlling person Charles Hurwitz and nine other former directors and officers of USAT/UFG that were earlier senior officers that were perceived as having significant responsibility over the real estate and investment functions at the institution.

In May 1994, after a series of meetings with the potential defendants and the exchange of considerable documents and other information, we presented a draft authority to sue memorandum recommending that we pursue claims against Hurwitz and certain of the former officers and directors for losses in excess of $200 million. The proposed claims involved significant litigation risk, in that the bulk of the loss causing events occurred more than two years prior to the date of receivership, and therefore subject to dismissal on statute of limitations grounds. In light of the Fifth Circuit’s opinion in Dawson, a split of authority in the federal trial courts, the high level of culpability required to toll limitations and the Supreme Court’s refusal to consider whether a federal rule should be adopted under which negligence by a majority of the directors would toll the statute of limitations, our strategy was to assert that gross negligence was sufficient to toll the statute of limitations. After three days of deposition and after discussion with the potential defendants, we decided to defer formal FDIC approval of our claims and continue the tolling agreements.

At about the same time that we deferred formal approval of the FDIC cause of action, we developed a new strategy for pursuing these claims through administrative enforcement proceedings with the OTS. After several meetings with senior staff of the OTS Office of Enforcement, we entered into a formal agreement with the OTS, who began an independent investigation into the activities of various directors and officers of USAT, Charles Hurwitz, UFG, as well as USAT’s second tier holding company, Maxxam, Inc., a publicly traded company that is significantly controlled by Hurwitz.

II. Significant Case Law Developments Have Further Diminished the Viability of an Independent Cause of Action by the FDIC

Although we have continued to investigate and refine our potential claims during the pendency of the OTS investigation, two significant court decisions and the failure of Congress to address the statute of limitations problem have further weakened the FDIC’s prospects for successfully litigating our cause of action in the United States District Court for the Southern District of Texas.

In the recent decision of RTC v. Acton, the Fifth Circuit held that under Texas law, only self-dealing or fraudulent conduct, and not gross negligence, is sufficient to toll the statute of limitations under the doctrine of adverse domination. As a result of this opinion, we can no longer rely on any argument that gross negligence by a majority of the culpable Board is sufficient to toll the statute of limitations. Moreover, the Board’s case is very little, if any, evidence of fraud or self-dealing that is likely to survive a motion to dismiss on statute of limitations grounds.

Even before the development of limitations problems, a recent decision by the Texas Supreme Court announced a new standard of gross negligence that will be difficult to meet. In Transportation Insurance Company v. Moriel, 1994 WL 249688 (Tex.), the Texas Supreme Court defined gross negligence as involving two elements: (1) viewed objectively from the standpoint of the actor, the act or omission must involve an extreme degree of risk, considering the magnitude of the risk involved to the potential harm to others, and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the rights, safety, or welfare of others. This new standard will make it very difficult, if not impossible to prove our claims.

The cumulative effect of these recent adverse decisions is that there is a very high probability that the FDIC’s claims will not survive a motion to dismiss either on statute of limitations grounds or the standard of care. Because there is significantly less than a 50% chance that we can avoid dismissal, it is our decision not to recommend suit on the FDIC’s proposed claims.

III. Debt for Nature Swap

Our decision not to sue Hurwitz and the former directors and officers of USAT is likely to attract considerable criticism from environmental groups and Congress. Hurwitz has a reputation as a corporate raider, and his hostile takeover of Pacific Lumber is likely to attract media and Congressional attention because of Hurwitz’s reputation in corporate takeovers, and his ownership of Pacific Lumber, an environmental concern. Environmental interests have received considerable publicity often suggesting exchanging these claims for trees. The Department of Interior recently informed us that the Administration is seriously interested in pursuing such a settlement.

TIMING AND COST-BENEFIT ANALYSIS: We intend to use Hopkins & Sutter (Chicago/Dallas) and the minority firm Adorno & Zeder (Miami). The estimated cost of litigation, outside counsel costs to $2 million through trial, and an additional $2 million through trial. We have incurred outside counsel fees and expenses of $4 million.

Attorney Client Privilege Attorney Work Product Memorandum To: Board of Directors, Federal Deposit Insurance Corporation.

From: Jack D. Smith, Deputy General Counsel

Stephen N. Graham, Associate Director (Operations)

Date: July 24, 1995.

Subject: Status of PLS Investigation, Investigation of the Southern District of Texas, on or before, Wednesday, August 2, 1995.

We will be available to discuss this matter on very short notice.

1. USAT officers and directors were grossly negligent in causing USAT to invest approximately $180 million in its subsidiary, United Savings Association of Texas, (USAT) into $1.8 billion of mortgage backed securities ("MBS") and losing approximately $97 million (including interest) when USAT had already suffered disastrous results in its first MBS portfolio and was in a critically weakened financial state. Approximately $80 million of the $180 million was advanced within two years of the failure.

2. USAT officers and directors were grossly negligent in failing to act to prevent $50 million of additional losses from USAT’s first MBS portfolio. The investment fell in place more than two years before failure. Our analysis is that they should have begun to cut their losses, wind down this set of positions, seek to remove the senior officers or directors that we perceive as having significant responsibility over the real estate and investment functions at the institution.

In May 1994, after a series of meetings with the potential defendants and the exchange of considerable documents and other information, we prepared a draft authority to sue memorandum recommending that we pursue claims against Hurwitz and certain of the

CONGRESSIONAL RECORD — Extensions of Remarks December 20, 2001

E2452
former officers and directors for losses in excess of $200 million. The proposed claims involved significant litigation risk. Most notably, the bulk of the loss causing events occurred prior to the order of receivership, and were therefore at risk of dismissal on statute of limitations grounds.

In light of the Fifth Circuit’s opinion in Dornbusch v. Thrusttone in the federal trial courts in Texas on the level of (basically because we are likely to loose on statute of limitations grounds) because this matter has not been likely to continue to be—highly visible. Culpability required to toll limitations and the Supreme Court’s refusal to consider whether a federal rule should be adopted under which negligence by a majority of the directors would toll the statute of limitations, our strategy at that time was to assert that gross negligence was sufficient to toll the statutes of limitations. After briefings with the deputies to the Directors and further discussion with the potential defendants, we decided to defer filing the civil claims against controlling person Charles Hurwitz, and his fellow directors and officers of USAT is likely to attract media coverage and criticism from environmental groups and members of Congress. Hurwitz has a reputation as a corporate raider, and his hostile takeover of Pacific Lumber attracted enormous publicity and litigation because of his harvesting of redwood forests. Environmental interests have received considerable publicity in the last two years, suggesting exchanging our D&O claims for the redwood forest. On July 24, 1995, we met with representatives of the Department of the Interior, who informed us that they are negotiating with Hurwitz about the possibility of swapping various * * * we do not recommend suit on the FDIC’s potential proposed claims.

II. The Pacific Lumber—redwood forest matter

A. Statute of Limitations

Although we have continued to investigate and refine our potential claims during the pendency of the OTS investigations, two significant closures and the failure of Congress to address the statute of limitations problems, has further weakened the FDIC’s prospect for successfully litigating our claims in the United States District Court for the Southern District of Texas.

A. Statute of Limitations

In the recent decision of RTC v. Acton, the Fifth Circuit held that under Texas law, only self-dealing of directors, failure to maintain a high degree of care in duty, and not gross negligence, is sufficient to toll the two year statute of limitations under the doctrine of adverse domination. As a result of this opinion, if we rely on an argument that gross negligence by a majority of the culpable Board members is sufficient to toll the statute of limitations. There is very little, if any, evidence of fraud or self-dealing that is likely to survive a motion to dismiss on statute of limitations grounds.

B. The Merits

We have attached for your information an updated draft of our proposed claims against controlling person Charles Hurwitz and certain USAT officers and directors. We believe the conduct here constitutes gross negligence as that is normally defined. The law in Texas is currently unsettled, but * * * *

Attorney Client Privilege

Memorandum To: Board of Directors, Federal Deposit Insurance Corporation.

From: Jack D. Smith, Deputy General Counsel. Stephen N. Graham, Associate Director (Operations).

Date: July 24, 1995.

Subject: Status of PLS Investigation, Institution: United Savings Association of Texas—Houston, Texas #8185.

This memorandum reports on the status of the ongoing investigation of the failure of United Savings Association of Texas ("USAT"), the separate investigation of USAT being conducted by the Office of Thrift Supervision ("OTS"), current tolling agreements, settlement negotiations with United Financial Group, Inc., ("UFG") USAT's first tier holding company, and our decision not to recommend suit by the FDIC against controlling person Charles Hurwitz and other USAT officers and directors.

We had hoped to delay a final decision on this matter until after OTS decides whether to pursue claims against Hurwitz, et al. However, we were advised on July 21, 1995 that Hurwitz would not extend our tolling agreement. Consequently, if suit were to be brought it would have to be filed by August 2, 1995. We are taking the unusual step of advising the Board of our conclusion that suit should not be brought basically because the FDIC is highly likely to lose on statute of limitations grounds because this matter has been—and is likely to continue to be—highly visible. We do not recommend suit.

1. Background

As you know, USAT was placed into receivership on December 30, 1988 with assets of $4.6 billion. The estimated loss to the insurance fund is $1.6 billion. After a preliminary investigation into the massive losses at USAT, the FDIC negotiated tolling agreements with UFG, controlling person Charles Hurwitz and ten other former directors and officers of USAT/UFG that were either senior officers or directors that were perceived as having significant responsibility over the real estate and investment functions at the institution.

In May 1994, after a series of meetings with the potential defendants and the exchange of considerable documents and other information, the FDIC was not an officer or director of USAT. We believe that his involvement rose to the level of a de facto director, but that is a notable hurdle.

Texas case law has essentially eliminated liability for negligence in the name of applying a very expensive business judgment rule defense.

We believe the conduct here constitutes gross negligence as that is normally defined. The law in Texas is currently unsettled, but * * * *
former officers and directors for losses in excess of $200 million. The proposed claims involved significant litigation risk. Most notably, the loss causing events occurred more than two years prior to the date of the dissolution of the corporation, and were therefore at risk of dismissal on statute of limitations grounds. In light of the Fifth Circuit’s opinion in Dawson, a split of authority in the federal trials courts in Texas on the level of culpability required to toll limitations and the Supreme Court’s refusal to consider whether a federal rule should replace one under which negligence by a majority of the directors would toll the statute of limitations, our strategy at that time was to assert gross negligence as sufficient to toll the statute of limitations. After briefings with the Deputies to the Directors and further discussion with the potential defendants, we decided to defer an FDIC decision on whether to assert our claims, and we continued the tolling agreements.

II. OTS’s Involvement
At about the same time that we deferred a decision on the FDIC’s cause of action, we met with OTS staff to discuss the possibility of OTS pursuing these claims (plus a net worth claim) directly through administrative enforcement proceedings. After several meetings with senior staff of the OTS Office of Enforcement, we entered into agreements with OTS, who began an independent investigation into the activities of various directors and officers of USAT, Charles Hurwitz, UFG, and as USAT’s second tier holding company, Maxxam, Inc., a publicly traded company that is largely controlled by Hurwitz. The FDIC is paying OTS’s costs in connection with this matter.

The OTS has reviewed extensive documentation and has recently conducted a series of depositions. Moreover, it has been informed that OTS staff is currently preparing a broad-based draft Notice of Charges against Hurwitz and others, including Maxxam, for substantial restitution for unsafe and unsound practices and for enforcement of a net worth maintenance agreement. OTS staff plans to seek formal approval for this case in the relatively near future. Under the terms of our agreement with OTS, FDIC will be the beneficiary of any recovery from the OTS enforcement action through administrative enforcement proceedings. All of the potential respondents of the OTS investigation have signed tolling agreements with OTS which expire on December 31, 1995.

III. Significant Caselaw Developments Have Further Weakened the Viability of Suit by the FDIC
Although we have continued to investigate and refine our potential claims during the pendency of the OTS investigation, two significant court decisions, and the failure of Congress to reauthorize the statute of limitations on OTS claims, have further weakened the FDIC’s prospects for successfully litigating our claims in the United States District Court for the Northern District of Texas.

A. Statute of Limitations
In the recent decision of RTC v. Actors, 49 F.3d 1086 (5th Cir. 1995), the Fifth Circuit held that under Texas law, only self-dealing or fraud, and not gross negligence, is sufficient to toll the two year statute of limitations under the doctrine of adverse domination. As a result of this opinion, we have withdrawn an argument that gross negligence by a majority of the culpable Board members is sufficient to toll the statute of limitations. There is very little, if any, evidence of fraud or self-dealing.

All of the affirmative acts that would form the basis for an FDIC suit occurred more than two years before USAT failed. Thus, the only claims that have any chance of surviving a motion to dismiss based on statute of limitations grounds are claims based on violations of certain transactions in mortgage backed securities and derivative instruments as soon as that should have been done. The statute of limitations risks in this case are even more significant, because (1) all of the material was put at risk more than two years before failure, and (2) if there is a claim based on USAT being late in unwinding these transactions (we are thinking not earlier than January 1, 1987), there is a real likelihood *** that they should have unwound them more than two years before failure.

In short, we have an argument for presenting some claims, but that argument is not likely to prevail.

B. The Merits
The law has also moved against us on the merits of the claims. The claims against Hurwitz are more difficult than usual because he was not an officer or director of USAT. We believe that his involvement rose to the level of a de facto director, but his status presents a notable hurdle.

Texas case law has essentially eliminated liability for negligence in the name of applying a very expansive business judgment rule defense. We believe the conduct here constituting gross negligence as that term is normally defined. The law of gross negligence in Texas is currently unsettled, but a recent decision by the Texas Supreme Court announced a new standard of gross negligence that will be very difficult to meet if it is applied to D&O cases. In Transportation Insurance Company v. Mori, 879 S.W.2d 10 (Tex. 1994), the Texas court defined gross negligence as constituting two elements: (1) viewed objectively from the standpoint of the actor, the act or omission must involve an extremely high degree of risk, considered in probability and magnitude of the potential harm to others, and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others. This new standard, if applied, would make it very difficult, if not impossible, for OTS to prevail through this type of litigation. Texas legislation has attempted to compare, in essence, ‘authorizations in FDIC claims.’

Thoroughly reviewing decisions is that there is a very high probability that the FDIC’s claims will not survive a motion to dismiss on statute of limitations grounds, and because even if we survived a statute of limitations motion, victory on the merits is uncertain given the state of the law in Texas, we do not recommend suit on the FDIC’s potential claim. 4

IV. The Pacific Lumber—Redwood Forest Mat-
ters
Our decision not to sue Hurwitz and the former directors and officers of USAT is likely to attract media coverage and criticism from environmental groups and members of Congress. Our public position as a corporate raider, and his hostile takeover of Pacific Lumber attracted enormous publicity and litigation because of his harassment of Californians and his involvement in the activity of a corporate raider. Charles Hurwitz and ten other former directors and officers of USAT/UFG who were either senior officers or directors that were involved in the real estate and investment functions at the institution.
In May 1994, after a series of meetings with the potential defendants and the exchange of considerable documents and other information, we prepared a draft authority to sue memorandum that discussed the possibility of claims against Hurwitz and certain USAT former officers and directors for losses in excess of $300 million. The proposed claims involved a variety of issues, including, but not limited to, the overvaluation of Texas law, only self-dealing or fraudulent conduct, and not gross negligence, is sufficient to toll the two year statute of limitations under the doctrine of mutual assent. However, under this opinion, we cannot rely on an argument that gross negligence by a majority of the culpable Board members is sufficient to toll the statute of limitations. We have little, if any, evidence of fraud or self-dealing.

B. The Merits

The law has also moved against us on the merits of the claims. The claims against Hurwitz are more difficult than usual because he was not an officer or director of USAT. We believe that his involvement rose to the level of a de facto director, and for some purposes a control person, but his status presents a notable hurdle. Texas law has essentially eliminated liability for negligence in the name of applying a very expansive business judgment rule defense. We believe the conduct here constitutes gross negligence as that term is normally defined. The law of gross negligence in Texas is currently unsettled, but a recent decision by the Texas Supreme Court announced a new standard of gross negligence that will be very difficult to meet if it is applied to D&O cases. In Transportation Insurance Company v. Moriel, 879 S.W. 2d 319 (Tex. 1994), the court expressed gross negligence as constituting two elements: (1) viewed objectively from the standpoint of the act, the act or omission must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others. This new standard, if applied, would make it very difficult, if not impossible, to prove gross negligence.

The effect of these recent adverse decisions is that there is a very high probability that many, if not all, of the FDIC's conventional claims will not survive a motion to dismiss on statute of limitations grounds. We would also be at increased risk of dismissal, or loss at trial, on the merits.

IV. The Pacific Lumber—Redwood Forest Mater

Any decision regarding Hurwitz and the former directors and officers of USAT is dependent on further consideration of a variety of environmental and public opinion. Hurwitz has a reputation as a corporate raider, and his hostile takeover of Pacific Lumber's operations includes both the public and litigation because of his harvesting of California redwoods. Environmental interests have received considerable publicity in the last two years, suggesting exchanging our D&O claims for the redwood forest. On July 21, we met with representatives of the Secretary of Interior, who informed us that they are negotiating with Hurwitz about the possibility of swapping various properties, plus possibly the FDIC/USAT holding company for the redwood forest. They stated that the Administration is seriously interested in pursuing such a settlement.** We plan to follow up on these discussions with the OTS and the Department of Interior in the coming weeks.** The Hurwitz tolling agreement expires, we **

DRAFT

Attorney Client Privilege Attorney, Work Product

Memorandum To: Board of Directors, Federal Deposit Insurance Corporation.

From: Jack D. Cox, Acting General Counsel.

Stephen N. Graham, Associate Director (Operations)—DAS.

Date: July 24, 1995.

Subject: Status of PLS Investigation, Institution: United Savings Association of Texas—Houston, Texas #815.

The memorandum summarized the status of the continuing investigation of the failure of United Savings Association of Texas ("USAT"), the separate investigation of a series of adverse domination cases (including the Office of Thrift Supervision ("OTS"), current tolling agreements, settlement negotiations with United Financial Group, Inc. ("UFG"), and the status of the boundary to recommend suit by the FDIC against controlling person Charles Hurwitz and certain USAT officers and directors.

We had hoped to delay a final decision on this matter until after OTS decides whether to pursue claims against Hurwitz et al. However, we were advised on July 21, 1995 that Hurwitz would not extend our tolling agreement with him. Consequently, if suit were to be brought it would have to be filed by August 2, 1995. We are not recommending suit because there is a 70% probability that most or all the FDIC case would be dismissed on statute of limitations grounds. Under such circumstances, we were advised that it was highly unlikely that we would close out the investigation under delegated authority. However, because of the high profile nature of this case (evidenced by numerous letters from Congress and environmental groups), we are advising the Board in advance of our action in case there is a contrary view.

I. Background

As you know, USAT was placed into receivership on December 30, 1988 with assets of $1.6 billion. The estimated loss to the insurance fund is $1.6 billion. After a preliminary investigation into losses at USAT, the FDIC negotiated tolling agreements with all former officers or directors that were perceived as having significant responsibility over the real estate and investment functions at the institution.

In May 1994, after a series of meetings with the potential defendants and the exchange of considerable documents and other information, we prepared a draft authority to sue memorandum recommending that we pursue claims against Hurwitz and certain USAT former directors and officers for losses in excess of $200 million. The proposed claims involved significant litigation risk. Most notably, the principal loss causing events occurred more than two years prior to the date of receivership, and were therefore at risk of dismissal because of limitations issues.

In light of the Fifth Circuit's opinion in Dawson, a split of authority in the federal trial courts in Texas on the level of culpability required to toll limitations and the Supreme Court's refusal to consider whether a federal rule should be adopted under which tolling agreements would toll the statute of limitations, our strategy at that time was to assert that gross negligence was sufficient to toll the statute of limitations. After briefings with the Deputies to the Directors and further discussion with the potential defendants, we decided to defer an FDIC decision on whether to assert our claims, in order to further investigate the facts, give time for the Texas law on adverse domination to take more concrete shape and ascertain the view of OTS. Therefore, the tolling agreements were continued.

II. OTS's Involvement

At about the same time that we deferred a decision on the cause of action, we met with OTS staff to discuss the possibility of OTS pursuing these claims (plus a net worth maintenance agreement) through settlement or litigation against respondents in the OTS investigation, in furtherance of OTS's investigation into the activities of various directors and officers of USAT, Charles Hurwitz, UFG, as well as USAT's second tier holding company, Maxxam, Inc., a publicly traded company that is largely controlled by Hurwitz.

The FDIC is paying OTS's costs in connection with this matter.

The OTS has reviewed extensive documentation and has recently conducted a series of administrative depositions. We have been informed that OTS staff is currently preparing a broad-based draft Notice of Charges against Hurwitz and others, including Maxxam, for substantial restitution for unsafe and unsound practices and for enforcement of a net worth maintenance agreement. Under the terms of our agreement with OTS, FDIC will be the beneficiary of any recovery from the OTS enforcement action through settlement or litigation against the proposed respondents. All the potential respondents in the OTS investigation, including Hurwitz, have signed tolling agreements with OTS which expire on December 31, 1995. OTS staff's current expectation is that they will seek formal approval for this case by December 31, 1995. Therefore, the tolling agreements, expire on December 31, 1995.

III. Significant Caselaw Developments Have Further Weakened the Viability of Suit by the FDIC

Although we have continued to investigate and refine our potential claims during the pendency of the OTS investigation, two significant court decisions, and the failure of Congress to adopt the statute of limitations, have further weakened the FDIC's prospects for successfully litigating our claims in the United States District Court for the Southern District of Texas.

A. Statute of Limitations

In the recent decision of RTC v. Acton, 49 F.3d 1086 (5th Cir. 1995), the Fifth Circuit held that under Texas law, only self-dealing or fraudulent conduct, and not gross negligence, is sufficient to toll the two year statute of limitations under the doctrine of mutual assent. However, under this opinion, we cannot rely on an argument that gross negligence by a majority of the culpable Board members is sufficient to toll the statute of limitations. We have little, if any, evidence of fraud or self-dealing.

F.3d 1086 (5th Cir. 1995), the Fifth Circuit Court for the Southern District of Texas. December 31, 1995.
worth maintenance agreement claim) through administrative enforcement proceedings. After several meetings with senior staff of the OTS Office of Enforcement, we entered into what we believed to be a tier-one agreement with OTS, which began an independent investigation into the activities of various directors and officers of USAT, Charles Hurwitz, UFG, as well as second tier holding company, Maxxam, Inc, a publicly traded company that is largely controlled by Hurwitz. The FDIC is paying OTS’s costs in connection with this investigation.

The OTS has reviewed extensive documentation and has recently conducted a series of depositions. We have not been informed that OTS staff is currently preparing a broad-based draft Notice of Charges against Hurwitz and others, including Maxxam, United States Attorney for the Southern District of Texas.

In short, we have an argument for pursuing the FDIC’s case. We will also look to FDIC for costs in connection with the OTS investigation, two significant court decisions, and the failure of Congress to act on the statute of limitations problems, have further weakened the FDIC’s prospects for successfully litigating our claims in the United States District Court for the Western District of Texas.

B. The Merits

The law has also moved against us on the merits of the claims. The claims against Hurwitz are more difficult than usual because he was not an officer or director of USAT, but an investor in a very large degree to the level of a de facto director, but his status presents a notable hurdle.

Texas case law has essentially eliminated liability for negligence in the name of applying a very expensive business judgment rule defense. We believe the conduct here constitutes gross negligence as that term is normally defined. The law of gross negligence in Texas is currently unsettled, but a recent decision by the Texas Supreme Court arises from a pleading standard that is very challenging to meet. If the Board decides that it wants the Texas district court to decide the statute of limitations issue rather than FDIC staff. If the Board were to decide to go forward with the filing of a complaint, we need to file the complaint in the Southern District of Texas, on or before Wednesday, August 2, 1995. If the Board has no objection to the proposed staff action to allow the tolling agreements to expire, the Board need take no formal action.

We are available to discuss this matter at your convenience.

Concur: William F. Kroener, III, General Counsel.

Concur: John F. Bovenzi, Director, DAS.

APPENDIX 2

Record 1

To: Robert DeHonzel,
Cc: Ben Groner, James Cantrell.
From: Paul Springfield
Subject: Strange Call—United S&L Houston, TX.

Date: Friday, November 19, 1993.

Bob, yesterday, Mary Saltzman sent an E-mail to Ben Groner and me regarding a call she received from a named individual who Bob has referred to as a ‘‘congressional contact’’. Yesterday afternoon an individual who identified himself as Bob Close called me. His primary question was that he wished to speak to someone involved in investigating the United S&L failure. I asked him the reason for his request and who he was. He responded that he was working for a group in New York identified as ‘‘Wetlands’’ and in Northern California a group called ‘‘EPIC’’. He gave the name this group for which I do not recall, but it was environmentally something. I asked him what was the source of his information and the purpose of his call. He vaguely asked the purpose but related the following names as sources of his information.

Attorney: Bob Bertain and Investigator; Bob Martell, both in Northern California.

He also gave a telephone number where he could be reached later in the week **He indicated this was in Acadia California. He said he was currently in New York City and was working with a group in New York identified as ‘‘Wetlands’’ and in Northern California a group called ‘‘EPIC’’.

Frankly, I do not know whether this individual is some kind of radical Tree Hugger on a mission to save the forest in California or someone seeking to confirm whether FDIC is involved in some conspiracy involving United. I am a little suspicious, however, as to the motives stated by the individual, in light of the specific dollar figures he related and in our conversation yesterday. I did not come across sounding paranoid. I did not relate to him who was assigned to the Investigation or that I worked in Investigations.

I do not know whether to ignore this situation but if I feel the individual will call me again since he was my name and in the course of the conversation I related that I would need to look into his request to talk to the Investigator was simply a ploy to obtain information from him.

There is a possibility you may wish to speak to this individual to determine whether he is a potential witness and if so, please advise and I will relate this to...
December 20, 2001

CONGRESSIONAL RECORD — Extensions of Remarks

E2457

him; otherwise, I will do nothing and if he calls I will state that his request to speak to the Investigator cannot be granted. If you wish to discuss this further, call me at ** *

To: Mary Saltzman
Cc: Ben Groner

From: Paul Springfield.

Subject: United S&L—Strange Call.

Date: Monday, November 22, 1993.

Forwarded by: Paul Springfield.

Forwarded to: James Cantrell.

Comments by: Paul Springfield.

Comments: Jim FY.

[Original Message]

I had a conversation with PLS attorney Bob DeHenzel, Friday afternoon, 11-19-93, to devise an approach as to the appropriate manner to deal with the inquiry from Dan Close. We determined that Mr. Close was to pose his inquiry in written form and address it directly to DeHenzel. I related this information to Close via another party that answered the telephone # he had left.

DeHenzel indicated he had some knowledge about the nature of the inquiry as well as the attorney Bill Bestlove disclosed by Close. Hence, this group was involved in fighting a take over action of some company by Hurwitz involving forest property in the near future. Apparently they are trying to obtain information to utilize in their efforts.

Hopefully, this will close the book, at least from the Investigative perspective. Everyone, have a great holiday.

To: Paul Springfield.
Cc: Ben Groner.

From: Mary Saltzman.

Subject: re: Strange Call—United S&L, Houston, Tx.

Date: Monday, November 22, 1993.

Forwarded by: Paul Springfield.

Forwarded to: James Cantrell.

Comments by: Paul Springfield.

Comments: Whoops. Sent the wrong one earlier.

Forwarded to: Ben Groner.
Cc: Martha F. Boyles-Hance.

Date: Monday, November 22, 1993.

Comments by: Paul Springfield.

Comments: Thanks. Sent the forward seems to indicate where the party obtained my name. You will receive another E-Mail from me that should clarify this matter, at least for now.

Thanks.

[Original Message]

Thanks for fielding that one, Paul! I received the first call late on Thursday and checked the investigation on DOLLARs. His comments were too close to be comfortable, and with all the bad publicity we have had in the Scripps Howard papers lately, I didn’t feel I could pass him off to an ombudsman who might or might not understand the confidentiality of our claims. Anyway, at that hour I felt it was better to pass him directly on to you or Martha so that you could deal with him. Sounds like you got some information from him. The excitement never ends. Haven’t seen you in a while, hope all is well with you. Have a good Holiday...MMS

RECORD 1A

[From the Trees Foundation, July 17, 2000]

A FINAL PUSH FOR DEBT FOR NATURE

(By the Rose Foundation)

For six years, the Rose Foundation has worked with other activists to save Headwaters Forests. The major issue was a debt for natural land swap. Debt for Nature means resolving hundreds of millions in pending federal claims against Maxxam in exchange for public title to ancient redwoods and other sensitive habitat in the Headwaters Forest area. Rose has researched and documented the factual and legal basis of its debt for nature campaign. Its Department suits against Maxxam and CEO Charles Hurwitz. The suits seek $500 million in restitution for the failure and taxpayer bail-out of the failed Texas Savings and Loan. Maxxam credits Rose with catalyzing the suits. We also led shareholder campaigns for four years to reform Maxxam’s corporate governance and forest management practices. In the most recent campaign (which Maxxam presented as “a referendum on Debt For Nature”), 80% of the shares outside of Hurwitz controlled holdings, and almost 50% voted to toss out Maxxam’s Board in favor of our candidates.

It’s now or never to resolve the debt for nature. The Treasury Dept. is all but concluded. This summer, the judge will make an advisory ruling to the director of the Treasury’s banking regulatory division. The director will then issue a restitution order. We believe Treasury has proven its case, and a large restitution order is imminent. Maxxam has many resources at its disposal, and to offer forestsland instead of cash:

A huge cash judgment could bankrupt Maxxam.

Some of Maxxam’s largest investors tell us that they prefer debt for nature to a cash payment.

Debt for Nature is a win-win. Maxxam could trade forestsland which they can’t cut profitably (but are environmentally priceless) in exchange for settling the federal claims and resolving some of Maxxam’s most pressing and costly environmental disputes.

But FDIC & Treasury’s position is that their mandate is to recover cash, not forest. If they took their forestslands in lieu of cash, their mandate would be to liquidate the property or demand an equal value exchange from Interior or BLM. An existing law (Coastal Barrier Resources Act) already allows banking regulatory agencies to transfer property they acquire which is adjacent to an existing reserve, to resource management agencies. Rose seeks an amendment which would clarify that the banking agencies could donate such property to resource management agencies—avoiding the unaccustomed requirement of a Federal transfer.

We also need to continue to keep the heat on Hurwitz through his stockholders to force Maxxam to agree to a Debt for Nature settlement if they had Congressional approval to donate recovered Headwaters forestsland to Interior. The amendment would also be good policy in its own right—our research has already uncovered four other examples where such a policy would have facilitated public acquisition of properties that Interior was already trying to conserve.

We need to make significant progress in this Congress. The Treasury and the FDIC & Treasury that Debt For Nature is worth considering. We also need to continue to keep the heat on Hurwitz through his stockholders to force Maxxam to agree to a Debt for Nature settlement.

It will not be an easy fight. Several Members of Congress, including House Majority Whip Trent Lott (R-MS), and Resource Committee Chair Don Young (R-AK), have demanded access to all of FDIC and OTS’ sensitive legal research and background information that is critical to their case. More chilling from a constitutional and public liberty standpoint, Congressman Young is demanding all records of any communications with Drexel Burnham/呋uren. We believe that theоб Debtfors Naturalindebt-for-nature—including specifically Rose, Trees Foundation, EPIC, Sierra Club, and many others. We believe Congressman Young’s actions are a clear abuse of Congressional subpoena authority and a heavy-handed attempt to dissuade citizens from exercising their constitutional right to petition the government regarding issues of concern.

People can contact their Congressional and Senate representatives to ask them to support the Debt for Nature bill. The Ford Foundation, and their power to ease a Debt for Nature swap for the agencies. It could help save the Headwaters today, and other valuable and threatened habitat tomorrow.

RECORD 2

In light of the magnitude of the losses and the FDIC’s well-considered evaluation of liability, I am particularly concerned that a formal action has not yet been filed. Although the FDIC has not publicly quantified the claim, the UFG’s 10-K estimated the claim of $545 million failure to maintain the minimum net worth and failure to remit tax revenues.

My concern about this matter has been heightened by my colleague Dan Hamburg, who recently introduced legislation to acquire by forest property by Pacific Lumber Company (PALCO). Principals in PALCO who acquired the company in 1985 with Drexel Burnham/Milken high yield bonds were also involved in UFGC transactions. Evaluation of their liabilities to the Federal government becomes particularly critical as the prospect of payment for property acquisition proceeds.

I would appreciate your earliest possible response.

Sincerely,

HARRY B. GONZALEZ,
Chairman.

THE FAILURE OF UNITED SAVINGS ASSOCIATION OF TEXAS (USAT)

FACT SHEET

The FDIC has an outstanding claim against United Financial Group, holding company for the failed USAT in excess of $545 million dollars. (United Financial Group 10-K Report year ending 12/31/92).

Five years have passed since this claim was asserted in 1988, and while the FDIC has extended the statute of limitations through two extensions, the current statute of limitations ends on December 30, 1998. (UFG 10-K Report year ending 12/31/92).

When it was settled in 1988 by the FDIC, USAT was a wholly-owned subsidiary of United Financial Group whose controlling shareholders at the time of the collapse was Charles Hurwitz-run Maxxam, MCO, and Federated Development Corp. Also, Drexel, Burnham, Lambert was a 8% shareholder (Washington Post, 4/16/91, MAXXAM Prospectus, 1988 and FDIC v. Milken).

From 1986 to 1988, USAT purchased over $1.3 billion worth of Drexel-underwritten junk bonds. During that same period of time, according to an FDIC lawsuit against Michael Milken, “the Milken group raised about $1.8 billion of financing for Hurwitz’s takeover ventures,” which funded the 1988 takeover of the Pacific Lumber Company, the world’s largest producer of old growth redwood. (FDIC v. Milken).

According to Fortune, the failure of USAT constituted the fifth largest failed S&L bailout, as of 1990, costing the taxpayers $1.6 billion. (Fortune, 8/10/90).
Receiued letter from * * *. Hope to get decision by May '94.

What is status of investigation? What are key factors? Is there specific date by which I must make decision? What other agencies involved? Who is working on case? Multiple attorneys? Reoccurring learning curve? Interesting to me is to why it takes so long on these decisions.

Smith—Failure in Dec. 1986. Very difficult to do a swap for trees. The investigation has looked at several areas. Claim on the net worth maintenance agents.

Thomas—Have been attempts to enforce this. We can’t find signed agent before FSLIC or Thrift Supervision Act. Are claims Hurwitz has signed * * * agent to 3/1. This. We can’t make decision. What other agents? Key factors? Is there specific date by which worth maintenance agents.

—

Maintain USAT's net worth pursuant to 12 USC § 1730(q)(1). Create a private right of action if a thrift regulation would not comport with the purposes of the underlying statutory framework; the court deemed those purposes to be prospective rather than compensatory.

In Savers, the court also found that a holding company's net worth maintenance commitment was not enforceable as a private contract because the holding company was required by law to comply with the net worth maintenance regulation, and therefore its commitment to affirmative action was not "bargained for" consideration which would support a contract, while the bankruptcy court in Conner similarly held that a holding company's promise to maintain the net worth of a savings and loan association did not constitute legal consideration. The court held that the NWM stipulation did not constitute "offer and acceptance" that would give rise to a legally binding contract.

The Tetco court did, however, agree with Conner that a NWM condition in a resolution or agreement with the holding company setting forth a regulatory condition, and a net worth stipulation was merely an acknowledgment of regulatory requirements, not the requisite promise to maintain net worth for the 15-year life of the resolution or agreement.
failure to comply with regulatory requirements).

In any event, quite apart from the weight of authority holding that no private right of action for breaches of existing agreements existed before, the FDIC can point to no evidence showing that either UFG or Hurwitz signed a net worth maintenance agreement.

IV. OFT Administrative Proceedings pursuant to 12 USC §1818(b)(1)

Although the FDIC cannot prevail on a direct claim against UFG for violation of the NWM stipulation, the OTS has the statutory authority to seek enforcement of NWM claims against UFG in an administrative proceeding, pursuant to 12 USC §1818(b)(1). See, Akin V. OTS, 950 F.2d 1180 (5th Cir. 1992) holding that NWM agreements are enforceable in cease and desist proceedings, and that attack on the validity of the agreement for lack of consideration must fail in light of Groce National Bank v. Comptroller of the Currency, 573 F.2d 889 (5th Cir. 1978). In Groce, the court rejected an argument that a supervisory agreement was invalid because of a lack of consideration: “The statute provides that a cease and desist order may issue upon any violation of an agreement between the agency and bank and says nothing of consideration. Nor is there any requirement of consideration proper to private contractual relations, into the relationships between a regulatory agency and the entity it regulates. The Comptroller is authorized by statute to exercise extensive controls upon banks; the statute clearly contemplates that agreements may occur between the Comptroller and the Comptroller. As the Comptroller enters such an agreement by way of attaining voluntary compliance, we will not introduce the trappings of common-law consideration to question that agreement. 573 F.2d at 896.

In Akin, the court noted that under 12 U.S.C. §1818(b), the OTS director has discretionary authority to issue cease and desist orders to correct violations of regulations or written agreements between the agency and an institution affiliated party, including the power to seek reimbursement and restitution when a party has been unjustly enriched through the violation. The court noted that by failing to make capital infusions sufficient to maintain capital ratios above the prescribed levels, Hurwitz was unable to retain capital which otherwise would have been contributed to the financial institution. In affirming the director’s order requiring Hurwitz to add $19 million to the net worth deficiency of the institution, the court stated: “Read in its entirety, the statute manifests a purpose of granting broad authority to Federal thrift regulators to ensure that capital ratios above the prescribed levels are maintained. The purpose of Section 365(o) is “to prevent institution-affiliated parties from using bankruptcy to evade commitments to maintain capital ratios above the prescribed levels of a federally insured depository institution.” In re First Corp., Inc., 973 F.2d 243, 246 (4th Cir. 1992). By operation of this section, if the preferred shareholders are successful in their effort to force UFG into Chapter 11, USFP or the trustee would have to turn over assets to OTS in satisfaction of the capital maintenance obligations. In a nutshell, because Hurwitz asked the court to prevent a bankruptcy court from requiring the trustee or debtor-in-possession to make good on UFG’s commitment to maintain the regulatory capital requirements of the Bankruptcy Code provides: “In a case under Chapter 11 of this title, the trustee . . . shall immediately cure any deficit under any commitment by the debtor . . . . The purpose of Section 365(o) is “to prevent institution-affiliated parties from using bankruptcy to evade commitments to maintain capital ratios above the prescribed levels of a federally insured depository institution.” In re First Corp., Inc., 973 F.2d 243, 246 (4th Cir. 1992). By operation of this section, if the preferred shareholders are successful in their effort to force UFG into Chapter 11, USFP or the trustee would have to turn over assets to OTS in satisfaction of the capital maintenance obligations. In re First Corp., Inc., 973 F.2d 243, 246 (4th Cir. 1992). By operation of this section, if the preferred shareholders are successful in their effort to force UFG into Chapter 11, USFP or the trustee would have to turn over assets to OTS in satisfaction of the capital maintenance obligations.

V. Net Worth Maintenance Claim Against MCO/First City

On December 6, 1984, pursuant to FHLLB Resolution 84-712, MCO and FDC received FHLLB approval to acquire more than 25% of UFG and thereby become a SLHC with FHLBB approval to acquire more than 25% of UFG and thereby become a SLHC with FHLBB approval to acquire more than 25% of UFG and thereby become a SLHC. However, the actual operation was control of all three entities exercised by Charles Hurwitz.

On November 23, 1982, UFG’s preferred shareholders filed an involuntary bankruptcy petition against UFG seeking reorganization under Chapter 11 of the Bankruptcy Code. If the bankruptcy petition is eventually heard on the merits and the court grants the petition in bankruptcy, the OTS may proceed on the NWM claim, if it deems the agreement for lack of consideration improper to private contractual relations, into the relationships between a regulatory agency and the entity it regulates. The Comptroller is authorized by statute to exercise extensive controls upon banks; the statute clearly contemplates that agreements may occur between the Comptroller and the Comptroller. As the Comptroller enters such an agreement by way of attaining voluntary compliance, we will not introduce the trappings of common-law consideration to question that agreement. 573 F.2d at 896.

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Congress assembled, representatives of the United States of America in Congress assembled.

It may have a chance in Congress—Solely for purposes of payments made pursuant to chapter 69 of title 31 of the United States Code, all lands added to the National Forest System under section 508(a) of the National Forest Management Act of 1976 (16 U.S.C. 510m(a)) shall be deemed to have been acquired for the purposes specified in section 6904(a) of such title of the United States Code, all lands added to the National Forest System under section 508(a) of the National Forest Management Act of 1976 (16 U.S.C. 510m(a)) shall be deemed to have been acquired for the purposes specified in section 6904(a) of such title.

To: Pat Bak
From: J. Smith
Subject: Hurwitz Forest

The Congress does not intend that designation of lands within the Six Rivers National Forest Addition, including but not limited to each of the following:

(1) Prohibition of sale of timber from lands within the old growth redwood groves as depicted generally on the map referred to in section 3(a). Timber sales in other areas shall be allowed consistent with the purposes of this Act and other applicable Federal laws and regulations.

SEC. 4. WILDERNESS AREAS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 680-682), the State of California acquired under section 3 of this Act which are within the areas generally depicted on the map referred to in section 3 as the "Headwaters Forest Wilderness (Proposed)" shall be designated as wilderness and therefore as a component of the National Wilderness Preservation System, effective upon acquisition of such lands under section 3 of this Act.

(b) MAP AND DESCRIPTION.—As soon as practicable after the inclusion of any lands in the Headwaters Forest Wilderness, the Secretary shall file a map and a boundary description of such lands which shall be known as the Headwaters Forest Wilderness.

(c) BUFFER ZONES NOT INTENDED.—The Congress does not intend that designation of lands within the Six Rivers National Forest Addition by designation, by purchase with donated or appropriated funds, or by exchange for other lands owned by any department, agency, on instrumentality of the United States. When any land within such boundaries, the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of fees as affecting outside lands or for relocations of such boundaries may be exchanged by the Secretary for non-Federal lands within the boundaries, and any land so acquired and not substituted for the purposes of the Management Plan, this Act, and with the other laws, rules, and regulations applicable to such national forest. In addition, subject to valid existing rights, any lands acquired and designated as wilderness under subsection (c) shall be administered in accordance with the provisions of the Wilderness Act, nothing in this Act shall be construed as affecting the jurisdiction or reference in such provisions to the effective date of the Wilderness Act (or any similar provision) shall be deemed to be a reference to the date of acquisition of such lands under section 3 of this Act.

(2) To the maximum extent practicable, all work to implement the management plan's Restoration Measures shall be performed by unemployed forest and timber workers, unemployed commercial fishermen, or other unemployed persons whose livelihood depends on fishery and timber resources.

(3) In order to facilitate management, the Secretary, acting through the Chief of the Forest Service, may enter into agreements with the State of California for the management of lands owned by the State or purchased with State assistance.

SEC. 6. PAYMENTS TO LOCAL GOVERNMENT.

(a) PLFT.—Soley for purposes of payments made pursuant to chapter 69 of title 31 of the United States Code, all lands added to the National Forest System under section 508(a) of the National Forest Management Act of 1976 shall be deemed to have been acquired for the purposes specified in section 6904(a) of such title.

(b) 10-YEAR PAYMENT.—Subject to annual appropriations and the provisions of subsection (c), for a period of 10 years after acquisition by the United States of lands added to the National Forest System under section 508(a) of the National Forest Management Act of 1976, the Secretary, with respect to such acquired lands, shall make annual payments...
to Humboldt County in the State of California in an amount equal to the State of California Timber Yield Tax revenues payable under the California Revenue and Taxation Code (sec. 38101 et seq.) in effect as of the date of enactment of this Act that would have been paid with respect to such lands if the lands had not been acquired by the United States, as determined by the Secretary pursuant to this subsection.

(2) The Secretary shall determine the amounts to be paid pursuant to paragraph (1) of this subsection based on an assessment of the value of a variety of factors including, but not limited to—

(A) timber actually sold in the subject year from comparable commercial forest lands of similar soil type, slope and such determination of appropriate timber harvest levels.

(B) By comparable timber size class, age, and quality.

(C) Market conditions.

(D) All applicable Federal, State, and local news and regulations.

(E) The goal of sustainable, even-flow harvest or renewable timber resources.

(c) California Timber Yield Tax.—The amount of California Timber Yield Tax payments paid to Humboldt County in any year pursuant to the laws of California for timber sold from lands acquired under this Act shall be reduced from the same to be paid to Humboldt County in that year under subsection (b).

(d) 25-Percent Fund.—Amounts paid under subsection (b) in any year shall be reduced by any amounts paid under the Act of May 23, 1908 (16 U.S.C. 500) which are attributable to sales from the same lands in that year.

SEC. 7. FOREST STUDY.

The Secretary shall study the lands within the area comprising approximately 13,620 acres and generally depicted as the “Study Area” located by the Representative of the National Resources Committee and the Committees on Energy and Natural Resources, Agriculture, Nutrition, and Forestry of the United States Senate.

RECORD 6

FEDERAL DEPOSIT INSURANCE CORPORATION


CAROLYN B. LIEBERMAN,
Acting General Counsel,
Office of Thrift Supervision, Washington, D.C.

Re: United Savings Association of Texas

DEAR MS. LIEBERMAN: On September 2, 1992 I briefed Tim Ryan, Harris Weinstein and I believe Dwight Smith regarding possible claims stemming from the failure of United Savings Association of Texas (USAT). In conjunction with our investigation of professional liability claims arising out of that failure, our staff has reviewed potential claims against United Financial Group, Inc. (‘UFG’), USAT’s first tier holding company, for failure to act in USAT’s net worth. Our staff also reviewed the possible liability of MCO Holdings and its successor, Maxxam, Inc. and Federated Development Corp., for failure to maintain USAT’s net worth. I am enclosing a copy of this memorandum for your independent review and consideration.

In a draft report prepared as of the date of enactment of this Act that would have been paid with respect to such lands if the lands had not been acquired by the United States, as determined by the Secretary pursuant to this subsection.

(2) The Secretary shall determine the amounts to be paid pursuant to paragraph (1) of this subsection based on an assessment of the value of a variety of factors including, but not limited to—

(A) timber actually sold in the subject year from comparable commercial forest lands of similar soil type, slope and such determination of appropriate timber harvest levels.

(B) By comparable timber size class, age, and quality.

(C) Market conditions.

(D) All applicable Federal, State, and local news and regulations.

(E) The goal of sustainable, even-flow harvest or renewable timber resources.

(c) California Timber Yield Tax.—The amount of California Timber Yield Tax payments paid to Humboldt County in any year pursuant to the laws of California for timber sold from lands acquired under this Act shall be reduced from the same to be paid to Humboldt County in that year under subsection (b).

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RECORD 8

Rose Foundation—Conference Call 10/4/94

Tom Hecht * * * Hopkins & Satter.
Jeff Williams & FTD, * * *

2—3:15 p.m.

Tom Lipp—Esq.
Kirk Hyrka—Esq.—and Dave Williams, Esq.
Julia Radner, Esq.—President—Rose Foundation.
Rick DeStefano, Esq.—New Mexico—Real Estate & Litigation.

Who is doing what on the investigation? Who makes the decision and how are they making it?

Tom Lipp—statutory mandates

Constructive trust—there is a lot to be explored there—perhaps it could work.

Currently three lawsuits pending that are protective of oldest growth. Areas recently logged are adjacent to the oldest trees. Currently 18 timber harvest plans that include very old growth trees.

EPIC filed & agreed (103) a TKO to stop the cutting.

5,000-6,000 acres of virgin old growth left—all in litigation. Some cases are winding down and may be coming back to St. of CA to cause legal defects and allow logging to continue. In this case—logging may be permitted to continue in the next few months. EPIC and Rose are running out of resources to continue to fight the logging.

Habitat conservation plan may take 12 months to get Dept. of Interior/Fish and Wildlife Service to residual growth still very much at risk.

Kathy Lacy—asst. to Feinstein—can tell us more about Headwater legislation.

We will not discuss theories and hypothetical strategies with them.

Any published criteria for the FDIC’s Board’s deliberation and ultimate decision on how to proceed?

To: File.
Redwoods League seems to be opposed. Local work to see what can be done."

Murrelet-against-the-current legislation (officially against the current legislation in November from another former holdout. Hamburg won, but faces stiff Republican opposition from a Democratic congressman from the same district on a technicality. Recent Democratic primary pit Switches back and forth from Democrat to Republican. Recent Democratic primary pit

Switches back and forth from Democrat to Republican. Recent Democratic primary pit

The viability of the plan—``How do we turn those trees back to money to distribute to all those creditors?''. H&S role talked about in May 15, 1994 article in the Houston Chronicle.

Politics—Hamburg in a ``Marginal seat'' Switches back and forth from Democrat to Republican. Democratic incumbent re-elected Hamburg against Bosco (former Democratic congressman from same district on a $15,000/month legal retainer from PL). Hamburg's role in this election raises the issue of the viability of the plan. David Barr of the FDIC quoted as down-playing the viability of the plan—``How do we turn those trees back to money to distribute to all those creditors?''. H&S role talked about in May 15, 1994 article in the Houston Chronicle.

E. Politics—Hamburg in a “Marginal seat”. Switches back and forth from Democrat to Republican. Democratic incumbent re-elected Hamburg against Bosco (former Democratic congressman from same district on a $15,000/month legal retainer from PL). Hamburg's role in this election raises the issue of the viability of the plan. David Barr of the FDIC quoted as down-playing the viability of the plan—``How do we turn those trees back to money to distribute to all those creditors?''. H&S role talked about in May 15, 1994 article in the Houston Chronicle.

Memorandum

To: Jit Raines, The Foundation From: Richard De Stefano Date: October 1, 1994.

Re: FDIC Claims Against MAXXAM

Assuming MAXXAM and Hurwitz are subject to liability under California or Texas law for breach of fiduciary duty to USAT's creditors, and assuming state law authorizes the remedy of constructive trust, do federal court decisions support the imposition by a federal court of a constructive trust over PL for the benefit of FDIC?

Question Presented

Assuming MAXXAM and Hurwitz are subject to liability under California or Texas law for breach of fiduciary duty to USAT's creditors, and assuming state law authorizes the remedy of constructive trust, do federal court decisions support the imposition by a federal court of a constructive trust over PL for the benefit of FDIC?

Conclusion

There is overwhelming authority for imposition of constructive trust by federal court, but judicial decisions in recent years have not been entirely in complete harmony with the state court cases discussed in earlier memoranda. In fact, while states construe constructive trust in accordance with federal doctrines, such as family law, decedents' estate and real property title disputes, the federal cases cover the spectrum of complicated issues and are factually closer to the subject claims. A federal court will not hesitate to reach MAXXAM and Hurwitz, if their liability is established under state law, but will hesitate to reach PL, unless the actions are part of a larger scheme. Federal district courts have consistently applied the constructive trust doctrine where an employee acquires property in breach of fiduciary obligations, and held that a constructive trust is the appropriate remedy for breach of those obligations, rejecting the defendant's arguments that the equity is inadequate. See also U.S. v. Pegg, 782 F.2d 1488 (9th Cir. 1986). In Re American Motor Club, Inc. (Bkrtcy E.D.N.Y. 1990) involved constructive trust over corporate stock, but the court held that the corporate structure was not a fraud on creditors. Held, the court will promulgate a constructive trust on the assets of corporations, in breach of the fiduciary duties of the individuals to the corporation. The court will not hesitate to reach PL and its assets for the benefit of FDIC.
individual defendants were principal shareholders of an insolvent corporation ("XYZ") of which plaintiff was an unsecured creditor. These controlling shareholders induced a secured creditor to make a new loan on substantial all XYZ's assets. Through several complex financings involving the same foreclosing creditor, the individuals formed a new corporate vehicle to purchase the assets, and opened for business, in the same business as XYZ, and with the individuals in substantially the same roles. As the applicable Pennsylvania's Fraudulent Conveyance statute (Pennsylvania Uniform Fraudulent Conveyance Act §§354–357), generally prohibits transfers of assets of or liens on assets either (1) with intent to defraud, or (2) for less than fair consideration and which renders an insolvent, the Court argued that the statute did not apply to a series of transactions where each step was lawful. The Court held that a group of transactions will be analyzed as a single transaction where equity so requires, and upheld a constructive trust on the individual defendants' interest in the new corporation, for the benefit of creditors of XYZ.

On the issue of "collapsing" multiple transactions for fraudulent conveyance analysis, the Court relied on the landmark Third Circuit decision in U.S. v. Tabor Court Realty Corp., 803 F.2d 1288 (3d Cir. 1986). There the Court un wound a hideously complex series of transactions of a major leveraged buyout ("LBO") of a financially distressed group of related coal mining companies ("RAYMOND") by its president, DURKIN, who formed a new buying company ("GREAT AMERICA"). The Court's recitation of facts runs for many pages, employing charts to track the relationships involved. As the Court pointed out in its memo, the facts can be greatly condensed; RAYMOND was privately owned by wealthy individuals who employed DURKIN as a professional manager; the shareholders wanted out, and granted DURKIN an option to purchase all their shares, which option DURKIN assigned to GREAT AMERICA; RAYMOND pledged all its assets, including coal mines and substantial other real property, to SECURED LENDER for a loan of about $3.3 million; RAYMOND used the loan proceeds in part to pay creditors, part as a reserve on interest payments, and lent the balance of about $1 million unsecured to GREAT AMERICA; GREAT AMERICA used the monies to pay off liens against the same assets) to buy all the stock of RAYMOND, paying defendant shareholders about $6 million in cash (plus more debt); SECURED LENDER sold its mortgage to PAGNOTTI, who sold them to McCLELLAN; management could not turn the operations around, and so defaulted; McCLELLAN and DURKIN assigned and sold all property to a group of related companies ("LOREE")—a separate company was formed for each major property, to redeem state and local property taxes; when the financial dust settled, the former shareholders of RAYMOND got a lot of cash, LOREE got the mines, and the non-preferred creditors of RAYMOND got the shaft.

The largest such obligation of RAYMOND was to the IRS for about $20 million. The U.S. sued everyone involved in each transaction and everyone who received any of the loan proceeds (including the State of Pennsylvania and two Pennsylvania counties, for preferential payments of state employment taxes and county real property taxes) in several related actions which were consolidated for trial and appeal. After a 120-day trial, the District Court had the entire defense collapsed or sent the complete THPs, which he described as "extremely voluminous" to be copied. Please let me know which you would prefer.

The primary issue was the District Court's treatment of all these transactions as a single fraudulent conveyance. The District Court, which ruled on this holding the case was to the IRS for about $20 million. The federal Court of Appeal for the summer of 1983, DURKIN the former owner of the mining corporation, RAYMOND, paying defendant shareholders about $6 million in cash (pluses more debt), SECURED LENDER sold its mortgage to PAGNOTTI, who sold them to McCLELLAN; management could not turn the operations around, and so defaulted; McCLELLAN and DURKIN assigned and sold all property to a group of related companies ("LOREE")—a separate company was formed for each major property, to redeem state and local property taxes; when the financial dust settled, the former shareholders of RAYMOND got a lot of cash, LOREE got the mines, and the non-preferred creditors of RAYMOND got the shaft.

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The primary issue was the District Court's treatment of all these transactions as a single fraudulent conveyance. The District Court, which ruled on this holding the case was to the IRS for about $20 million. The federal Court of Appeal for the summer of 1983, DURKIN the former owner of the mining corporation, RAYMOND, paying defendant shareholders about $6 million in cash (pluses more debt), SECURED LENDER sold its mortgage to PAGNOTTI, who sold them to McCLELLAN; management could not turn the operations around, and so defaulted; McCLELLAN and DURKIN assigned and sold all property to a group of related companies ("LOREE")—a separate company was formed for each major property, to redeem state and local property taxes; when the financial dust settled, the former shareholders of RAYMOND got a lot of cash, LOREE got the mines, and the non-preferred creditors of RAYMOND got the shaft.

The largest such obligation of RAYMOND was to the IRS for about $20 million. The U.S. sued everyone involved in each transaction and everyone who received any of the loan proceeds (including the State of Pennsylvania and two Pennsylvania counties, for preferential payments of state employment taxes and county real property taxes) in several related actions which were consolidated for trial and appeal. After a 120-day trial, the District Court had the entire defense collapsed or sent the complete THPs, which he described as "extremely voluminous" to be copied. Please let me know which you would prefer.
the United States Fish and Wildlife Service (USFWS), Department of Fish and Game (DFG), Bureau of Forestry (BOF), and California Department of Forestry (CDF). On 9/1/92 the federal district court dismissed the Environmental Public Information Center's (EPIC's) claims against all parties except PL. Steve Volker of Sierra Club Legal Defense and Education Fund (SC) is currently appealing this dismissal for EPIC.

During discovery, PL was sanctioned by the Court and ordered to pay EPIC $6,275 for withholding information.

Trial was held August 15-24 and September 6-9, 1994 in San Francisco before Visiting Judge Louis Bechtle. Witnesses testified to PL's falsification of murrelet survey data and to other material misrepresentations by PL.

Status: awaiting ruling. anticipated in January of 1995, may be sooner.

EPIC Attorneys: Mark Harris, Macon Cowles, Susan O'Neill, Charles Steven Crandall, Brian Gaffney, Steve Wolker.

EPIC Contacts: Cecelia Lanman, Charles Powell, Josh Kaufman, Jamie Romeo, Laurie Sarachek

**EPIC V. CDF ("SEVEN THP's")**

This challenged CDF's approval of seven Timber Harvest Plans (THPs) in residual old-growth areas of PL's Headwaters Forest area.

**Procedure:** TRO denied October, 1994.

**Status:** Trial set for October 31.

**EPIC Attorneys:** Brian Gaffney.

**EPIC Contact:** Cecelia Lanman.

**EPIC V. CDF ("ALL SPECIES GROVE")**

This involves a 186 acre THP in virgin old-growth redwood and habitat in PL’s Headwaters Forest area, at the confluence of Bell and Lawrence Creeks. PL refused to conduct site-specific wildlife surveys and refused to accept CDF's corollary finding.

**Procedure:** THP 1-90-069HUM approved 5/4/90.

**EPIC filed** Petition 5/10, Humboldt Cty., Judge Buffington. Judge denied 6/28; subsequent appeals filed by Pacific Lumber and EPIC. Petition approved 8/15. After trial 10/5/88, judge returned THP to BOF for further findings. Trial Court denied Writ on 10/29 bases on BOF’s finding of no significant impact to species or habitat. Appeal Court reversed and remanded for denial of both THPs on 9/23/91. Petitions for rehearing filed by Pacific Lumber and EPIC. Affirmative case on 9/18/92, holding for EPIC. Appellate decision at 92 DAR 3711. California Supreme Ct. granted Pacific Lumber’s petition for review. Status: final-California Supreme Ct. unanimous decision on 7/21/94.

**EPIC Attorneys:** Tom Lippe, Bruce Cowles, Susan O'Neill, Charles Steven Crandall, Brian Gaffney, Steve Wolker

**EPIC Contact:** Cecelia Lanman. Charles Powell, Josh Kaufman, Jamie Romeo, Laurie Sarachek

**Subject: Rose Foundation Letter.**

To: FTH, RWP.

From: Steven C. Lambert (SCL).

On a weekend in June 1992, PL began logging in Owl Creek without approval of state or federal wildlife agencies, and was stopped on the Thanksgiving weekend of 1992. EPIC obtained a court order to test the BOF ruling within 90 days.

EPIC Attorneys: Julie McDonald, Joseph Brecher.

EPIC Contacts: Cecelia Lanman, Charles Powell.

**EPIC V. MAXXAM I**

This suit, EPIC’s first against Pacific Lumber (PL) and its corporate parent, involved three THPs proposing to clearcut old-growth redwood and/or Douglas fir forests. Two were in the Headwaters Forest area in Little South Fork Elk River and Salmon Creek watersheds, and one at Sulphur Creek of the Mattole.

In a suit resulted in a ruling that the CDF had not only “rubber-stamped” the THPs, but had intimidated the Department of Fish and Game (DFG) and the Regional Water Quality Control Board to delay making any comments critical of THPs. This suit resulted in a DFG policy shift to review all old-growth plans more carefully.

**EPIC Attorneys:** R. Jay Moller, Tom Lippe, Sharon Dougash, Thomas Petersen.

**The Rose Foundation, October 14, 1994.**

**Tom Hecht,** Hopkins & Sutter, Counsel for the Federal Deposit Insurance Corporation, Chicago, Ill.

Dear Tom, I am enclosing summaries of recent and pending cases affecting the Headwaters Forest (as well as a couple of older cases that seem likely to tie up in interest). These summaries are adapted from a draft I sent to Jimmy that laments a volunteer at the Garberville Environmental Public Information Center (EPIC) faxed to me on Wednesday.

I hope this information is helpful. Randy Ghent, who is also a volunteer with EPIC, is working on a map that will provide a sense of what specific areas are directly affected by the cases summarized.

Thanks again for your interest and attention.

Sincerely,

**Jill Ratner, Rose Foundation for Communities and the Environment**

MEMO

From: Steven C. Lambert (SCL) to: FTH, RWP.

Date: Wednesday, October 19, 1994 4:42 pm.

Subject: Rose Foundation Letter.

I received through inter-office mail a copy of an October 12th letter to Tom from Ms. Ratner.

In her letter, Jim presents several issues—none of which I have time to go into here—discussing her interest in the timber resource. As I appreciate what she is suggesting, (and,
please understand, I'm not certain of the context in which this subject came up in your call with her, she suggests use of satelllite photography in order to get an “accurate picture of economic and environmental resources at stake”.

I'd like an opportunity to discuss her suggestion with you before someone adopts her proposal. If the agency is interested in valuation information about the Headwaters and other PL holdings, I believe it first should look at valuation information already in the public domain— which was based at least in part on an on-the-ground inventory (called a cruise) of the property being appraised. The recent hearing of the House Committee provides some appreciation as to the US Forest Service by Jim Fleming (an MAI from Sacramento, CA)—which issued information (even if it is based on such photography. In any event, I recently summarized the already-public information in a memo, I'll be happy to do so.

I have some mis-givings, based on past experience, in trying to determine in any precise way, old growth redwood volumes/values by use solely of aerial photography such as she is describing. The only use for such technology of which I am aware relates to mass-resource studies, where “preciseness” is not felt to be necessary for the purpose of the study. The chief way redwood is valued based on such photography.

However, if the agency wishes to “go that route”, then I could suggest several firms to consider before someone adopts her proposal. If you were to summarize the already-public information in a memo, I'll be happy to do so.

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(S.D. Tex. 1977). There, officers and principal shareholders of the plaintiff banks were profiting from insurance commissions and rebates generated in connection with credit life insurance, which was required by the bank as a condition for certain loans. Federal and state regulators moved administratively to forbid the practice and to require that the commissions and rebates belong to the banks and not the individuals. The Court specifically found that the banks were not damaged by the practice, yet harmed against the individuals on the grounds of breach of fiduciary duties to shareholders and depositors and unjust enrichment of the bank officers and principal shareholders. The Court stated:

"An officer, director or controlling owner of any business entity has a fiduciary duty to make certain that the economic rewards accruing from a corporate opportunity inure to all the owners of the enterprise. This obligation is even stronger in the case of a bank, both because of the fiduciary nature of banking and because of the duty to depositors." 436 F. Supp. at 830, 831 (emphasis added).

The La Marque Court cites several other cases for the proposition that controlling persons of banks have higher fiduciary duties than other businesses. On this issue and the constructive trust risk-loss issue, the opinion seems very strongly to support an action by the FDIC against controlling persons of USAT. See also, Land v. Allen, 869 F.2d 1409 (9th Cir. 1989) (constructive trust imposed on secret profit from sale of a partnership asset); U.S. v. Pegg, 782 F.2d 1406 (9th Cir. [Cal] 1986) (constructive trust for wrongful acquisition and detention of property belonging to the U.S.); Chien v. Chen, 759 S.W.2d 484 (Tex App. 1988) (secretary who purchased property through "front man", so seller was unaware of buyer's true identity as seller's agent and confidant); and Amalgamated Clothing Workers of America v. Murdock, 861 F.2d 1406 (9th Cir. 1988) (pension officials liable to disgorge from self-dealing despite lack of damage to plan members). Outside of Texas and California, the rules are the same, that unjust enrichment of a fiduciary without actual damage to the principal, is sufficient for liability. Bush v. Taylor, 890 F.2d 1344 (5th Cir. 1990). We have found no authority for the contrary position that damages are essential to a breach of fiduciary duty. We are not in any case of action, or a constructive trust remedy, in any unjust enrichment scenario.

6. Texas Savings and Loan Regulations.

In the Headwaters Memo, we have argued generally applicable principles of fiduciary liability and constructive trust relief, shying away from discussions of "banking law" because of our lack of expertise. We have, however, briefly reviewed Rules of the Texas Savings and Loan Department in effect in 1986. 7 Texas Administrative Code, Chapter 65, while additional authority.

6.1 Regarding the propriety of USAT's investment in Drexel-underwritten securities, § 65.19(5) regarding investments in real property. There is no specific prohibition on investments in securities issued by affiliated persons, but this is because of the list of permitted investments is so limited.

6.3 The regs define "Affiliated Person" to include "controlling person," not just directors and officers (§65.3). This would seem to be exclusively factual, and provable here.

6.4 The regs limit aggregate loans to one borrower (§65.4) to the net worth of the association, and require an in-substance, an unsecured loan to MAXXAM for acquisition of PL, compare the amounts of purchases of Drexel-underwritten securities in that year to the net worth of USAT at year-end for those years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Purchases</th>
<th>Net Worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>$280 million</td>
<td>$183 million</td>
</tr>
<tr>
<td>1986</td>
<td>$888 million</td>
<td>$249 million</td>
</tr>
<tr>
<td>1987</td>
<td>$321 million</td>
<td>$63 million</td>
</tr>
</tbody>
</table>

6.5 Loans to affiliated persons are further restricted, requiring the approval of a majority of disinterested directors at a regular board meeting.

6.6 "One borrower" is defined to aggregate loans made to affiliated entities where one hold only 10% of the other's stock (§65.3).

Full disclosure. If disclosure to the independent directors of USAT or United Financial Group of material facts relating to investment decisions of USAT is germane to FDIC's potential challenge of those decisions, the disclosure must be complete and meaningful, and extend not just to the superficial facts about a particular investment, but to the extent of the quid pro quo. It seems almost certain that the outside directors of USAT/UFG would contend that they had no knowledge of the quid pro quo and that investments in Drexel-underwritten securities were used to finance MAXXAM's acquisition of PL and that if they had known, would have disapproved, and it also seems likely that these outside directors would be believed, and a Court would find that there was no adequate disclosure.

8. The endangered species act ("ESA") and the mission of FDIC. While the FDIC is primarily focused on recovering money's worth for its loss in USAT, we urge that all federal agencies are mandated to consider the impact of their decisions on endangered species. The Headwaters Forest is habitat for several endangered and threatened species, as detailed in the Headwaters Memo.

The ESA states that "[i]t is the policy of Congress that all Federal . . . agencies shall seek to conserve endangered species and the environment upon which they depend. . . . " 16 U.S.C. § 1531(c)(1) (emphasis added), and further requires that "[u]nless . . . Federal agencies shall, in consultation with the Secretary [of the Interior], utilize their authorities in furtherance of the purposes of this chapter." 16 U.S.C. § 1531(a)(1).

The "duty to conserve" is an affirmative obligation of all federal agencies. Pyramid Lake Paiute Tribe v. U.S. Dept. of the Navy, 898 F.2d 1410. The ESA further provides that: "[a]ll Federal . . . shall consult with the Secretary [of the Interior], in matters relating to the protection and restoration of such [species], with the purpose of lessening the likelihood of jeopardization of such species or result in the destruction or adverse modification of habitat of such species which is determined to be critical. . . . " (16 U.S.C. § 1536(a)(2).

Accompanying Federal agency decision makers who will decide whether to seek recovery of the Headwaters Forest properties have an affirmative duty to conserve the endangered and threatened species in the forest, and further that the decision not to pursue recovery of the properties, if there is a reasonable legal basis to do so, may be in violation of the ESA.

9. Conclusion. We believe a federal court will view this case as involving related, illegitimate transactions, which destroyed USAT and benefitted Hurwitz and MAXXAM; and will hold that Hurwitz and MAXXAM had fiduciary duties to USAT (and therefore to the FDIC) breached those duties, and thereby unjustly enriched by their breach. The court will not see Hurwitz and MAXXAM as careless to walk just this side of liability, but as directly participating in a violation of a Savings and Loan who are now destroying the Headwaters Forest. We urge the FDIC to take immediate action to restrain logging the Headwaters Forest, and to proceed as swiftly as possible to recover this irreplaceable asset.

Very truly yours,
RICHARD DE Stefanos.

RECORD 8A

[From the Humboldt Beacon, Aug. 26, 1993]

EARTH FIRST! WANTS 98,000; 4,500 ACRES TOPS, PL SAYS

(By Glenn Franco Simmons)

Contrary to many published and televised reports, Congressman Dan Hamburg's bill if passed will affect nearly 60,000 acres—not 44,000 as Hamburg proposed.

Furthermore, Hamburg has proposed an additional 13,500 acres to be set aside as "study acres." Earth First! has set its goal at 98,000 acres. "It's too much," Bulkwinkel said. "We can always work to keep setting aside more productive timberland."

Hamburg has said that much of the land, if his bill succeeds, would still be open to "sustainable" logging.

"When has the federal government been able to do any job better than private industry?" asked Pacific Lumber Co. spokesperson Mary Bullwinkel.

She said PALCO does not believe the federal government can be a better steward of the forests than private timber companies.

What is the Headwaters?

The freshman congressman's bill calls for the purchase or exchange of 44,000 acres of what appears to be mostly PALCO-owned land in the Headwaters area about 10 to 15 miles northeast of Fortuna, Bulkwinkel said. "The reason they named it the Headwaters Forest," Bulkwinkel noted, "is because it is more remote than other streams... Salamon Creek and the Little South Fork of Elk River."

The Headwaters bill came from a very radical proposal put together by people who made the Headwaters an issue," said Earth First! spokesperson Alicia Little Tree. "We've been working on it for eight years: Earth First!, E.P.I.C. and other people who have been concerned about the well-being of Headwaters.

They put together a proposal that calls for not only a debt-for-nature swap, but also an employee-stock-option plan for the businesses to restore the Headwaters... that would be estimated by these years of logging by Maxxam.

The activist said Hamburg picked up on the original proposal that she called "visionary.

"Hamburg, who is a first-year congressperson," Little Tree said, "... did pretty good to get through the shell of the proposal and make it into something... in that all we could get in a compromise situation.

"He thinks he has done all he can, and I appreciate his work. He should be congratulated for all he could do.

Despite having reservations, she said she didn't disagree with Hamburg's proposal. "I think a lot more is needed to protect the Headwaters;" she noted, "because the bill calls for willing sellers. Maxxam clearly stated that (it) is not willing to sell 4,500 acres..."
acres. Selling Headwaters as a 4,500-acre island doesn’t do anything to protect the ancient-redwood ecosystem. It just creates an isolated island of old trees; kind of like a museum, except the trees die from the “edge effect” and from being so fragmented. It dries out and kills it from the edges in.”

She said examples of the edge effect can be found along the redwood coast of Southern Humboldt. One example, she said, is just south of Stafford in the first old-growth redwood groves below Visa Point.

“Without them, Little Tree said, “There are blow downs; they are no longer regenerating.”

PAC has offered to negotiate for the fair-market-value sale of 4,500 acres of what it considers the Headwaters. About 3,000 acres of that is old growth and the 1,500-acre “buffer”, have been cut out and kills it from the edges in.

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You have asked us to provide you with an analysis of the mechanisms under Federal law by which the Federal Deposit Insurance Corporation (FDIC), as title-holder of the Headwaters Forest, may be authorized to transfer the forest to a Federal, State, local, or private entity rather than disposing of it through sale.

Our research has uncovered six Federal statutory programs that allow property under the control of one Federal agency to be transferred to another Federal agency into non-Federal hands. These programs may be characterized as either: (1) “exchange” programs, under which a Federal land-management agency trades some of its land for non-Federal lands of approximately equal value in order to carry out agency objectives; (2) “transfer” programs, under which property no longer required by an agency may be transferred to a state, local, or private entity.

It is difficult to determine at this point which of these programs, if any, would best accommodate the Headwaters Forest, but certain factors may dictate which of the these programs will be employed. None of these programs specifically authorize the precise type of transaction in question here, i.e., the transfer of property acquired by the FDIC in settlement of a legal claim (as opposed to property acquired via normal appraisals and procurement procedures). Furthermore, there are no particular instances under which such transfers are mandatory under any of these programs. At the same time, none of the statutes or regulations or cases interpreting them specifically prohibits such a transaction. A review of these sources indicates that any decision by an agency to enter into any kind of land-transfer transaction will be, in fact, almost entirely discretionary, regardless of the program. Thus, the primary concern under each program will be to convince the appropriate agency that the transaction, if approved, will serve both the public interest broadly, the agency’s interest specifically, and relevant political factors.

Of all these programs, those involving the disposal of surplus Federal or military real property are probably the best candidates, as they do not categorically require reimbursement to the disposing agency. These programs are more restricted than the others, however, in that only certain agencies may receive surplus real property, and then only for certain enumerated purposes. Under these programs, therefore, an interagency body such as the Park Service would initially receive the surplus property for the agency and then either transfer it to the FDIC in exchange for Headwaters or, with the understanding that Headwaters would be managed only for authorized uses. The advantage to the FDIC is that they will require an agreement between three parties instead of two, and this disadvantage may ultimately be outweighed by the need to preserve the Headwaters resource.

When the FDIC, in its capacity as receiver for a failed institution, takes title to land held by another in satisfaction of a claim against that person resulting from the failure of a financial institution, the FDIC forwards title to the land to its regional real estate sales division for disposition. Funds then flow into the appropriate receivership account to cover administrative costs, and then into the general insurance fund as reimbursement for funds expended in covering the deposits in the failed institution.

There does not appear to be any statutory or regulatory mechanism in place whereby the FDIC may dispose of assets acquired in satisfaction of a claim against a director of a failed institution without any reimbursement whatsoever. Such a transaction may, however, exist under an FDIC policy guideline, under the general receivership provisions of the bankruptcy laws, or under the FDIC’s corporate powers, and further research may be warranted. The FDIC is authorized to settle claims by accepting property at less than market value, although any such settlement must be approved by the FDIC’s board of directors.

The FDIC’s primary interest is to restore the government institutions to the health of the banking system. This interest may be achieved by selling property at a profit, by selling property without reimbursement, or by selling property in exchange for other property. If a mechanism exists whereby another Federal agency holding non-Federal lands of approximately equal value may exchange property to state fish and wildlife agencies for wildlife conservation purposes under 16 U.S.C. §676b.


6. Disposal of public lands to state and local governments or non-profit organizations for park and recreation purposes under the Recreational and Public Purposes Act (RPAA). These procedures provide for property in the jurisdiction of one Federal agency to be transferred to another Federal agency, a state, or a private entity without any reimbursement for land of proximately equal value, any of the programs discussed here could provide the statutory or regulatory basis for such an exchange.

Case law addressing these statutory land-transfer procedures is scant. In general, the few cases involving attacks on an agency’s decision to undertake a transfer of Federal property have primarily addressed questions of: plaintiffs’ standing to sue the agency (see, e.g., The Island Gables v. GSA (II), 397 F.Supp. 41 (1975)); the validity of an agency’s determination that a proposed transfer is in the “public interest” (see, e.g., National Wildlife Federation v. Energy v. GSA (I), 561 F.2d 397 (1977)); and whether the amount of land acquired was larger than necessary to meet the transfer agency’s needs (see, e.g., U.S. v. 82.46 Acres of Land, etc., 691 F.2d 574 (1982)).

Thus, this memorandum focuses on the mechanics of these land-transfer procedures, analyzing the statutes themselves and their administering regulations.

A. Transfer of “excess” property under FPASA

The Federal Property and Administrative Services Act (FPASA) (40 U.S.C. §471 et seq.) governs the disposition of property under the discretion and control of an agency that no longer needs it. Under FPASA, when a Federal agency determines that property under its control is not required for its needs and the property is suitable for exchange with a Federal agency possessing such property is designated “excess property.” 40 U.S.C. §472(e). FPASA then imposes a duty on all executive agencies to transfer their excess property to other Federal agencies whenever practicable, 40 U.S.C. §483(b), and, correspondingly, to obtain excess property from other Federal agencies rather than purchasing new property. 40 U.S.C. §486(c); 41 C.F.R. §101-47.203-2.

1. Procedure

Under FPASA, once an agency designates a particular piece of property as excess, “the agency must promptly inform the General Services Administration (GSA) of the property’s availability for transfer. Id. at §486(b). The agency then must provide the GSA with all records of all Federal property reported as excess. See 41 C.F.R. §101-47.202-3. Also under FPASA, when an agency (or a mixed-ownership Government corporation) possesses excess property that requires additional property to carry out an authorized program, it must likewise inform the GSA of its needs. See 40 U.S.C. §486(c); 41 C.F.R. §101-47.203-3. Upon receiving notice from an agency that property is required, GSA will review its records of property reported excess, and its discretion is not limited by the necessity of being able to determine whether any such property may be suitable for the needs of the requesting agency.

For instance, Natural Heritage Institute, 401, 411, 418, 422, 424, 426, 428.
When a transfer of excess property is approved, FPASA authorizes GSA, with the approval of the Director of the Office of Management and Budget (OMB), to prescribe the extent of reimbursement for the transfer.

Although neither FPASA nor the Federal Property Management Regulations specifically provide for reimbursement in-kind in the form of property of equal value, neither do they specifically prohibit it. Given the Congressionally mandated and the land-exchanges under §489(a)(1), although FPASA allows for transfers without reimbursement in certain situations 41 C.F.R. §101-47.203-7, reimbursement at “fair market value” as determined by GSA is required when a mixed-ownership corporation like the FDIC acquires real property to take the FDIC, is either the transferor or the transferee agency. 41 C.F.R. §101-47.203-7(d), (e).

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in a rural area whose closure under this title will have a substantial adverse impact (as determined by the Secretary) on the economy in the communities in the vicinity of the installation and on the property owners and the economic recovery of such communities from such closure.” Id., at Sec. 2200(a)(1)(B)(ii)(A). This may hamper any effort to convert the military property to an agency able to exchange it for Headwaters.

A potentially greater limitation is a rider bill (H.R. 1365) introduced by Congressman Rohrabacher (R-CA) to amend the surplus property disposal provisions of the Defense Authorization Act to authorize the Department of the Interior to a Military Security Committee, and NHI will continue to any property exchange transaction. The bill is currently pending before the National Security Committee, and NHI will continue to track its progress.

iii. Return of lands transferred “temporarily” to the Department of Defense by the Department of the Interior

Unrelated to DoD’s general authority to dispose of surplus military property, a further section of this regulation provides that any lands that have been transferred from the Department of the Interior to a Military Security Committee in the Department of Defense’s temporary use “are to be returned to the Secretary of the Interior” if they are still suitable for the programs of the Secretary of the Interior. 32 C.F.R. § 91.7(a)(9)(i). The Military Department concerned will notify the Secretary of Interior, normally through the Bureau of Land Management (BLM), when withdrawn public domain lands are included within an installation to be closed. 32 C.F.R. § 91.7(a)(9)(ii). BLM will then screen these lands within the Department of Interior to determine if the federal lands are suitable for return to the Department of Interior. 32 C.F.R. § 91.7(a)(9)(iii). Thus, it should be ascertained whether BLM has transferred any land in California to DoD on a temporary basis. If so, the decision to return the property to BLM will be non discretionary, thus eliminating the need to persuade DoD to dispose of the property in a particular manner. If BLM retakes control of the property, it would be a question of orchestrating a land-exchange under FLPMA (see section E. infra). NHI will attempt to identify military property in California that is owned by the Secretary of the Interior.

D. Disposal of surplus Federal and military property

FLPMA, and the Wilderness Act states that Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values. BLM must also find that the resource values and the public benefits that the Federal lands or interests to be conveyed may serve if retained (or not moved) are no less valuable than the values of the non-Federal lands and the public objectives they could serve if acquired. 43 C.F.R. § 2200.6(b)(1). Once BLM accepts title to non-Federal lands or interests, it must assume the liability for them and remain public lands, subject to BLM management. 43 C.F.R. § 1715(c).

Exchanges may be proposed by BLM itself, or by any person, state, or local government.” 43 C.F.R. § 2201.1. Initial exchange proposals are directed to the authorized officer of the lands involved in an exchange. Generally, the parties to an exchange bear their own costs. 43 C.F.R. § 2201.1-3. However, if the Federal lands are exchanged, BLM may agree to bear the other party’s costs. Id. A flow-chart describing the entire BLM land exchange process appears as Attachment A to this memorandum.

E. BLM Land Exchanges under FLPMA

FLPMA regularly organizes what are called “three-party land exchanges” of Federal for non-Federal lands. Under a three-party exchange, the non-Federal lands is sold initially to a third-party, usually a private land trust, for cash. The third-party then holds and manages the land pending BLM’s approval of the identification of the parcels of Federal land to be exchanged. Once the Federal lands are selected, BLM conveys them to the third-party in exchange for title to the non-Federal lands it holds. The third-party then may sell the lands conveyed to it to recover the cost of the initial purchase. A narrative description of a three-party exchange upheld in the past appears as Attachment C to this memorandum.

iv. Restrictions

Restrictions on BLM land exchanges under FLPMA include: (1) a requirement that the Federal and non-Federal lands exchanged lie within the same state (43 U.S.C. § 1716(b)); (2) a requirement that an environmental analysis under NEPA be prepared after an agreement to initiate an exchange is signed (43 C.F.R. § 2200.9-6(h)); (3) a requirement of conformity with existing land use plans (43 C.F.R. § 2200.9-6(i)).

F. U.S. Forest Service Land Exchanges under FLPMA

In addition to authorizing BLM to enter into land exchanges, FLPMA (43 C.F.R. § 1716(b)) authorizes the U.S. Forest Service to exchange Federal land for Wild and Scenic Rivers System, Trails System, or Wilderness preservation system, the Federal lands will immediately become part of that unit without further action by the Secretary.
lands upon a determination that the public interest will be well served thereby: 43 U.S.C. §1716(a). The substantive provisions of FLPMA, including authorizations and limitations, are reappealed uniformly and are applicable and apply equally in the Department of Defense on land subject to the Secretary of the Interior for public lands and the Secretary of Agriculture for National Forest lands. Thus, the analysis contained in Section E. of supra, of this memorandum may be incorporated herein by reference.

The last several regulations governing exchanges appear in Title 36, Part 254 of the C.F.R. These regulations mirror the correlatives of the regulations governing BLN land exchanges, and the discussion of the latter regulations in Section E. applies equally and may also be incorporated herein by reference. One key difference in the exchange procedure, however, is that exchanges of State lands exchanged for Federal land for-timber (non-Federal land for-timber (non-Federal land exchanged for the rights to Federal timber, or "partiparte land-for-timber"—(non-Federal land exchanged for the Federal timber)) are governed by the regulations of Title 36, Part 254. This section, however, may be disregarded in any one State per calendar year. 43 U.S.C. §2742.1

Realignment Act requiring the return of lands held by the Department of Defense “on loan” from the Department of Interior may be a favorable option in light of the non-discretionary nature of the initial transferee. Under this provision, land must be transferred to the Department of the Interior, thus eliminating the need to convince the Department of the Interior ownership of the property, in its discretion, in a particular manner in its discretion. As stated above, NHI will attempt to identify military property in California that is owned by the Department of the Interior.

To: Jack D. Smith, Deputy General Counsel
From: Jeffrey Ross Williams, Counsel, PLS
Date: 15 June 1995
Subj: United Savings Association of Texas,
In FDIC Receivership, Investigation of
Charles Hurwitz and Others.

We received a letter (from among the hun-
dreds we received in the last 60 days) that
discusses the “debt-for-nature” transaction
that apparently has been taking place. I have
been advocating to resolve the claims involving
Hurwitz and USAT. It contains a reference to the
Oak City bombing and a call to “defuse the situation.” I want to bring it to
your attention.

As you know, the above-referenced inves-
tigation has resulted in attracting the atten-
tion of concerned individuals that have
interests in environmental preservation.

This is a case where Charles Hurwitz’s
acquisition (through affiliation with Pacific Lumber, a logging company in Hum-
boldt County, California, that owns the last
stands of old growth, virgin redwoods. It
has been widely reported that the company
has received thousands of letters urging FDIC to
pursue such a transaction.

The environmental movement, like many others, contains extreme elements
that have resorted to civil disobedience and even criminal conduct to
further their goals. As a result of the recent tragedy in Oklahoma City, everyone appears more sensitive to the possibility that people can and do resort to depraved criminal acts. Accordingly, we take any re-
ferences to such acts with great care.

Among the hundreds of letters we received last week, a reference to the Oklahoma City bombing that I want to
bring to your attention. The author does
not make any directly threatening state-
ments but appears, at least to me, to have
personal knowledge of the deep passions and
divisions that various environmental activ-
ists harbor on these preservation issues. This
is particularly evident when he states, “Do
us all a favor and save the forest and defuse
this situation.” The author’s hometown of
Seabastopol, CA., happens to be a hot-bed of
environmental activism and conflict since the
1960s.

In the event you believe this letter de-
serves greater scrutiny, it should be referred to the local offices of the General Counsel.

I would be pleased to contact you if you deem it appropriate. I can al-
ways be reached at 736-0648 to discuss this
matter further.

June 15, 1995—Told Wms to advise FBI

Memorandum

The Rose Foundation

To: Steve Lamberton, Hopkins & Sutter

From: Kirk Boyd and Dave Williams, Boyd, Huffman and Williams, (415) 981–5000

Introduction

The MAXXAM Corporation, through its wholly owned subsidiaries Pacific Lumber Company (Del), Scotia Pacific, and the Salmon Creek Corporation (Collectively “Pacific Lumber”, or “PL”), currently controls and logs an area known as Headwaters Forest in Humboldt County, California. Headwaters Forest is a coastal forest that contains the last major unprotected stands of old growth redwood in the world. These stands of an-
cient redwood, many of which are over
1000 years old, are remnants of the great
great virgin redwood forest that once
tended more than 500 miles from its southern tip to its
northern boundary, blanketing the west-
ern coastal range from Big Sur to southern
Oregon.

The Rose Foundation contends that
MAXXAM’s control of Pacific Lumber and the Headwaters Forest properties is unlawful and was
wrongfully obtained, as a result of a prohi-
bition transaction which breached of
its duties as a controlling shareholder of the
United Savings Association of Texas (USAT), which led to
USAT’s 1988 failure and bailout by the Fed-

eral Deposit Insurance Corporation (FDIC)
which cost taxpayers more than $1.3 billion. We believe that the FDIC, as the party in-
jured by the alleged breaches of fiduciary
duty, has the authority to seek imposition of
a constructive trust on the proceeds of the prohibited
transaction and to compel
MAXXAM’s disgorgement of Pacific Lumber and its
assets.

The FDIC must act quickly to file an ac-
tion against MAXXAM seeking
disgorgement. While the statute of limita-
tions will not apply in this case, we respectfully point out that the policies behind the statute of limitations
still hold true: recollections are fading; evidence is being lost; witnesses may soon become unavailable. Of particular concern in this matter is the age of the Texas State Bank—ten minutes prior to the collapse of the bank and in reviewing or supervising the review of USAT’s records; it is our understanding that he is now more than seventy years old. In any event, the court must quickly to protect the value of the res during litigation by positioning for a temporary restraining order and preliminary injunction to prevent any further irreparable harm such as has occurred as a result of recent intensive logging operations. These operations began September 15th and are, in all probability, continuing to destroy valuable “ancient” or “old growth” trees.

The adjacent residual old growth provides a buffer zone needed to keep the ancient groves intact and protect the vulnerable species isolated ancient groves together with buffer zones needed to keep the ancient groves intact and protect the vulnerable species. The 44,000 acre acquisition area, which represents one of the three remaining California nesting areas for the endangered sea-run Coho Salmon, (which are under consideration for listing by the Federal Fish & Wildlife Service as threatened by the Federal Fish and Wildlife Service) is also home to the spotted owl (listed as endangered).

The Scope of This Memorandum

The Federal Deposit Insurance Corporation (FDIC) alleged essentially the same facts in connection with MCOI. The FDIC alleged essentially the same facts in connection with MCOI. This memo does not reach any potential claims against MCOI or any further irreparable harm such as has occurred as a result of recent intensive logging operations. These operations began September 15th and are, in all probability, continuing to destroy valuable “ancient” or “old growth” trees.

The adjacent residual old growth provides a buffer zone needed to keep the ancient groves intact and protect the vulnerable species isolated ancient groves together with buffer zones needed to keep the ancient groves intact and protect the vulnerable species. The 44,000 acre acquisition area, which represents one of the three remaining California nesting areas for the endangered sea-run Coho Salmon, (which are under consideration for listing by the Federal Fish & Wildlife Service as threatened by the Federal Fish and Wildlife Service) is also home to the spotted owl (listed as endangered).

In the course of the the deal, Simplicity Pattern Corporation (S&L) was also involved, but that is another story.

FACTUAL SUMMARY

The factual basis for our argument can be stated quite simply:

(1) MAXXAM controlled and dominated United Savings Association of Texas (USAT), functioning, in actuality, as its controlling shareholder.

(2) Without providing full disclosure to USAT’s disinterested directors, MAXXAM, and MAXXAM’s CEO, Charles Hurwitz, used MAXXAM’s position of trust and confidence to control USAT, plowing it into a prohibited deal with Michael Milken and the firm of Drexel, Burnham, Lambert.

(3) Under the terms of that deal, or quid pro quo, MAXXAM caused USAT to purchase large amounts of Drexel under-written securities in return for Drexel arranging the financing for MAXXAM’s takeover of Pacific Lumber.

(4) The quid pro quo worked very much to the benefit of MAXXAM and to the detriment of USAT in that MAXXAM acquired a valuable, asset-rich company, while USAT was left with over a million dollars of essentially worthless securities.

(5) The preponderance of these worthless Drexel securities in USAT’s portfolio precipitated, or at least contributed in very significant part, to USAT’s failure, and dictated the size of the $3.5 billion contribution to the S&L bailout.

(6) Drexel’s role in the financing of the PL acquisition was critical to the takeover’s success, because MAXXAM’s strategy required cash for a 100% tender offer and MAXXAM could not get financing elsewhere.

A brief history of the MAXXAM Corporation

Although the MAXXAM Corporation has always been a company that has been highly trusted, its business practices are almost inextricably intertwined with those of its controlling shareholder, President, CEO, and Chairman, Charles H. Hurwitz. In September 24, 1986, Charles Hurwitz changed its name to MAXXAM Group, Inc. and renamed its real estate subsidiary, Twin Fair, which became MAXXAM Properties Inc (MPI). MPI was subsequently merged with another Hurwitz controlled company, Fed- erated Development Company (FDC). This memo will not be discussing, MAXXAM continued to be a subsidiary of MCOI. In 1985, MCOI owned 37.2% of MAXXAM Group Inc. FDC (which, taken together with Pacific Lumber, owned 65.2% voting control of MCOI) continued to control MAXXAM directly. The remaining MAXXAM stock was largely held by institutional investors.

There was also significant overlap of leadership among MCOI, MAXXAM and FDC. All five of FDC’s trustees and five of MAXXAM’s directors (three whom were common to both MCOI and FDC sat on MAXXAM’s ten member board. Charles Hurwitz, George Kozmetsky, Barry Munitz and Ezra Levin served on all three boards, and occupied positions of real leadership within the three organizations.

On September 24, 1986, a MAXXAM Group/ MCOI merger was announced, which was completed in April of 1988, when MCOI emerged as the surviving parent corporation, retaining however, all of its Hurwitz controlled assets and to all the interests of MAXXAM Group Inc. as well as it is possible that, as is common practice, this merger was actually planned long before it was announced; this possibility should be explored in discovery.

In the years immediately prior to its renaming as MAXXAM, MCOI had served as the primary acquisition vehicle for the various Hurwitz related acquisition. Simplicity and then MAXXAM Group, joined in performing that function for the Hurwitz financial empire. MAXXAM played a significant role in the argued coordinated acquisition campaigns and alleged green-mail activities of the various related companies in Hurwitz financial empire.

Charles Hurwitz and MAXXAM’s Control of United Savings Association of Texas

During all of the relevant times, MAXXAM’s CBO Charles Hurwitz and MAXXAM’s CEO, Charles H. Hurwitz, controlled United Savings Association of Texas (USAT) and its affiliated enterprises. Hurwitz controlled United Savings in the capacity of a controlling shareholder, President, CEO, and Chairman. In 1985, Charles Hurwitz owned 3% of the stock of the MAXXAM directly, and controlled 40.6% through related entities and through the ownership of family members, Hurwitz has served continuously on the MAXXAM Group’s board since the MAXXAM Group was formed in 1985 as the successor to the Simplicity Pattern Corporation in June of 1984.

MAXXAM Group, Inc. (MAXXAM Group of Midland, TX) was created from the Sanderson Pattern Corp (SPC) in June of 1984. MAXXAM Group began its corporate existence as a subsidiary of MCOI Holdings (MCOI), (another Hurwitz controlled company) which owned the Simplicity Pattern Corporation in 1982.

MAXXAM Group was formed as the result of a complicated set of interrelated transactions. Simplicity Pattern Corporation (SPC) first spun off its actual pattern operations as a production subsidiary, Simplicity Pattern Corporation (SIPC). Then SPC sold the忽悠 production subsidiary to another company known as the Triton Group Inc. (TGI) which simultaneously played with yet another company, The Republic Corporation.

In the course of the the deal, MAXXAM Corporation’s (MAXXAM) is publicly held, its fortunes and stability are dependent on the financial success of a large number of its subsidiaries. The financial success of a large number of its subsidiaries. The financial success of a large number of its subsidiaries.

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with ownership of options to acquire more voting stock and ownership of preferred stock which, in time, would have converted to voting stock had Hurwitz considered conversion desirable. Prior to the merger, none of the directors of the holding company and the S&L, 3) control of the executive committee of the S&L, 4) control of the S&L investment department and board committee.

Stock Ownership

United Savings Association of Texas (USAT), a Texas state chartered savings and loan, was a wholly owned subsidiary of the savings and loan holding company, United Financial Group (UFG). According to the complaint in FDIC v. Milken, “in mid-1983, Hurwitz, through two companies he controlled, First National Development Co. and MCOH Holdings, Inc., acquired approximately 23% of UFG.” In other words, when MAXXAM Group was created in 1984, its parent company, MCOH, already had a substantial interest in UFG, to which MAXXAM succeeded when MAXXAM Group and MCOH merged. In United Financial Group’s 198810K report to the SEC, MAXXAM is described as owning, together with an affiliated entity (Federated Development Co.), 23.3% of UFG’s common stock.

Drexel held another major bloc, between 7% and 9.7% of UFG stock. Again from the FDIC v. Milken complaint, “Drexel and Hurwitz were the largest shareholders of UFG during the entire period. Prior to acquiring more than 30% of UFG’s outstanding stock from 1984 until 1988, when USAT failed. Since MAXXAM (through Hurwitz and Drexel (through Milken) comprised to control the S&L for their own benefit and to the detriment of the USAT and ultimately the FDIC, for our purposes Drexel and Milken were part of MAXXAM’s control as well, and the whole should be attributed to MAXXAM.

In addition to the outright ownership of common stock, MAXXAM’s predecessor corporation and affiliates held various options and other convertible instruments that increased their ability to control UFG and USAT. In June, 1984, UFG-USAT issued Series C Convertible Preferred Stock. FDC-MCOH bought 97.5% of the issue. The series C was replaced (prior to its conversion date) by series D, which was replaced (prior to its conversion date) by Series E, in June of 1988. The tactic of not actually exercising conversion rights but continuing to maintain those rights, was apposed nationwide in at the direction of MAXXAM’s Chairman of the Board, Charles Hurwitz, in order to prevent activation of net worth guarantees which would have been required by the Federal Home Loan Bank Board (FHLBB) had the percentage of voting stock attributable to MAXXAM’s predecessors come to exceed 25% of the outstanding voting stock. In December 1985, MCOH bought a put-call option for 300,000 shares of UFG-USAT from Drexel, further increasing MAXXAM’s predecessor’s ability to exercise voting control if the need should arise.

At the end of 1985, Drexel’s and MAXXAM’s interests in USAT were:

| Common | Total | Total/
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<tbody>
<tr>
<td>FDC-MCOH</td>
<td>21.3</td>
<td>26.97</td>
</tr>
<tr>
<td>Drexel</td>
<td>15.2</td>
<td>19.57</td>
</tr>
<tr>
<td>Totals</td>
<td>36.5</td>
<td>46.54</td>
</tr>
</tbody>
</table>

It is important to note that while the percentage of voting stock controlled by MAXXAM (through Hurwitz, MCOH (or predecessor MCO) and Drexel) remained below 50%, even taking into account the conversion factor, it was never necessary for MAXXAM to control a majority of voting stock in order to exercise de facto control over the savings and loan. Records of UFG stock ownership indicate that at the time of MAXXAM’s acquisition of 52% of UFG’s voting stock was held in trust by the brokerage firm of Cede and Co. With 43% in trust, and thus in all probability held by non-voting shareholders (or its predecessor) and Drexel merely needed to control one share more than half of the remaining 57%, in other words to control slightly more than 28.5% of the shares, CHARTER MAXXAM’s voting stock—a test that they met handily.

Control of the Board of Directors

In 1982 Charles Hurwitz first hired Barry Munitz as Executive VP and CFO of FDC, UFG, MCOH and Simplicity as Hurwitz’ representative. As a director of UFC, Munitz apparently was given the task of ensuring that the SEC, MAXXAM is described as owning, with which MAXXAM succeeded, controlling more than 30% of UFG, to which MAXXAM succeeded—see above—in 1984. In addition to Munitz also served on MAXXAM, MAXXAM, as an investment company, wouldn’t exercise control apparent.

Control of Investment Decisions

Shortly after UFG-USAT formed the Executive Committee to redirect USAT’s investment strategy, Ron Heubsch was hired to be the Executive Committee’s advisor to MAXXAM. Heubsch, who was employed by or associated with Hurwitz since 1969, worked for FDC during the late 1984-1985 period. Under the direction of the Executive Committee and Heubsch, the redirection of USAT’s investment strategy was ultimately quite drastic, converting USAT from a traditional savings and loan, with assets consisting primarily of home mortgages, to an investment bank, albeit a highly distorted one, with assets consisting primarily of ultra-high risk corporate securities.

Other Officers and Key Employees

Other key employees of USAT had connections to MAXXAM related companies and to MAXXAM’s predecessor corporation. The First City National Bank’s connection to UFG-USAT included the recruitment of other USAT officers such as Michael R. Crow and John F. Williams, who served as President and treasurer, and perhaps James R. Walker, who was recruited from a large Texas bank’s holding company and served USAT in marketing and branch administration.

MAXXAM’s Acquisition of Pacific Lumber

After MAXXAM sold the Simplicity Pattern businesses, a holding division functioning essentially as an investment company, its assets consisted primarily of securities and real estate. Had this situation continued, MAXXAM as a company, would have been subject to stringent reporting requirements. It was, therefore, very much to MAXXAM’s advantage to acquire simultaneous control of a construction subsidiary. During 1984 Hurwitz began searching for an operating company that MAXXAM could acquire.

The third group, the PennCorp directors, were those associated with PennCorp, which by virtue of owning a substantial portion of preferred stock, placed four directors on the board.

Control of the Executive Committee

In early 1985, UFG-USAT formed an Executive Committee to determine USAT’s restructuring and investment strategy. The original members of the executive committee were Hurwitz, Munitz and Williams, along with two representatives of the MCOH group (Chairman of the Board, Charles Hurwitz) and Drexel (through Milken) controlling more than 30% of UFG. As the SEC, MAXXAM is described as owning, with which MAXXAM succeeded, controlling more than 30% of UFG, to which MAXXAM succeeded—see above—in 1984. In addition to Munitz also served on MAXXAM, MCOH and FDC boards contemporaneously. Munitz chaired the Executive Committee and USAT in marketing and branch administration.

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around December of 1984, Quirk, at the re-
quity of MAXXAM’s Robert Rosen, had pre-
pared a list of forest products companies that were attractive as potential acquisition targets. MAXXAM’s strategy was to acquire the hidden values in Pacific Lumber’s 190,000 acres of real property in Humboldt County; the value of the redwood forests, which had not been recognized by timber companies and their analysts, was estimated to be $2 billion. An examination of the redwood forests revealed that Jefferies began buying PL stock under circumstances that suggest that they were not acting in the best interest of the company’s shareholders. While the Rose Foundation can raise large amounts of capital, and, through its captive S&L, United Savings Association of Texas, even though United Savings has an assets measured at about $5 billion.

The complaint in FDIC vs Milken alleged: "Between 1985 and 1986 and 1988 the Milken group raised $1.5 billion for financing for Hurwitz takeover ventures. In return, Hurwitz used USAT to purchase huge amounts of Drexel-underwritten junk bonds.

"The Milken Group placed much of the debt Drexel underwrote for USAT with its network. For example, about $727 million face amount of the $615 million of senior subordinate extendible notes issued in connection with the Pacific Lumber financing, the Milken Group underwrote ("Golden Nugget"). Similarly, the Milken Group placed a significant amount of the senior subordinated extendible notes issued in connection with the Pacific Lumber takeover with S&Ls, including AMCO, a wholly-owned subsidiary of Lincoln Federal Savings & Loan, Rupert Savings and Loan Associations and Pacific Lumber. In exchange for these entities purchase of the Pacific Lumber financing, the Milken Group on an exchange for these entities purchase of Pacific Lumber's 20% of USAT, there is a clearly observable correspondence between the FDIC’s allegations are that Milken is a high-risk securities and the size of bond issues underwritten by Drexel for MAXXAM and related entities, which were then placed with United Savings and the Pacific Lumber network. (Please see accompanying chart.)

These reciprocal transactions can be summarized as follows: In May of 1985, Hurwitz underwrote and placed a $150 million bond issue for MAXXAM, of 1986 Hurwitz underwrote and placed a $35 million bond issue for MCOH. The funds generated by these bond issues allowed MAXXAM and MCOH to purchase the shares of PL stock that Jefferies had accumulated before the Tenth Circuit in July of 1985, and USAT recorded purchases of Drexel issued high risk bonds valued at $280 million.
In November of 1985, Drexl underwrote a $450 million bond offering for MAXXAM, the proceeds of which were used to acquire more Pacific Lumber stock to complete the capital buildup necessary for MAXXAM’s tender offer. Then, in June of 1986, Drexl floated another $340 million in “Bridge Notes” for MAXXAM, which allowed MAXXAM to replace the $275 million in junk bond issued on July 1 of 1986. USAT recorded purchases of $688 million worth of Drexl junk bonds, representing the peak of USAT’s Drexl bond purchases. The transaction subjected the FDIC to a $755 million bond issue for Pacific Lumber, these “Reset Notes” were used to pay off the Bridge Notes; the rest were used for general corporate purposes, in particular, reducing the bank debt incurred in the takeover.

After 1986, USAT’s Drexl securities purchases began to taper off, with only about $321 million worth of such purchases recorded in July of 1987. These purchases probably represent USAT’s last purchases in connection with the Pacific Lumber deal.

In 1986, junk bonds represented 97.4% of all corporate securities held by USAT. A very high proportion were Drexl securities, which had a higher default rate than that of other junk underwriters. USAT’s portfolio was described by Louis Ranieri, who took control of the company in January of 1989, as “80% bologna.” Unquestionably, USAT’s junk portfolio played a major role in determining the size of the FDIC’s $1.3 billion financial contribution to the Ranieri group bailout plan for USAT.

Renowned economists George Akerlof and Paul Romer have developed an economic model which demonstrates, in general, the motivation for Milken and Drexl to conspire with someone such as Hurwitz in orchestrating a plan of the type described above. Akerlof and Romer demonstrate convincingly that it was possible for Milken and Drexl to use institutions like USAT to ensure full subscription of particularly risky junk bond issues, deferring the ultimate failure of those issues, in order to maintain their short term sales and profits. [George A. Akerlof & Paul M. Romer, Looting: The Economic Underworld of Bankruptcy For Profit, NBER Reprint No. 1869 (1993)]. This model provides expert support, as well as an academic economic analysis, of how precisely both Milken and MAXXAM to make a huge amount of money by looting the federal treasury. The model is also interesting because it suggests that Hurwitz, in particular, may have been a key driver in the[MAXXAM's] decision. The model is especially demanding position. Transactions between board of directors of corporations having common members will be guarded as jealously by the law as are personal dealings between director and his corporation. In other words, each director and officer of UPG has a fiduciary duty of loyalty for the corporation whose hat they wore at the time, ahead of the other corporation, to which they also owned a duty of loyalty. Further, the burden of proof is on the party asserting a violation of the transactions on the interested directors. Where the fairness of such transactions is challenged, the burden is on those who challenge the transaction to prove its fairness and where is sale, full adequacy of consideration. Crook v. Williams Drug Co., 558 SW 2d 500 (Tex. Civ. App. — 1977, writ ref’d n.r.e.).

Hurstly and other common members to the MAXXAM and UPG minority shareholders must prove that the entire fairness and where is sale, full adequacy of consideration. Crook v. Williams Drug Co., 558 SW 2d 500 (Tex. Civ. App. — 1977, writ ref’d n.r.e.). Hurwitz and other common members to the MAXXAM and UPG minority shareholders must prove that the entire fairness and where is sale, full adequacy of consideration. Crook v. Williams Drug Co., 558 SW 2d 500 (Tex. Civ. App. — 1977, writ ref’d n.r.e.).
relationship to both corporations. To the extent the common directors and officers had divided loyalties, and failed to disclose material information relating to the purchase of junk bonds, or to vote to approve the agreement to purchase junk securities in exchange for later financing, would UFG/USAT have purchased billions of Drexel junk bonds? It is axiomatic that Hurwitz, as an officer, director, and controlling owner owed a fiduciary duty to UFG and USAT. UFG's activities were to manipulate UFG/USAT into purchasing Drexel junk bonds to the benefit of Hurwitz and MAXXAM.

It is axiomatic that Hurwitz, as an officer, director, and controlling owner owed a fiduciary duty to UFG and USAT. Fagan v. La Gloria Oil and Gas Co., 494 S.W.2d 624 (Tex. Civ. App.—1973, no writ). Dowdell v. Tex. Am. Oil Corp., 503 S.W.2d 677 (Tex. Civ. App.—1973, no writ); this duty requires the officer, director, or controlling owner to place the interests of the corporation ahead of their own. The power of Hurwitz' office was required to be exercised solely for the benefit of the corporation. Texas State v. Fort Bend Chapter, 590 S.W.2d 156 (Tex. Civ. App.—1979, no writ). (Directors of corporation owed to it a duty of loyalty and were bound to do any business which might result in personal benefit to a director or officer, or which might result in benefit to any other person or persons.)

There is no evidence that Hurwitz had a personal interest the officers and directors must demonstrate the highest good faith. See Reynolds Southwestern Corp. v. Texas. Texas not only recognizes this fiduciary duty, but charges the insider to make certain that the economic rewards flowing from corporate opportunities inure to all owners of the enterprise. That obligation is even stronger in the case of a bank, both because of the fiduciary nature of banking and because of the importance of deposits. California Bank of La Marque v. Smith, 463 F. Supp. 824 (d. Tex. 1977), aff'd in part, vacated in part, 610 F.2d 1258 (5th Cir.). A corporate fiduciary may not use the corporation's money for the benefit of a corporation in which the controlling interest is directly owned, or is indirectly owned in which Hurwitz had a personal interest the officers and directors must demonstrate the highest good faith. See Reynolds Southwestern Corp. v. Texas. Texas not only recognizes this fiduciary duty, but charges the insider to make certain that the economic rewards flowing from corporate opportunities inure to all owners of the enterprise. That obligation is even stronger in the case of a bank, both because of the fiduciary nature of banking and because of the importance of deposits. California Bank of La Marque v. Smith, 463 F. Supp. 824 (d. Tex. 1977), aff'd in part, vacated in part, 610 F.2d 1258 (5th Cir.). A corporate fiduciary may not use the corporation's money for the benefit of a corporation in which the controlling interest is directly owned, or is indirectly owned in which Hurwitz had a personal interest the officers and directors must demonstrate the highest good faith. See Reynolds Southwestern Corp. v. Texas.

But despite his duties to UFG/USAT (which, it appears, he ignored), Hurwitz, acting on behalf of MAXXAM, was able to leverage UFG/USAT assets into financing MAXXAM's takeover of Pacific Lumber by means of an all-cash tender offer. Absent Drexel's junk bond financing of the tender offer, Hurwitz could not have financed the tender offer. Absent UFG/USAT's purchase of billions of dollars of Drexel junk bonds, there could not have been a Pacific Lumber tender offer.

Had there been full disclosure of all material facts surrounding Hurwitz's involvement with Milken and Drexel, to the disinterested UFG/USAT shareholders, including disinterested directors, cognizant of their own obligations to UFG/USAT, would have approved the transaction under those circumstances.

The purchases of billions of Drexel junk securities had a direct, and dire, impact on the financial health of UFG and USAT as rummaged through the shareholders of UPT and the depositors. See, In Re Weslec, 434 F. 2d 195 (5th Cir. 1970).

As a controlling shareholder of UFG/USAT, Hurwitz dealt fairly with UFG/USAT, its depositors and its other shareholders. Hurwitz' failure, or more likely, intentional failure to disclose the agreement with Milken and Drexel violated this duty. It is a classic example of conflict of interest and misuse of inside information: Hurwitz used his insider knowledge of UFG/USAT's affairs to manipulate UFG/USAT into purchasing Drexel junk bonds to the benefit of Hurwitz and MAXXAM.

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MAXXAM and Hurwitz diverted USAT’s assets into the Milken system, and benefited from their wrongful conduct by obtaining 100% financing for the takeover of Pacific Lumber. Until the Federal Deposit Insurance Corporation (FDIC) took over the benefit of the FDIC, as successor to USAT.

4. Given the propriety of imposing a construction trust over Pacific Lumber for the benefit of the FDIC, injunctive relief is appropriate to protect the ree during litigation.

When the FDIC succeeds in litigating its claims against MAXXAM and Hurwitz for breach of contract, it will acquire, through construction trust, equitable rights over Pacific Lumber’s assets. In addition to recovering millions of dollars worth of properties for the American taxpayers, it will acquire the Headwaters Forest with its very unique environmental values and issues.

As mentioned above, substantial tracts of old growth are being cut down right now. While cutting was halted over the summer, during the nesting season of the endangered marbled murrelet, that nesting season ended September 20, 1995, when Pacific Lumber resumed cutting at a drastic rate. By winter, many very large and very old trees will be gone and a good deal of old growth habitat will be destroyed.

Where, as here, such dire, irreversible environmental consequences are at issue, especially consequences that impact an endangered species, emergency injunctive relief is particularly appropriate.

Generally, under Federal law, as articulated in the 9th Circuit, injunctive relief should over Pacific Lumber. The moving party can meet one of two tests:

First if:
1. The moving party will suffer irreparable injury if the injunctive relief is not granted;
2. The proposed issue will probably prevail on the merits;
3. In balancing the equities, the non-moving party will not be harmed more than the moving party is helped by the injunction; and
4. Granting the injunction is in the public interest.

Landi v. Phelps, 746 F.2d 710, 712 (9th Cir. 1984), citing William Inglis & Sons Baking Co v. ITT Continental Baking Co, 526 F.2d 86, 87 (9th Cir. 1975); or, second, by demonstrating “either a combination of probable success on the merits and the possibility of irreparable injury or a balance of hardships (or equities) are raised and the balance of hardships tips sharply in his favor;” (emphasis in the original)

The 9th Circuit has stated that the tests are not separate, but “represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of a favorable outcome decreases.” (Emphasis in the original) From the Tribune v. Chronic Publishing, 762 F.2d 1374, 1376 (9th Cir. 1985). Under this formulation, the Supreme Court requires that the public interest element be raised, and second, by demonstrating “either a combination of probable success on the merits and the possibility of irreparable injury or a balance of hardships (or equities) are raised and the balance of hardships tips sharply in his favor;” (emphasis in the original)

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Among other things, those depositions should be directed toward uncovering strategies employed to obscure MAXXAM and Hurwitz’ control of UPG-USAT, and toward developing evidence of the MAXXAM/Drexel quid pro quo.

At the same time that it is pursuing all possible avenues for developing additional evidence, in light of the fact that the FDIC is not speedily as possible to file an action for breach of fiduciary duty against the MAXXAM corporation, seeking imposition of a constructive trust and disgorgement of Pacific Lumber and moving immediately for interim protection of these extraordinary forest assets, which are in truly imminent danger of being lost as a result of PL’s recent, continuing logging onslaught. In this instance, failure to act in a timely fashion could preclude recovery of a national asset of extraordinary and inestimable value.

**Record 14**

**Hopkins & Sutter, June 29, 1995.**

**Jeffrey Ross Williams, Assistant U.S. Attorney, San Francisco, CA.**

**Joann Swanson, U.S. Department of Justice, Washington, DC.**

DEAR JEFF: Enclosed is the May missive from the Rose Foundation and an “Addendum” to the written disclosure statement. In reviewing my qui tam materials, I was not sure if you had received this or not. There is not much new here, although the legal argument is somewhat more developed.

Best regards,

F. Thomas Hiecht

**Boyd, Huffman, & Williams, San Francisco, CA, May 19, 1995.**

Joann Swanson, Assistant U.S. Attorney, San Francisco, CA.

Stephen J. Segreto, U.S. Department of Justice, Washington, DC.


DEAR JOANN AND STEPHEN, It has been some time since we have discussed this case and I am anxious to hear how the government’s investigation of the legal claims is going. As I have told you before, we have a team of experts who have been considering the potential consequences of a qui tam case. The government would not catch on while they traded off the assets of the institutions they controlled to another governmental organization. In considering the applicable law and the factual circumstances of this case, we hope that upon review of the legal memo the government would want to join in this qui tam suit. We look forward to hearing your thoughts on these legal issues. You will also see enclosed herewith a supplement to the disclosure statement submitted previously. We are providing further details to the original statement with respect to the investigative activities of the relator, in particular his contact to Mr. Art Leiser and the valuable information that Mr. Leiser has. I have spoken with Mr. Leiser and believe that the “107 forms” that he and others in his bank examiners’ office required to be prepared by USAT show that numerous written false claims were made by Hurwitz and his representatives with respect to USAT’s net worth. In my first conversations with Mr. Leiser, he told me that no government officials from the FDIC or any other governmental organization has spoken with him about the source of cash for ante claims made with respect to net worth (even after we had submitted the memo from The Rose Foundation which included information pertinent to Mr. Leiser). Later, and more recently, when I spoke to Mr. Leiser, he said that he had been contacted but that the contact was only cursory and that his deposition has never been taken, nor had he been asked to review important documents that were prepared at his direction regarding the net worth of USAT. I look forward to talking with the two of you about the government’s ongoing consideration of this qui tam suit. As I have said before, and these memos substantiate, we intend to cooperate fully with the government and hope that you will tell us if there is any way that we may be of further assistance.

Sincerely,

J. Kirk Boyd

**Boyd, Huffman, & Williams, Attorneys at Law**

Memorandum

To: Joann Swanson, Stephen Segreto.

From: J. Kirk Boyd.

Date: May 19, 1995.


The purpose of this memo is to address the question of what false claims were made by Hurwitz and others, and what claims made are actionable under the False Claims Act. Based upon the analysis below, false claims were made and the government funds for the bailout of the depleted USAT makes these claims actionable under the False Claims Act.

**FACTS**

Hurwitz MAXXAM Inc., Hurwitz, MAXXAM’s controlling shareholder, President, CEO, and Chairman of the Board, was also the controlling shareholder of USAT in the late 1980s. As outlined in our complaint, Hurwitz controlled USAT (with a net worth of $5 billion) by acquiring and controlling the assets of various Hurwitz-controlled corporations in the early 1980s. In our complaint, Hurwitz joined Milken’s “junk bond network” in order to indirectly tap USAT’s assets. This network was comprised of S&Ls, insurance companies, pension funds and corporations that were dependent on capital infusions provided by Drexel-issued junk bonds, and was the source of billions of dollars for Milken and his friends. In order to replenish USAT’s depleted assets, its net worth of $5 billion, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel. In the event that USAT did not have enough money to pay for this junk bond offering, Hurwitz to raise the $900 million necessary for a 100% tender offer. Although MAXXAM’s captive Savings & Loan, USAT, had assets valued at over $1.28 billion junk bonds from Drexel.
Knowing that USAT was federally insured, and wanting to continue to drain its assets without being put into receivership, Hurwitz misrepresented the net worth of USAT. Further, he engineered the perception that USAT was making sufficient investments on USAT, Hurwitz accelerated paper gains and hid losses through unacceptable accounting devices, such as not "marking to market," keeping gains in the paper form and hiding losses through outright fraud. He engaged in a far-reaching conspiracy that included the submission of fraudulent applications for student loans, in connection with a fraudulent loan application, was not a direct claim for payment of an obligation owed by the government, it nevertheless was "an action which has the effect of inducing the government to part with sums of money." 390 U.S. at 233. In that case, the Supreme Court held that submitting false information in support of a loan application to a federal agency constituted a "claim" within the meaning of the Act. Even though the loan application was not a direct claim for payment of an obligation owed by the government, it nevertheless was "an action which has the effect of inducing the government to part with sums of money." 390 U.S. at 233. In construing the Act, the Court noted that the Act was intended to reach all types of fraud, without regard to whether that might result in financial loss to the Government. . . . the Court has consistently refused to accept a rigid, restrictive reading, even at the time when the statute imposed criminal sanctions as well as civil." Id. at 232. Similarly, in this case, Hurwitz's fraud did not consist of a direct claim, but his actions nonetheless "had the effect of inducing the government to part with money."

Moreover, the Supreme Court held in United States ex rel. Marcus v. Hess, 317 U.S. 537 (1943), that defendants can cause a false claim for payment to be presented to the government by their conduct. In Hess, contractors who, through collusive bidding, obtained contracts with municipalities to work on federal Public Works Administration projects, were held liable under the Act because, though paid directly by the municipalities, the work was funded by the federal government. The Court held that the provisions of the statute, considered together, indicate a purpose to reach any person who conspired to defraud the government to pay claims which were grounded in fraud, without regard to whether that person had direct contractual relations with the government. 317 U.S. at 544-45. Like the defendants in Hess, the taint of Hurwitz's misrepresentation of net worth and illegal quid pro quo scheme entered into every depositor's potential claim which was the cause for payment into USAT by the FDIC.

The Supreme Court reaffirmed the Hess interpretation of the Act in United States v. Bornstein, 423 U.S. 303 (1976). The Court held that the False Claims Act gives the government judicial power against any person who induces the government to pay claims which were grounded in fraud, without regard to whether that person had direct contractual relations with the government. The Court held that as long as the fraud caused the government to pay out money, even if the claim is made against a party other than the government, if the payment of the claim would ultimately result in a loss to the United States.

Id. at 315. In United States v. McNinch, 336 U.S. 595 (1949), the Supreme Court held that there were sufficient fraudulent claims and the depositors' submission of claims to the FDIC.

By virtue of the Act's construction . . . it is sufficient for liability to attach that Rob- ert L. Treen knowingly caused to be presented to the Department of Education false papers and a need for a false claim. The McNinch decision, the Court expressly left open the question whether the additional facts of default on the loan and default on the guarantor would make a case under the False Claims Act. That question is before us now. Id. at 505. The Supreme Court in McNinch held that the government's primary concern was to avoid committing fraud on the guarantor of a student loan. It was sufficient for liability to attach that Hurwitz knowing induced the government to pay out sums of money, had not been paid a refund that was due, the necessary and foreseeable result would be that the outstanding loan balance for the government, having been compelled to pay an innocent third person as a result of a defendant's fraud in inducing the undertaking, is entitled, to assert a claim against the defendant under the False Claims Act.

Since there has been no default here, we need express no view as to whether a lending institution's action on a defaulted loan originally procured by a fraudulent application would be a "claim" covered by the False Claims Act. Id. at 599 n.6.

Shortly after the McNinch decision, the Court of Appeals for the Third Circuit specifically held in United States v. Venezia, 328 F.2d 504 (3d Cir. 1959), where the government, having guaranteed a loan, was required to pay under its guaranty. The court recognized it was resolving the question left open in McNinch.

The McNinch opinion of the Supreme Court expressly left open the question whether the additional facts of default on the loan and default on the guarantor would make a case under the False Claims Act. That question is before us now. Id. at 504. The Supreme Court held that "the government's primary concern is to avoid committing fraud on the guarantor of a student loan. It was sufficient for liability to attach that Hurwitz knowing induced the government to pay out sums of money; his net worth there was a "hole" developing in USAT—a hole that would later have to be filled with taxpayers' money—which it was. He also bank funds purchased with USAT funds would be worthless or would stop significantly in value and the foreseeable result would be USAT's collapse and the depositors' submission of claims to the FDIC.

The Treen court held that Treen's alleged knowledge and direction of the refund of student money or property requested will either be a false certificate, standing alone, be sufficient to note that the McNinch held that where there was no claim because the FHA disbursed no funds. Here, however, the court wrote, "it is sufficient to note that the insurance involves a false statement made with the purpose and effect of inducing the Government immediately to part with money," and that the cause of action arose when the mortgage holder presented a claim to the VA or FHA for payment on the guaranty or insurance.

In United States v. Hibbs, 568 F.2d 347 (3d Cir. 1977), in holding that a causal connection must be shown between loss and fraud, the Third Circuit Court of Appeals distinguished McNinch, holding that "the making of a false certificate, standing alone, does not entitle the government to the statutory forfeiture. There must have been a payment." Id. at 356. The American Heart Research Found, 996 F.2d 7 (1st Cir. 1993), in holding that reverse false claims, i.e., when government receives too little money, are "claims" within False Claims Act, the First Circuit Court of Appeals agreed with Neftet-White, which distinguished McNinch on grounds that it involves the payment of government money. Id. at 10 n.3.

Lower courts have held McNinch to this particular facts in holding that submission of false applications which ultimately cause the government to pay out funds constitute a "claim" under the False Claims Act.

Although most of the federally guaranteed loan cases involve two parties, an individual applicant and a lending institution, both the application and the bank or credit corporation that approves the loan, United States ex rel. Lavalley v. First Natl. Bank of Boston, 990 F.2d 903 (1st Cir. 1993), is a case where the bank itself was accused of presenting a false and misleading "material adverse change report" to the FmHA which induced the FmHA to guarantee the loan. The government alleged that the bank failed to apprise
the government of its misgivings about the corporation’s management and ability to repay the loans, and this fraud was motivated by its special relationship with the government to assure continued federal insurance of the S&L funds.

The relator remained undaunted and continued his investigation of Charles Hurwitz. Part of this investigation included looking into Mr. Hurwitz’ controlling holding company for USAT. It was determined through investigation that Charles Hurwitz had abused his control over an insurance company in an effort to pay fines. The investigation also revealed that Charles Hurwitz had close ties to Michael Milken and that Michael Milken had been responsible for assisting Charles Hurwitz in his effort to amass capital for the purchase of UFG, the holding company for USAT. Upon a closer look at USAT, it was recognized by the relator that Charles Hurwitz in purchasing USAT was to use the assets of USAT to attain his goals as a corporate raider. The relator located documents in Hawaii concerning an attempt by Charles Hurwitz to use the USAT funds to take over Castle & Cooke, a publicly traded company with extensive land holdings. The documents reviewed included a court order enjoining Charles Hurwitz from using the USAT funds (which were federally insured) as capital for corporate raiding.

Knowing of Hurwitz connections to Milken, the relator also investigated Milken’s connections to other savings and loans. It was apparent to the relator that Hurwitz had been using illegal means to control USAT and that these monthly reports included rankings of the status of USAT. Several rankings reflected that USAT were in danger of going out of business and that these monthly reports were subjected to anonymous threatening letters. The relator was also aware that the government of its misgivings about the corporation’s management and ability to repay the loans, and this fraud was motivated by its special relationship with the government to assure continued federal insurance of the S&L funds.

B. Personal History of the Relator

Robert Martel (hereinafter “relator”) has worked for many years as an investigative journalist. The relator received his degree from St. Mary’s College in mathematics and thereafter did graduate work at the University of California. He has also studied stocks and bonds transactions, as well as corporate financing, and has been licensed by the National Association of Securities Dealers.

In 1983 the relator started a newspaper called “The Country Activist.” The newspaper reported on community issues in northern California, including issues regarding timber harvesting. As both a founder and writer for this newspaper, the relator did investigative work regarding the Pacific lumber company. He has also studied the history of Humboldt County including ancient old-growth forests. The Country Activist published several articles concerning Pacific Lumber forest issues.

As part of the investigative work of the Country Activist, the relator followed the takeover of Pacific Lumber by Charles Hurwitz and Maxam Inc. This investigation included interviews with people affected by the takeover as well as the review of documentation concerning Charles Hurwitz and the activities of the corporation including its control of United Financial Group ("UFG"), the holding company for the Texas savings and loan, United Savings & Loan of Texas, and others.

In addition to being the founder and a writer for the Country Activist newspaper, the relator was also active in community affairs. The relator, along with others, worked vigorously to place three measures on the ballot for Humboldt County in 1988, including one measure that would prevent offshore drilling off the California coast. These measures were approved by the voters and became law.

In the following year, the relator and others prepared additional ballot measures, one of which pertained to pollution caused by logging in Humboldt County. The political activism of the relator was opposed by Charles Hurwitz and Pacific Lumber. Deliverable efforts were made by Hurwitz and Pacific Lumber to undermine the relator’s political activities including threats to advertisers in the relator’s newspaper that they would be boycotted by Pacific Lumber if they continued to run the relator’s campaign ads.

The relator continued to investigate Hurwitz even when he and his advertisers were subjected to anonymous threatening phone calls for his continuing work on forestry issues.

Faced with personal attacks and an advertising boycott by Pacific Lumber, the relator remained undaunted and continued his investigation of Charles Hurwitz. Part of this investigation included looking into Mr. Hurwitz’ controlling holding company for USAT. It was determined through investigation that Charles Hurwitz had abused his control over an insurance company in an effort to pay fines. The investigation also revealed that Charles Hurwitz had close ties to Michael Milken and that Michael Milken had been responsible for assisting Charles Hurwitz in his effort to amass capital for the purchase of UFG, the holding company for USAT. Upon a closer look at USAT, it was recognized by the relator that Charles Hurwitz in purchasing USAT was to use the assets of USAT to attain his goals as a corporate raider. The relator located documents in Hawaii concerning an attempt by Charles Hurwitz to use the USAT funds to take over Castle & Cooke, a publicly traded company with extensive land holdings. The documents reviewed included a court order enjoining Charles Hurwitz from using the USAT funds (which were federally insured) as capital for corporate raiding.

Knowing of Hurwitz connections to Milken, the relator also investigated Milken’s connections to other savings and loans. It was apparent to the relator that Hurwitz had been using illegal means to control USAT and that these monthly reports included rankings of the status of USAT. Several rankings reflected that USAT were in danger of going out of business and that these monthly reports were subjected to anonymous threatening letters. The relator was also aware that Charles Hurwitz was also misrepresenting to the government the amount of control that he had over UFG. Had Hurwitz admitted that he had more than 25% control over UFG, then his requirement to further deplete the assets of USAT would be increased. Under no circumstances did Hurwitz want his net worth requirements to go up.

Record 15

Memorandum

To: Douglas H. Jones, Acting General Counsel

Through: Jack D. Smith, Deputy General Counsel

From: Marilyn E. Anderson, Senior Counsel; Patricia F. Bak, Counsel; Robert J. DeHenzel, Jr., Senior Attorney

Subject: Retention of Outside Counsel, United Savings Association of Texas

Date: February 14, 1994

This memorandum outlines our search for counsel in this matter and our consideration to two firms, Cravath, Swaine & Moore/Duker & Barrett and Hopkins & Sutter, and sets forth some of the considerations relevant to the selection of counsel to assist the Professional Section in handling the United Savings Association of Texas ("USAT") directors’ liability litigation. We understand that it will be attached to the recommendation of the Associate and Assistant General Counsel.

Background

USAT failed on December 30, 1988. The projected loss to the insurance fund is $1.6 billion. The Professional Liability Section, as
assisted by outside counsel, has investigated potential claims relating to the failure of the institution and is prepared to request authorization to initiate litigation against a number of administration and officers of USAT, USAT's holding company, United Financial Group, Inc. ("UFG") and Charles Hurwitz, a director of USAT and a national association in corporate acquisitions and takeovers. Others among the proposed defendants also are very prominent.

If any action would be based upon claims of gross negligence, breach of fiduciary duties of loyalty and care and knowing participation in the breach of fiduciary duty. During and prior to 1984 through 1988, USAT paid imputed dividends to UFG, allowed UFG to wrongfully retain tax refunds due USAT, made a special imputed loan to a Hurwitz affiliate, and paid excessive compensation to USAT management who were Hurwitz's friends and associates at MCO Holdings, Inc. ("MCO," later known as Maxxam) and Federated Development Corporation ("FDC"), entities which collectively owned a significant percentage of and ceded even greater control over UFG. While these transactions alone resulted in losses approximating $300 million, to compensate for these losses, USAT has engaged in imputed gains trading in mortgage-backed securities which resulted in additional losses in the hundreds of millions of dollars.

Almost immediately after USAT's failure, UFG approached the FDIC to try and settle the FDIC's claims against it. Since that time, the Professional Liability Section has engaged in on going discussions with the potential defendants, which discussions have and continue to be affected by the exchange of information bearing on the merits of the FDIC's claims. The investigation has received considerable Congressional and press attention, and is the subject of information requests by the FDIC and any large recovery is dependent on establishing Hurwitz as a de facto director of USAT, establishing liability against one very wealthy outside director and tapping a number of former directors and officers of certain USAT directors.

The firm is widely regarded as aggressive, clever and having a demonstrated ability to cover all waterfronts in high profile litigation on behalf of the Corporation, and, drawing on its extensive representation of the lumber industry, will be able to cover all aspects of any potentially unique settlement options, perhaps increasing the chances of early settlement. The firm has broad experience with FDIC issues, procedures and personnel, although not directly with FDIC professional liability staff; Mr. Boies knows and has a good relationship with a key player, counsel for Hurwitz, Richard Koster, who he served as successor counsel in the Texaco Litigation; and the firm, and Mr. Boies in particular, are familiar with Mr. Hurwitz and certain of his trading activities through the Drexel Litigation.

The firm, based both on Mr. Boies' reputation and the firm's prior participation in the Drexel case on behalf of the FDIC, would likely have an immediate impact on the litigation and perhaps increase the chances of early settlement.

Pros:

- David Boies of that firm as lead counsel, the proposition was made that we hire both Cravath Swaine & Moore and Duker & Barrett. The Duker & Barrett firm largely consists of former Cravath Swaine & Moore law partners. From Mr. Boies, we decided to hire while at Cravath and thereafter. Staffing for the case would include David Boies as lead counsel, Bill Duker and Duker & Barrett lawyers, and paralegals and jurors. A large, highly regarded trial lawyer, who has performed high profile matters on behalf of the FDIC, would provide special expertise in this area, but at a potential 20 percent mark-up in the future; and
- The firm has a large office, is willing to open a Houston office, and is familiar with local practice;
- Past cases have left the Professional Liability Section with an excellent working relationship with the firm on all levels;
- The firm has offered concessions on billing for travel and expenses and also will entertain and has proposed an alternative fee arrangement;
- The firm would be able to provide minor participation from within, with partners and/or associates with FDIC, although perhaps not professional liability experience;
- The firm has a proven record handling high profile litigation on behalf of the Corporation and, drawing on its extensive representation of the lumber industry, will be able to cover all aspects of any potentially unique debt for redwoods settlement arrangements;
- Potential conflicts have been reviewed by the Outside Counsel Conflict Committee and resolved in a manner which would not impair the firm's participation in this case; and
- Firm partners who would serve on the team know the case, having previously litigated against counsel for certain of the defendants, John Villa of Williams & Connolly.

Cons:

- The firm would not likely bring an immediate, discernible impact upon entry into the case, inasmuch as it is largely perceived as the "firm of choice" for the FDIC. The firm would not benefit from the FDIC mandated fee cap and projects that it will remain under the cap in the future;
- Certain firm members' active participation in MBS issues on behalf of the FHLLB provides special expertise in this area, but at the cost that this history might make it difficult for the firm to bring the independent view necessary to make sound litigation risk assessments; and
- The firm does not have a reputation for the boldness of action or creativity which must enhance FDIC's ability to secure an early recovery in this case.
At the same time that we deferred formal approval of the FDIC's cause of action, we developed a new strategy for pursuing these claims through administrative enforcement proceedings and the litigation processes. At several meetings with senior staff of the OTS's Office of Enforcement, we entered into a formal agreement with the OTS in which the OTS agreed to take the claims against Hurwitz and certain of the other defendants and the exchange of pleadings and discovery. This plan was designed to divide the potential defendants and the exchange of pleadings and discovery. This plan was designed to reduce the risk involved, but nevertheless proceed with the case.

1. Background

As you know, USAT was placed into receivership on December 30, 1988, with assets of $46.4 billion. The estimated loss to the insurance fund is $1.6 billion. After a preliminary investigation into the massive losses at USAT, the FDIC negotiated tolling agreements with UFG and nine other former directors and officers of USAT/UFG that were either senior officers or directors that were perceived as having responsibility over the real estate and investment functions at the institution.

In May 1994, after a series of meetings with the potential defendants and the exchange of considerable documents and other information, we presented a draft authority to sue memorandum recommending that we pursue claims against Hurwitz and certain of the former officers and directors of USAT and controlling person Charles Hurwitz.

2. Significant Caselaw Developments Have Further Weakened the Viability of an Independent Cause of Action by the FDIC

In the recent decision of RTC v. Acton, the Fifth Circuit recognized a new standard of proof that is more likely to attract media coverage and consideration. In this case, the Texas Supreme Court announced a new standard of proof that will be very difficult to meet. In the decision, the Texas Supreme Court defined gross negligence as constituting two elements: (1) viewed objectively from the standpoint of the actor, the act or omission must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious disregard of it.

3. Debt for Nature Swap

Our decision not to sue Hurwitz and the former directors and officers of USAT is unlikely to attract media coverage and considerable criticism from environmental groups and Congress. Hurwitz has a reputation as a corporate raider, and his hostile takeover of Pacific Lumber has attracted enormous publicity and litigation because of his harvesting of California redwoods. Environmental interest has resulted in a considerable public interest in the last two years, suggesting exchanging our claims for trees. We recently met with the Department of the Interior, who informed us that they are considering negotiating with Hurwitz about the possibility of a debt for nature swap that the Administration is seriously interested in pursuing such a settlement. We do not plan to pursue these settlement discussions with OTS in the coming weeks.

IV. Updated Authority to Sue Memorandum

We have attached an updated authority to sue memorandum for your review and consideration. It sets forth the theories and weaknesses of our proposed claims in detail. It should be considered for Board approval only if the Board decides, as a matter of public policy, that it wants the Texas courts to decide the statute of limitations issues. Such a decision would be based not on the merits of the case, but on the potential success of the case.

We will be available to discuss this matter on very short notice.

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**Record 17**

Memorandum To: Board of Directors, Federal Home Loan Bank of Houston From: Jack D. Smith, Deputy General Counsel Date: July 24, 1995.

Subject: Status of PLS Investigation, Institution: United States Association of Trusts

We have been investigating the potential weaknesses of our proposed claims in great detail. It should be considered for Board approval only if the Board decides, as a matter of public policy, that it wants the Texas courts to decide the statute of limitations issues. Such a decision would be based not on the merits of the case, but on the potential success of the case.

We will be available to discuss this matter on very short notice.
December 20, 2001  CONGRESSIONAL RECORD — Extensions of Remarks

Alan McReynolds—Admin. wants to do deal—Gov. Wilson w/DOI had task force of 6 groups. Told to find way to make it happen—Copeland—Intelligence CM & timber—Admin. might ?? mil. base
Had call from atty. appraisal on prop. for $500m. Said they want to make a deal. Don’t know how much credence we have from them about a claim. At same time telling them to get rid of claim. He can’t cut them down. If we drop suit, will undercut everything.

Record 22

May recall briefed re OTS—paying some months ago. OTS is making progress, but not ready. Thus, tolling again. OTS staff hopes to have draft notice of charges to Hurwitz, et al, Amended—Intelligence CM & timber—we thought we would be able to put off a final decision until OTS acted. Hurwitz refused to toll. Normal matter, we would close out under delegated authority w/o bringing it to your Bd’s—attention.

However, given (a) visibility—tree people, Congress and press; and (b) basis is Texas S of L, we thought you—Bd—should be advised of what we intended to do—and why—before it is too late.

OTS is looking at: 1) Bad loans; incl. park 410; 2) MBS—Joe’s portfolio.

UMBS (3) Maxxam capital maintenance agreement—(4) UFP tax claim, etc, agreement in principal to settle subject to B C+ approval. $9.6m.

If PDIC case—1) Bad loan—Park 410 (4 yrs); 2) MBS—Joe’s portfolio (2½ yrs); UMBS (2-4 yrs).

During last two years law has moved against us in Texas. S of L was traded 2 yrs ago—more than ? Acton—this spring—more than ?? ?.—Loose on Park 410.—Loose (most or all) on UMBS.—Likely loose Joe’s portfolio 70% most, or all, out.

OTS—No apparent S of L issue (except Kozmetski**)

Merits: Joe’s portfolio—not unwinding, starting 1997 is most likely to survive.

(1) Facts—3 mos earlier, S of L 1+yr later, done
(2) Standard of core—gross neg. Texas—pu- light—damage cited—in intentional/knowing * * *
Bottom line: likely to lose on S of L let it go or have ct. dismiss it.

Redwood swap—Interior/Calif; Forests—base—PDIC/OTS claim(?)

Continue to fund OTS; We’ll write Congress re what & why rather than awaiting reaction mechanics: Brief Deputies; Board presentation.

Record 23

Context

Sue by Aug 2—Kurwitz, the rest rolled tolling following

Hurwitz, insiders have told we/OTS

Proposes: if authority ‘one last chance’ for Hurwitz to toll; not sue others

OTS is investigating Draft Notice of charges coming—staff Loans

Joe’s Portfolio

UMBS

New worth maintenance: [UFP] toll Maxxam Redwoods—Headwaters Press, environmentalists Congress follow Interior trying to find a deal (Legislation to achieve)

Delima (why they get paid the big bucks—take:

Hit for dismissed suit
Hit for walking based on staff analysis of 70% loss if most/all on S & L
Likely cost: ??—$200m
If our early or S & L, or able to slow—stay due to OTS, lower. But no guarantees
Very difficult to value; if survives S & L largely in tact

USAT

When last discussed think everyone’s hope was OTS *** would avoid the fateful day when our principals had to decide—whether to sue on USAT

Hurwitz refusal to toll wrecked that plan. ATS recommends suit against Hurwitz, some—not all—others tolling with Also states intention to let 3 outside re- ductives OTS isn’t tolling with

We believe USAT Ds, Os & defacts dir/v

Hurwitz written in (1) Lending—Park 410
(2) Joe’s Portfolio
(3)UMBS

The problems include:

(A) S of L—Park 410, no reasonable basis under existing law
Joe’s . . . when liq—money at UMBS . . .

(B) Hurwitz is defacto dir

(C) FHLB policies did encourage ‘games’ w/ futures & options accts

Looked for other g.f. claim

Recommend Hurwitz—defect as D&D & control person, breached duty of loyalty to USAT in failing to cause UFP, MCO fed- erated to honor capital maintenance obligations! Beats S of L

Tough merits case [$150m]

Record 25

Paton Boggs, LLP

Anchorage, AK.

To: Joel Pecht

Company: Maxxam
Fax Number: 713-267-3702

Total Pages Including Cover: 3

From: John C. Martin
Sender’s Direct Line: 907-263-6032
Date: August 7, 2001

Client Number: 5921-101

Comments: John, I found this memo to the file immediately after our conversation. I thought you might be interested in the memo. (Note that the automatic date on our system changed the date of the memo from July 14, 1995 to today’s date.) I’ll look for more documents as time per- mits in the next few days.

John

Paton Boggs, LLP, L.L.P.

Memorandum

TO: File-5921-101
FROM: John C. Martin.
DATE: July 14, 1995.
SUBJECT: Conversation with Allen McReynolds.

I had a telephone conversation with Allen McReynolds concerning the Department of Interior’s approach to the Headwaters Forest property matter. We talked about a number of different aspects of the matter. He indicated that (i) the Department of Interior wants to acquire the property, (ii) he does not believe legislation is necessary, (iii) he and others believe that the transaction should be a cash agreement rather than a land exchange, and (iv) he believes the Governor’s office is working the lead in nego- tiations on the subject. The following sum- marizes the information and comments he provided.

The Department’s Desire to Acquire the Property

McReynolds said several times during the course of the conversation that the Depart}-
schedule the meeting for some time after he returns from his one-week vacation.

CC: Thomas H. Boggs, Jr.
Donald V. Moorehead
Aurby E. Arothrock ——

Record 26
OTS/FDIC Meeting July 26, 1995 at 10:50 a.m.
I. Smith
Hurwitz won’t sign tolling agreement with FDIC: Need to file lawsuit by August 2. J. Thomas—Chance of success on State limitations is 90% or less.

—Will continue discussions with Helfer.
—Pressure from California congressional delegation to proceed.

Chairman of Interior—Alan Reynolds

—Administration interested in resolving case and getting ***.
—Pete Wilson has put together a multi-game fish group
—California would put up $100 million of California timberland
—Hurwitz wants a military base The Dalies and find work—suitable for commercial development
—Hurwitz also wants our claims settled as part of the deal.

Two weeks ago—Hurwitz lawyer called Terri Gordon at bank and told him she should not be tuned out by $500 million appraisal.

What is OTS’ schedule? How comfortable is OTS with giving info to Interior?

R. Stearns Tolling Agreement extended until December 31, 1995 with 30-day kickout beginning October 31, 1995 with 30-day kickout beginning

***

16 witnesses in June including Hurwitz working on 2d draft of NOC

J. Guido

—MBS Case Summary
—We have done a $5 analysis of what we think we can claim in NOC
B. Rinaldi

—Net Worth Case Summary
Negotiating with UFG regarding settlement of net worth claim

Looking at Maxxam

J. Williams

(1) Need copies of Trax—copies of diskettes
(2) Send documents’ exhibits to J. Williams
—Cover letter to Jef—sharing and assistance under statute
—Duffy—Where is he?
—Need to get together with Duffy and Hargrett

USAT/UGF Value of Claims
Net Worth Maintenance Obligations UFG/MAXXAM & Federated (REDACTED) (7/67)

Reckless Speculation In Mortgage Backed Securities.
Unsafe and Unsound Loans to Affiliated Parties (including Cost of Funds @ 9%). (REDACTED)
Sub Total Cost of Funds from December 31, 1988 to Present (75% of FDIC).
Total Residual Value of Park 410.
OTS/FDIC Meeting on July 26, 1995

Bryan Veis OTS (Enforcement).
Paul Leiman OTS (Enforcement).
Jeffy Williams FDIC Legal.
Ken Guido OTS (Enforcement).
John V. Thomas FDIC PLS.
Rick Stearns OTS (Enforcement).
Jack Smith FDIC.
Bob Dettenzel FDIC PLS.
Marion Andrus FDIC PLS.
Thomas Hecht Hopkins & Sutter.
John Rogers Hopkins & Sutter.
Mr. Walton: Redacted by Committee on Resources.

Chairman Helfer: Redacted by Committee on Resources.

Vice Chairman Hove: Redacted by Committee on Resources.

Chairman Helfer: Redacted by Committee on Resources.

Director Flechter: Redacted by Committee on Resources.

Chairman Helfer: Redacted by Committee on Resources.

Vice Chairman Hove: Redacted by Committee on Resources.

Chairman Helfer: Redacted by Committee on Resources.

Mr. Walton: Redacted by Committee on Resources.

Chairman Helfer: The second memorandum with respect to a professional liability suit involves United Savings Association of Hoton, Texas. Mr. Thomas.

Mr. Thomas: I will try to be brief but I won’t be able to be quite that brief. With me today are Marilyn Anderson, Senor Counsel in San Antonio, and Bob DeHenzel, who will be called upon if there are hard questions.

Chairman Helfer: Good, we’re glad you have help.

Mr. Thomas: Well, after the first one I’m not sure I’ll need any.

Vice Chairman Hove: Don’t be so sure of that.

Chairman Helfer: You’ve got to watch those attorneys, don’t you?

Mr. Thomas: Mr. Chairman, the memorandum that we have before us today seeks authority to sue Charles Hurwitz as de facto director and officer of the Pequot San Juan Association of Texas, or USAT, as also a control person of that entity, and it also seeks authority to sue three insiders of USAT. The claim is based on—the case will be based on three claims, the first—Redacted by Committee on Resources.

Chairman Helfer: So if suit is not in—if we—if we don’t authorize suit today and suit is not brought tomorrow, all these claims are lost.

Mr. Thomas: To the FDIC.

Staff has conducted an extensive investigation. We have been working on a few days ago. I know they intended to speak to Director Flechter in the interim. I hope they were able to do that. They are preparing a draft of a memorandum that we will be interested in working with them to see whether something’s possible. We believe legislation would ultimately be required to achieve that. But again, if it’s the Board’s pleasure, we would at least try to find out what’s happening and pursue that matter and make sure that nothing goes on we’re not aware of—we’re not part of.

This is a difficult case. Redacted by Committee on Resources.

Chairman Helfer: Under adverse domination.

Mr. Thomas: Redacted by Committee on Resources.

Chairman Helfer: Are there questions?

Director Flechter: One comment. I’m told by our Enforcement staff that they will be making a decision on whether to prosecute me sometime in mid to late September, but don’t have one at present, as to how we might proceed. Vice Chairman Hove: Because I’m curious to know what happens, if we choose not to pursue this, with the OTS claims and—

Mr. Thomas: It—it would have no direct affect on the OTS claims—

Vice Chairman Hove: Vice President, you'll need any.

Mr. Thomas: They have tolling agreements in place with—all with four of these gentlemen and those tolling agreements would not be off—are not affected by—by our action one way or the other.

Chairman Helfer: As I understand it, the other three have agreed to tolling agreements—

Mr. Thomas: Right.

Chairman Helfer:—with the FDIC.

Mr. Thomas: And we would not sue them tomorrow.

Chairman Helfer: Okay. And that it’s—to Hurwitz’s knowledge, although he has agreed to a tolling agreement with the OTS. Mr. Thomas: That’s correct.

Chairman Helfer: And therefore, you’ve asked the Board to take a look at—at all of the—the body of the case and all of the prospective defendants, but would propose to bring suit only against Hurwitz, if he fails to provide the appropriate tolling agreement by noon tomorrow.

Mr. Thomas: Yep. We’re—we’re seeking authority on the part of the mortgage-backed securities claims to sue all four people so—Redacted by Committee on Resources.

Chairman Helfer: So if suit is not in—if we—if we don’t authorize suit today and suit is not brought tomorrow, all these claims are lost.

Mr. Thomas: To the FDIC.

Chairman Helfer: To the FDIC.

Mr. Thomas: Any recov—

Chairman Helfer: That’s correct. And any recoveries by OTS would come to the FDIC.

Chairman Helfer: Are the—does the FDIC’s authority to sue enhance the prospect for a settlement on a variety of issues associated with the case?

Mr. Thomas: It might have some marginal benefit but I don’t think it would make a large difference. I think the reality is that FDIC and OTS staff have worked together, and so—

Mr. Thomas: I don’t think it would have a major impact. It might make some difference, but I think particularly any effort to resolve this with—

Mr. Thomas: The FDIC’s proceeding with the institution, we believe it would be extremely difficult. The FDIC would have to be involved whether we authorize suit or not. And so you’re talking about a marginal difference.

Chairman Helfer: On the—the—basically, as I understand the—the Fifth Circuit’s judgment about Texas law, they essentially say the statute of limitations be run—

Chairman Helfer: That’s complained about, even though those individuals who were in control of the institution and committed the conduct would not have been likely to sue themselves—

Mr. Thomas: That’s correct.

Chairman Helfer: On behalf of the institution. And that the theory of adverse domination is that, during that period when the individuals in control were unlikely to sue because of their own misconduct or their gross-negligence as the case may be, that courts in some jurisdictions have recognized tolling of the statute of limitations. That is, the tolling of the commencement of the period when the statute of limitations will run, until that point at which the institution’s no longer under adverse domination.

Mr. Thomas: Right.

Chairman Helfer: But that Texas law has been interpreted to the contrary.

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: But as to one of the claims, you believe there is a reasonable argument that you can get beyond that issue.

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: But they have a continuing obligation, however, one could argue, on the part of the bank to reexamine these investments on a regular basis. And that’s the theory behind all of our judgments about banks having sufficient controls in place to make a judgment about whether their continuing stewardship of the institution can be justified on safety and soundness grounds.

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: Given the problems with the adverse domination interpretation of the Fifth Circuit, I take it, it would be—it would be advantageous to salvage some aspects of these—theories if—if that were possible.

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: I’m sorry, what’s a Rule 11 motion?

Mr. Thomas: For sanctions for bad faith pleading.

Chairman Helfer: Uh-huh.

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: I see. So you’re not recommending bringing that claim.

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: How much had they lost?

Mr. Thomas: I don’t know the answer to the question but it was not a disaster. When they put in the additional $80 million, they were putting money into an entity that was insolvent or close to insolvent. And because—

Chairman Helfer: Is that the standard for gross negligence?

Mr. Thomas: (Redacted by Committee on Resources).
Chairman Helfer: Are there any other comments or questions?

Director Steinbrink: I—I had one very general question to get your opinion on. If—if we have litigation and—and the courts follow the trend they’ve been doing and—and slap us, does that in any way impact the OTS’s case, in your opinion?

Mr. Chairman: (Redacted by Committee on Resources).

Chairman Helfer: But that’s simply trying the OTS case ahead of the OTS case.

Vice Chairman Hove: In re Urn-bah.

Mr. Thomas: That’s—that’s right. And—

Chairman Helfer: That’s the issue that would be presented.

Mr. Thomas: That’s right. It—it would be very unlikely this case would go to trial on the merits before an OTS matter went forward, assuming it’s going to go forward before the tolling agreements at the end—the end of this year.

Vice Chairman Hove: How much do we spend in—in this case before we know about the mortgage-backed security issue, John?

Mr. Thomas: There’s good news and there’s bad news. If we plead it well and argue it well, we might get to spend a lot. If—if—If it goes out on—a—on a early motion, then that would control—it would contain the cost. But we’re—we’re certainly going to try to plead it in[to] keep in, if we go forward with this. It would—and, if we succeed, it would come down to a fact question for the jury at trial, as to whether the statute of limitations—

Chairman Helfer: That’s a fact question.

Mr. Thomas: Well, in—

Chairman Helfer: Not a law question?

Mr. Thomas: It’s in terms of when the actions took place. If—one of the—if—if we can play it out that far. We’re not—you know, I think it’s a motion.

Chairman Helfer: Isn’t it much more likely that it would be resolved on a motion to dismiss?

Mr. Thomas: Yeah. Or—or a motion for summary to—

Chairman Helfer: If it were going to be resolved?

Mr. Thomas: Yes. Or a motion for summary. Well, either one.

Chairman Helfer: Sorry—or a motion—or either one, actually.

Mr. Thomas: Yeah. I think that’s the likely—

Director Fiechter: What will the outlay be? I mean, you’ve mentioned $6 million to go all the way.

Mr. Thomas: I would assume if it—if, well, we keep in the claim for failing to have the other institutions honor their net worth maintenance agreements, presumably the litigation would continue for some time. I imagine—we’re committed to spending at least half a million dollars and quite possibly most or all of $4 million to get to trial, if we go forward.

Chairman Helfer: On that claim.

Mr. Thomas: On that claim.

Chairman Helfer: The question I think was, what about claim that’s resolved on a motion to dismiss or a summary judgment motion?

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: (Redacted by Committee on Resources).

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: (Redacted by Committee on Resources).

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: (Redacted by Committee on Resources).

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: (Redacted by Committee on Resources).

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: (Redacted by Committee on Resources).

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: (Redacted by Committee on Resources).

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: To summarize, you’re recognizing—you’re recommending that the Board authorize the suit. You’re indicating that the pleadings would significant to—

Mr. Thomas: They should. I—I don’t warrant that they will, but I warrant that they should. The difference is the District Courts in the Fifth Circuit and Federal District Courts have between 35 percent would be an unrealistic expectation in terms of this—

Chairman Helfer: That’s a fact question—

Mr. Thomas: Well, if you want to multiply the math out, and, unlike most of our cases, I think this is one where they are relatively independent variables; most of them, I think, are highly dependent and when you start multiplying them together, you get a silly result. But here, 35 percent would not be an unrealistic expectation in terms of this—a substantial verdict being returned here. And if we get past the summary judgment motions, our estimate is that the case would have been handled by Committee on Resources—settlement value. But it is extremely difficult to value a case of this size and a case with these risks, because they’re unlikely to have a $10 million net worth and a claim for $4 million. There is no market. There—there aren’t a lot of cases like this. Those are our best guesses. If—if you work through the math, the low end of that would be—

Chairman Helfer: Are there any other comments or questions? May I have a motion to accept the staff’s recommendation to authorize suit in this case. Is that correct?

Mr. Langley: Yes.

Chairman Helfer: I will second.

Chairman Helfer: Yes. All right, all in favor of the staff’s recommendation to authorize suit in this case. Please record that the chair votes, yes. All opposed to instituting suit in this case?

Vice Chairman Hove: Aye.

Director Fiechter: Aye.

Mr. Steinbrink: I think that I would defer to the chair in this case and, in the first request, vote with the chairman and, in the second request, vote with the vice chairman.

Chairman Helfer: Okay. So that would be a two to two vote and I assume that that would not authorize suit in the case. Is that correct?

Mr. Langley: Right. That’s correct.

Chairman Helfer: All right.

Director Fiechter: Well, then, we want to revisit it?

Mr. Steinbrink: Talk some more about it.

Director Fiechter: As I understand it, I think we have to have a motion to reconsider the matter by someone who voted against.

Director Fiechter: I make the motion that we reconsider it.

Chairman Helfer: And a second.

Mr. Steinbrink: I will second.

Chairman Helfer: (Unclear).

Director Fiechter: All right.

Vice Chairman Hove: A first.

Director Fiechter: Can the Board members voting in favor give me a sense of—

Mr. Steinbrink: Well, I'm thinking of—

Director Fiechter: It—it’s the expenditure of—we’re assuming—what, John?—several million dollars to figure out how far we go on this?

Mr. Thomas: Let’s—let’s talk through that a little bit. We’ve spent $4 million so far on this matter. And part of that—

Chairman Helfer: I’m sorry, how much?

Mr. Thomas: Four million dollars so far on this matter, approximately.

Director Fiechter: I was told by our staff that we’re taking advantage of—of $4 million—

Mr. Thomas: Yes.

Director Fiechter: —of the—there’s value. Mr. Thomas: There are—there are—

Director Fiechter: From our perspective.

Mr. Thomas: There are—there are—

Director Fiechter:直接 from our perspective. We’ve spent $4 million. I think that’s a meaningful, useful way; help them work through what they’re doing; pay for the consultants they’re using.
We would expect there to be overlap, if both this claim and the OTS claim go forward, pari—prin-in parallel, and that’s another question. Both whether we would want that to happen, assuming that—that’s what says, yes, we have to sue. And we’d have a question of where the court would—if we say our—we’d like to stay this whole matter until OTS’s matter is resolved. Suppose—at the end of the year OTS brings a claim, assuming that for purposes of talking through what will happen, we might very well say we would rather stay our claim and let OTS resolve this in stead of having the same case go on two fo-

rms. The court might or might not let us do that. If we would sort of make that argument, which is contained in it, we have a better chance. But there’s no guarantee we’d be allowed to do that. If that happened, we would hold our costs down. If they go forward in parallel, there will be some serious over-

lap between the cost of this litigation and cost which we would otherwise—

Chairman Helfer: But we do not know whether the OTS is going to bring suit.

Mr. Thomas: That’s correct.

Chairman Helfer: That’s the problem with this analysis.

Mr. Thomas: That’s correct.

Chairman Helfer: If we knew—

Mr. Thomas: Yes.

Chairman Helfer: —that, we could take that into account.

Mr. Thomas: Yeah. That’s part of why I—

Chairman Helfer: —that we didn’t go in discussion earlier—

Chairman Helfer: Um-huh.

Mr. Thomas: —because it is very problem-

atic. It’s an unusual situation; it’s an unknown.

If we—(Redacted by Committee on Re-

sources).

Chairman Helfer: I guess I don’t under-

stand. We can bring you in without prejudice. We can seek a dismissal with prej-

udice of our claims at any point,

Mr. Thomas: That’s correct.

Chairman Helfer: —at any point that the OTS decided to proceed—

Mr. Thomas: We could certainly do that.

Chairman Helfer: —if it decided to proceed.

And—

Mr. Thomas: Yeah.

Chairman Helfer: And how many courts can say, no, you can’t dismiss your claim with prejudice. “With prejudice” meaning that it resolves the matters for all time and we cannot bring the suit again later.

Mr. Thomas: Well, I would have to look at whether there’s any case law and I suspect the answer is no. We’d have to take a risk, in terms of how the judge, whether that would prejudice our rights for restitution.

I don’t know the answer to that question. I haven’t really addressed the question.

Chairman Helfer: The rights for restitu-

tion, however, relate to a contractual agree-

ment with the OTS, don’t they?

Mr. Thomas: (Redacted by Committee on Re-

sources).

Chairman Helfer: There—there is no ben-

efit to proceed with the case either from the court’s perspective or from the defendant’s perspective. We seek to dismiss out our claims with prejudice. And—

Mr. Thomas: As long—as long as we’re willing to dismiss them with prejudice—

Chairman Helfer: That’s point one.

Mr. Thomas: —that’s—

Chairman Helfer: Point two, as to the—

the—how they pre—prejudice our restitu-

tion, if we’re seeking a dismissal with prejudice because we’ve become convinced that the statute of limitations prob-

lems are overriding and that the claims will be separately pursued and the deposit insur-

ance funds will have the recoveries which they are due on the merits, then I don’t un-

derstand how we prejudge the restitution—ability to get restitution as to both claims.

Mr. Thomas: (Redacted by Committee on Re-

sources).

Chairman Helfer: It obviously would have been helpful to have worked with the OTS all along to get to the point at the end of the year. We had agreed among ourselves that we would—both FDIC and OTS had agreed we would only ex-

tend the tolling agreements with people if they agreed to extend them with both. None of us realized until about 10 days ago, 13 days ago, that there was even an issue as to whether Hurwitz signed tolling agreement, because they had extended them several times. OTS staff ultimately reached what—the only possible conclusion. They were not prepared to—to make a final rec-

ommendation, so they had to accept tolling with Hurwitz and not—even though he wouldn’t toll with us. They—you know, any-
thing else would have been self-defeating. That’s how we got into this and I can only apologize to the Board for it.

Director Pletcher: —the process if we didn’t pursue a parallel effort—

Mr. Thomas: Bri—

Director Pletcher: —for the next couple of years?

Mr. Thomas: Bringing the suits, I don’t think, compromises OTS’s ability at all. The only question is one of—there’s a question that Chairman raised. If we, all right, OTS has brought a parallel case. It makes sense to us to drop this. The court won’t simply stay it. Hurwitz won’t agree to a dismissal without prejudice or to a dismissal without prejudice to OTS as an express preservation of our right to—to restitution in the OTS claim. Then we have the—the question, which is unresolved, whether we could simply dismiss the case with prejudice, save the additional costs, and if doing that would—would leave some risk of whether we could collect for restitution. And as I say, I don’t believe there are any cases that actu-

ally address this issue. I know we talked about it from time to time in other contexts and no one, in any—any of the regu-

lators that I’m aware of has ever seen a case—what that addresses that issue. Arguments can be made on both sides.

Chairman Helfer: Why does the case get presented if the OTS has a recovery? And we have an agreement with the OTS that they will restore—we’re, after all, cur-

rently paying the OTS’s cost for pursuing the matter and we have an agreement with the OTS that if there’s a recovery we—this recovery will go into the bank insurance com-

pents. We weren’t presented with issue it is to claim it?

Mr. Thomas: The—the way it would arise is that if Hurwitz and defendant would argue that OTS’s claim is for restitution, the restitution flowing back to the FDIC. And if we have dismissed with prejudice, then they would have to sue out of right to re-

cover at any forum, and I would argue the contrary. But I think that it’s—it’s not something I—that I could give—

Chairman Helfer: But I think the FDIC—

the OTS—

Mr. Thomas: —you a clear opinion on. Chairman Helfer: Right to sue—and separate—separate injuries to seek recovery on.

Mr. Thomas: They—the restitution claims are really a right to recover money for the benefit of the person who’s been injured. And that’s—that’s really the argument. Is it OK that the OTS has to sue out of right to have it go to the right people? Or is it really the victim’s rights and OTS is the entrance through—which collection is—is another question. And I don’t think there’s there isn’t an answer that I am aware of.

Chairman Helfer: But I thought our argu-

ment all along was that the OTS has a sepa-

rate right. That this isn’t a substitute to get around the FDIC statute of limitation prob-

lems. That is has separate legal rights and separate injuries that it can seek payment for.

Mr. Thomas: They have separate legal rights, but whether it’s a separate injury is a real question. But let me—let me frame the question just a little bit differently. Suppose the FDIC settled with Hurwitz, gave him a general release, and then OTS proceeded against Hurwitz on exactly the same claims and got a restitution order. Would he be able to say, I’ve already settled with the person who’s getting this money. I don’t have to pay. That’s the question. If you give it—be-

cause if we dismiss, we’d be putting ourselves essentially in that same position.

Chairman Helfer: And—all right, then let me carry the argument further. What if we didn’t institute suit in this case? The OTS brings it and then Hurwitz says, this is a—

the FDIC restitution and insurance funds. The institution that is re-

sponsible for managing the funds has—has decided not to bring the claim. Therefore, the OTS doesn’t have a right or res-

stitution for the deposit insurance fund.

Mr. Thomas: We think that’s a lose.

Chairman Helfer: Well, I don’t—I don’t quite understand why you think that may be a winner and this one—you’re sure this one is a loser.

Mr. Thomas: Wh—

Chairman Helfer: —in the Fifth Circuit which has—

Mr. Thomas: Wh—

Chairman Helfer: —not been recently very favorable to the FDIC.

Mr. Thomas: What—that I’m sure about—

on the question of what happens if we dismiss without prejudice in an an-

swer and I don’t think there is a definitive answer that says we’re okay. I—that—

mean, it’s not that I’m confident we would prevail. But I argue the FDIC simply need to alert you. I—I think there is an issue there if we dismiss with prejudice. We’d have to figure out whether that prejudice our claim and—that’s—that would likely to be a risky issue, because it’s unsettled.

Chairman Helfer: I—I just don’t under-

stand why our failure to pursue this claim doesn’t give rise to any ability to stop the OTS from proceeding to a claim that seeks restitution for the deposit insurance fund.

Mr. Thomas: They can certainly make that argument. I—I don’t remember any case that’s definitely decided that, but I know it’s been argued about. But I don’t—

Director Pletcher: Isn’t that there parallel cases, or cases where we have pursued it for the benefit of you or the RTC?

Mr. Thomas: The—I don’t remember any that actually have gotten to a point where the claim had expired and money was trans-

ferred, that weren’t settled.

Chairman Helfer: John, a point of clar-

ification, are—is this suit from deposit insur-

ance funds or is this for the FSLIC resolu-

tion fund?

Mr. Thomas: The FSLIC resolution fund.

Vice Chairman Have: Thank you. I—it did not make a difference—
Chairman Helfer: But it’s still the FDIC as manager.

Vice Chairman Hove: It’s still the FDIC, I agree, but I think (unclear).—Chairman Helfer: I appreciate the clarification for the record, yes.

Mr. Thomas: Yes, it—particularly if there was even some issue, in terms of resolution of—of this as part of the settlement, with the INT—Involving Interior and the redwoods, that—it might make a difference in terms of how we calculated the legislation had to be to achieve it. Because it—where you—it’s an issue of taxpayer money rather than insurance fund money.

Mr. Steinbrink: Can—I can go back and be a little more basic. And—and—and—correct me if—I’ve got in my mind this—this—this wrong. But we’ve got a group of individuals there that have lost the FDIC $1.6 billion. We’ve got a court system that has not ruled in our favor, recently, on certain elements of the case. We’ve spent 4 million bucks and we may spend 10 million bucks, plus another $600,000, if you go all the way through this case. And we’ve got the possibility—there is never a guarantee in this world of a 50 percent success rate, perhaps lower but 50 percent, for settlement somewhere in the—(Redacted by Committee on Resources.)

Mr. Thomas: Well, the [$7] [million] to [$34] [million] is simply multiplying the percentage likely—the success, against that range.

Chairman Helfer: We don’t know that yet.

Mr. Steinbrink: Maybe.

Chairman Helfer: They’re looking at it.

Mr. Thomas: They’re investigating, yes.

Mr. Steinbrink: Now, is there anything in there that’s—that’s necessarily wrong?

Mr. Thomas: I think you had an extra $600,000 added on, but other—in our—our cost—

Mr. Steinbrink: (Redacted by Committee on Resources.)

Mr. Thomas: Yeah. Yeah. But, no—Director Flechter: Am I right, Mr. Steinbrink?

Mr. Steinbrink: (Redacted by Committee on Resources.)

Director Flechter: Oh, sorry.

Chairman Helfer: And by—if we choose to pursue this case, our opinion we are not going to harm the OTS’s case.

Mr. Thomas: I think that’s right.

Mr. Steinbrink: And if you—if we choose to—not go, we probably won’t harm the OTS’s case.

Mr. Thomas: I think that’s correct.

Director Flechter: But that if we do pursue it, you’re not certain whether we, the FDIC, can drop out. Should OTS decide to pursue, we have parallel.

Mr. Thomas: We have a—a reasonable prospect to being able, in one way or another, to drop out. In fact, we probably have a good prospect, but we don’t have a guarantee that we can do it.

Chairman Helfer: Can you give me an example of a court that has refused to allow a case to be dismissed with prejudice by the party against?

Mr. Thomas: No.

Chairman Helfer: —to bring the case?

Mr. Thomas: No. There’s not question we could have recourse.

Chairman Helfer: But you’re raising the restitution issue.

Mr. Thomas: Right. Right. Yeah, there’s no question.

Chairman Helfer: Whether we would want to.

Mr. Thomas: Right.

Chairman Helfer: So then your issue is, would the court stay the proceeding? If this—who think it is likely Mr. Hurwitz would want to proceed with both sets of litigation simultaneously?

Mr. Thomas: He shouldn’t.

Chairman Helfer: He shouldn’t. Mr. Thomas: He shouldn’t.

Chairman Helfer: He shouldn’t. Of course, he shouldn’t.

Chairman Helfer: He shouldn’t what? I’m sorry.

Mr. Thomas: He should not want to proceed in both forums. I mean, it’s—it’s not economically rational, as I view the world, but then again, the fact that he didn’t sign the tolling agreement is not, in my view, economically rational.

Chairman Helfer: No. I think it—given the difficulty the Board is having deciding to bring suit, it was quite economically rational. He’s clearly telling the Board to put up or shut up, don’t you think?

Mr. Thomas: Oh, yeah. I—I have not discuss—I never met Mr. Hurwitz, but I think it’s pretty clear that he views this as a matter of calling our bluff, when you boil it down.

Director Flechter: My views on this were, in part, based on the—just the math, the cost of proceeding versus what we might collect. Are you suggesting that you have a good chance that we could agree to sue today but that, should OTS proceed—decide to pursue this in a couple of months, and as I understand the stabilizing OTS case it’s amirror case than the FDIC, that the FDIC could stand it OTS would have a probably stronger case than the FDIC, that the FDIC could then go slow or ask for a dismissal with prejudice and that the FBLIC Resolution Fund would therefore be no worse off than if the FDIC today decided not to sue.

Mr. Thomas: (Redacted by Committee on Resources.)

Chairman Helfer: For a motion to dismiss?

Mr. Thomas: Motion to dismiss and related—particularly if we get into any kind of discovery.

Chairman Helfer: Yes, but a motion to dismiss, I can see the lower end of the range. A summary judgment motion I can see the higher end of the range, or higher probably.

Mr. Thomas: (Redacted by Committee on Resources.)

Chairman Helfer: And you believe those acts constitute gross negligence?

Mr. Thomas: Yes.

Chairman Helfer: Without question. I mean, it’s the staff’s view that the facts support that these acts were grossly negligent.

Mr. Thomas: In terms of the claims we’re discussing here, they lost a lot of money for other things. They were the subject—they were the victim of fraud; they were the victim of bad economy; they were a lot of things, but the things we propose to sue on we believe are grossly negligent, yes.

Director Flechter: On my understanding that—to that the extent we feel that the suit today is redundant and that there is a good probability, but you can’t guarantee, given the lack of precedent, that the FDIC could avoid expending funds that duplicate what the OTS might choose to do. But you’re hedging in that, if the OTS decides not to pursue in two months, does he leave open the option of the FDIC proceeding. I’m willing to go with proceeding on.

Chairman Helfer: My understanding is that the staff would have to make it. No duplication litigation or litigation costs with the OTS, to the extent the staff can control that.

Mr. Thomas: Certainly, we’re.

Chairman Helfer: Possibility.

Mr. Thomas: —trying to avoid it today and we believe that’s the way.

Chairman Helfer: And the issue there simply is the court’s willingness to stay the proceeding.

Director Flechter: It’s—it’s your view that that come up with a good reason why they wouldn’t be willing to stay.

Chairman Helfer: Well—I’m—Director Flechter: And I just don’t know—

Chairman Helfer: —to the.

Director Flechter: —that much about the—Chairman Helfer: —dangerous—what is the saying, a fool—“A lawyer seeking to be his own counsel has a fool for a client.” I recognize that, but I can’t help but bring to bear to this matter my own experience with litigation and my own reading of more li—more greater experience at the appellate level in the Fifth Circuit, ad

Mr. Steinbrink: And by the way, in some of the cases, the Circuit, which are not unfortunately ones that we seem to come before. So I have to bring that to bear. Obviously, I don’t have the range of experience of Mr. Thomas, so I would have to defer to his advising the Board on legal matters.

Mr. Thomas: Our expectation is that Hurwitz would not want to proceed on two fronts, but there are no guarantees and he is a person who has made it clear that he doesn’t always do, in any forum, what other people expect of him. It doesn’t make sense to want to spend the money in two places.

Vice Chairman Hove: I guess I—I can appreciate what Steve was pointing out that—that—that there are losses here and—and no question about—some of these people are—are not the kind of people that you’d like to see in the financial services industry and—and clearly they didn’t do what we thought weren’t appropriate. And I guess we’re doing it more on principal—the principal of it. But—but the economics of the thing still doesn’t make sense. But, in the sense of collegiality, if—if the Chairman is interested in having this go forward, I’m willing to let it go forward.

Chairman Helfer: —a law, I believe the court’s unwillingness—let me ask one more question, on Texas law. What does Texas law say about adverse domination?

Mr. Thomas: The truth is, the Fifth Circuit wrote on a clean slate, for all practical purposes. There are—the Texas courts’ laws—the Texas court cases really don’t say much of anything. They simply said, well, this is what we think the Texas courts would do. We asked, in one of our recent cases, to have the Fifth Circuit certify something to the Texas Supreme Court to answer the question. They declined.

Chairman Helfer: That, of course, depends on the panel one gets on the Fifth Circuit. One of the—at least one of the virtues of this case might be to press that issue of how far the adverse domination determination goes and whether one can choose the continuing conduct after—let me state it differently. If one can look to continuing conduct adverse to the insured institution, even where the act that led to that took place during the period which the court said the
statute of limitations would bar, if that would essentially allow the Fifth Circuit to ameliorate what—I personally believe to be a gross disservice to insured institutions not to consider the principal of adverse domination—adverse domination in this context. So—

Mr. Thomas: I couldn’t agree more.

Chairman Helfer: Pardon me? Mr. Thomas: I couldn’t agree more.

Chairman Helfer: So I have to say that my concern is we have principals that have caused a $1.6 billion loss. We—to the U.S. taxpayer. We have a judgment that, as to the claims that we would bring, these individuals were so negligent and grossly negligent as to the insured institution. And we have the prospect of making claims that might lead a different panel of the Fifth Circuit to make a judgment that would ameliorate some of the grosser adverse aspects of the previous Fifth Circuit decisions. I recognize that, of course, a panel could simply follow suit. What prospect—is there a split in the Circuits on this? Is there two Circuits and they’ve gone essentially the same way?

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: But you’re saying there are no Texas Supreme Court decisions on point. So the Fifth Circuit is essentially interpreting the state law based on its own judgment about state law.

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: Would there be a prospect that a different panel of the Fifth Circuit might allow certification of the issue?

Mr. Thomas: (Redacted by Committee on Resources).

Chairman Helfer: No, I understand.

Mr. Thomas: —forum either, but it’s— Chairman Helfer: I understand, but that at least—

Mr. Thomas: —worth a try.

Chairman Helfer: —it sets a clear standard—

Mr. Thomas: That’s right.

Chairman Helfer: —of what the state law is—

Mr. Thomas: That’s right.

Chairman Helfer: —as opposed to the Fifth Circuit.

Mr. Thomas: And we’ve had some successes too. In the RTC. For example, in Maryland, the District Court certified a matter to the Maryland Supreme Court. Everyone thought that we would lose in Maryland and the case was settled and said, oh, no adverse domination is the law in Maryland; a very favorable decision. We have so—we have circuits going both ways but they again are basically looking at state law.

Chairman Helfer: Okay. There has been a motion to reconsider the previous vote of the Board with respect to the staff’s recommendation to authorize the institution of a PLS suit in the matter of United Savings Association of Houston, Texas. Given that motion, I would now seek a new motion in support of the staff recommendation.

Director Flechter: I’ll so move.

Chairman Helfer: And a second.

Mr. Stembrick: I’ll second it.

Chairman Helfer: All in favor of the motion?

Vice Chairman Hove: Aye.

FEDERAL DEPOSIT INSURANCE CORPORATION, WASHINGTON, D.C.

CERTIFICATION

I, Leneta G. Gregorie, Counsel and Special Assistant to the Executive Secretary, Office of the Executive Secretary, Federal Deposit Insurance Corporation, do certify that the attached is an excerpt taken from the Transcript of a Board of Directors Meeting held on August 1, 1995 (Closed to Public Observation).

(SEAL) LENETA G. GREGORIE
Counsel and Special Assistant, to the Executive Secretary.

RECORD 28
Memorandum To: Alan Whitney, Director, Office of Corporate Communications. Alice Goodman, Director, Office of Legislative Affairs.

From: Jeffrey Ross Williams, Counsel, Professional Liability Section. Robert J. DeHenzel, Jr., Counsel, Professional Liability Section.

Subject: PLS Lawsuit Filed Today Against Charles Hurwitz

As you know, yesterday the FDIC Board of Directors authorized the filing of a PLS suit against Charles E. Hurwitz arising out of the failure of United Savings Association of Texas ("USAT"), Houston, Texas. The FDIC’s complaint was filed this afternoon in the United States District Court for the Southern District of Texas in Houston. A copy of the complaint is attached for your reference.

The complaint seeks damages against Hurwitz in excess of $250 million and alleges claims for gross negligence, breach of fiduciary duty and breach of the duty of loyalty violating out of his personal interest and for aiding and abetting the conduct of others who served as officers and directors of USAT. The complaint alleges that Hurwitz dominated and controlled USAT as a controlling shareholder, a de facto senior officer and director and controlling person.

Count I of the complaint alleges that Hurwitz breached his fiduciary duty of loyalty to USAT by failing to ensure that USAT’s net worth was maintained by its parent company, United Financial Group, Inc. ("UFG") and its controlling shareholder; MCO Holdings, Inc. ("MCO" now known as Maxxam) and Federated Development Corporation ("Federated"). Count II of the complaint alleges that Hurwitz was grossly negligent and breached his duty of loyalty to USAT in failing to act to prevent additional losses from USAT of first mortgage backed securities portfolio. Count III alleges that Hurwitz was grossly negligent and breached his duty of loyalty to USAT in failing to act to prevent additional losses from USAT of first mortgage backed securities portfolio. Count II also adds that Hurwitz was grossly negligent and breached his duty of loyalty to USAT in failing to act to prevent additional losses from USAT of first mortgage backed securities portfolio.

JDS says we would sit at a global settlement. The Headwaters Forest to the FDIC in exchange for nature swap. We have pursued this at all. RTC has approached Interior.

RECORD 29

MEMORANDUM TO: Kathleen McGinty, Chairperson, Council on Environmental Quality, Executive Office of the President.

FROM: Jack D. Smith, Deputy General Counsel, Federal Deposit Insurance Corporation.

SUBJECT: Headwaters Forest/Charles Hurwitz, Debt-for-Nature Transaction

At a meeting in your office on October 22, 1995, you requested an analysis of certain issues concerning the viability of obtaining a transfer of the Headwaters Forest from Pacific Lumber (a corporation controlled by Charles Hurwitz) to the United States. This memorandum states the issues and summarizes the answers. More detailed responses are attached. These responses were prepared by representatives of the Federal Deposit Insurance Corporation, the Office of Management and Budget, and the Department of the Interior.

Issues and Answers

Issue 1: It is feasible for Hurwitz to transfer the Headwaters Forest to the FDIC in exchange for a settlement of the FDIC’s lawsuit and/or other assets?
E2490

CONGRESSIONAL RECORD — Extensions of Remarks December 20, 2001

Answer: Yes. While Hurwitz does not directly own the Headwaters Forest, he controls the boards of directors and the business decisions of the corporate entity that owns the Headwaters Forest, the major owner of the lands in the Headwaters. The corporation is Maxxam Inc. which, through its wholly owned subsidiaries, owns the Headwaters Forest. As the Chairman of the Board of Directors, President and Chief Executive Officer of Maxxam and through these capacities has controlled the business and affairs of Maxxam and its subsidiaries. Most important, the FDIC lawsuit against Hurwitz may well ultimately be a liability of Maxxam because Maxxam’s by-laws delegate it to the Board of Directors of Maxxam to accept or reject such liabilities. Finally, the FDIC’s Chairman has stated that in the event the Headwaters Forest is offered to the FDIC as settlement of any of the FDIC’s claims against Hurwitz, the FDIC Board of Directors would consider accepting such assets to pay off other liabilities, including lawsuits. Finally, the FDIC’s Chairman has stated that it was the FRF balance sheet. We note, too, that the FRF at the time of transfer were not at all dissimilar to the FRF’s balance sheet. We note, too, that the FDIC Board of Directors would be able to make the requisite determination in the near term given uncertainties as to continued ability to limit a potential claim, or, if such a case might be made in favor of such a determination of the present condition of古城红木的价格是约6000000000元，但政府的评估价格每棵值约3000000000元，但政府的评估价格每棵值约3000000000元，但政府的评估价格每棵值约3000000000元，但政府的评估价格每棵值约3000000000元，但政府的评估价格每棵值约3000000000元。Hurstz has said that the potential suit is being handled by the Department of the Interior, that the suit will not be an embarrassment to him and managers of the 127-year-old North Coast timber giant. The recognition he feels he deserves. We’re still talking about 10 years. We’ve re-invested $100 million in new facilities, added more *** and expanded our timber base. We rebuilt *** town after an earthquake and fire, said Hurwitz.

Answer: Next Steps

It appears appropriate to arrange a meeting as soon as possible to decide upon what, if any, action is appropriate. Hurwitz has recently been central and, at times, through his personal and corporate representatives—his desire to discuss the Headwaters Forest with representatives of the Government. For example, in a recent newspaper interview (attached), Hurwitz endorsed the possibility of a transfer of the Headwaters Forest in exchange for assets of equivalent economic value. Furthermore, in recent discussions with FDIC after the publication of the interview, Hurwitz’s lawyers have indicated their client’s interest in discussing a resolution of the Headwaters Forest issue. Statements have been made by Hurwitz representatives to the Department of the Interior:

There appears to be little downside in responding to these overtures at an early date. If everyone else agrees, it would be necessary to:

1. Which person(s) should be authorized to contact Hurwitz;
2. Through which Hurwitz representative (e.g., Maxxam, Pacific Lumber, Hurwitz’s defense lawyers) should such contact be made;
3. The substantive authority of the negotiating person or group for its discussions with Hurwitz; and
4. A mechanism for the negotiating person or group to regularly consult and coordinate its discussions with federal agencies and offices that are involved in this effort.

Please let me know if the FDIC can be of further assistance. My phone number is (202) 898-3706 and William F. Kroener, III, FDIC General Counsel, can be reached at 898-3680. Attachments.

[From the Press Democrat, Oct. 22, 1995]

Pacific Lumber: 10 Years After

By Mike Geniell

SCOTIA.—Ten years after pulling off a nearly $1 billion hostile takeover of Pacific Lumber Co., Texas financier Charles Hurwitz is seeking because his most prized asset remains off-limits.

Hurwitz believes a continuing controversy about Headwaters Forest, the largest stand of ancient redwoods left in private hands, worth $600 million today by company estimates, is both directed at him and managers of the 127-year-old North Coast timber giant the recognition he feels he deserves.

We’ve stuck around for 10 years. We’ve re-invested $100 million in new facilities, added more *** and expanded our timber base. We rebuilt *** town after an earthquake and fire, said Hurwitz.

And still we’re the bad guys, he said. My God, the way the critics beat the hell out of this company, you would think we have silver working there or something, complained Hurwitz.

In a rare interview, Hurwitz told The Press Democrat that Pacific Lumber is willing to have an independent party determine a value for Headwaters if that helps bring an end to the North Coast’s most tenacious environmental battle.

Andy McLeod, spokesman for Secretary of Resources Douglas Wheeler, welcomed Hurwitz’s offer.

“Without a deal, determining a value for the forest is key to finding solutions to the complexities surrounding Headwaters,” he said.

However, McLeod said the state will not negotiate “other than directly with the parties involved.”

Any further discussion on any value for Headwaters will have to be done directly,” he said.

Epiphany court fights, regulatory skirmishing and disputes over its value, have kept company chainsaws from cutting Headwaters’ 3,000 acres of towering redwoods, some dating back to the time of the Headwaters.

[From the Press Democrat, Oct. 22, 1995]

Pacific Lumber contends Headwaters’ fair market value is nearly $600 million, but government appraisals have ranged as low as $300 million. Because of special regulatory constraints surrounding harvesting of old-growth trees, preservation proponents say Hurwitz’s offer is value is much less, perhaps around $300 million.

Whatever value may be set, Hurwitz said he doesn’t necessarily expect taxpayers to buy off with that kind of money. Once again he said he would favor offsetting some of the cost by swapping the big trees for abandoned U.S. government property.

“You know, if I owned a forest that was very serious about resolving this, and who had some authority, to sit down with me, I think we could work out a Headwaters solution in half a day,” said Hurwitz.

Hurwitz warned, however, that a deal needs to be struck soon. He said he believes a Republican majority that could pass his bill and its zeal for private property rights, creates a better political climate for Pacific Lumber’s efforts to either be fairly compensated for Headwaters, or be forced to cut its growth trees in the coastal ridges east of Fortuna.

“I can’t promise to tell you that this is America, and that this land is zoned for timber cutting,” said Hurwitz defiantly.

“We are going to move forward. Somebody is going to pay us fair market value, or we’re going to cut it. And we’re not embarrassed to say that,” he said. A federal court recently has put on hold company plans to remove declining trees. Pending trial of the latest in a series of lawsuits filed by the grass-roots group Environmental Protection Information Center in Garberville.

DEAL

Departing from his usual stance of no interviews, Hurwitz spoke for nearly an hour by phone from a Puerto Rico resort being developed by his Houston-based Maxxam Inc. The conglomerate also owns Kaiser Aluminum, and substantial real estate holdings nationwide. The conference call interview included Pacific Lumber President Robert Campbell, who was a P-L executive before the Hurwitz takeover.

Hurwitz talked freely about controversies that erupted after Pacific Lumber’s 1986 board of directors capitulated 10 years ago today, and voted to sell the aristocrat of West Coast timber companies to Maxxam. It became the timber deal of the century because Pacific Lumber’s under-valued assets were probably worth closer to $2 billion, according to estimates in some shareholder lawsuits filed to the aftermath of the Hurwitz takeover.

At the time of Hurwitz’s takeover, Pacific Lumber was touted by the Sierra Club and the Save the Redwoods League for its responsible logging practices. Generations of Humboldt County residents have worked for Pacific Lumber and lived in Scotia, the West’s last real mill town. Until the takeover, they were comforted by a paternalistic management that gave them a lifestyle once characterized as “Life in the Peace Zone.”

Pacific Lumber’s buyout by an outsider was a stunning development for hundreds of workers and their families, and a region that prides itself on the community’s economic well-being. The takeover ignited a decade of environmental activism in the streets and in the courts, and reshaped the face of North Coast politics. Logging controversies have played a role in almost every major election since the takeover.
In the beginning, Hurwitz was largely unknown. At the time, he was a small-time investor with alleged ties to convicted Wall Street wheeler-dealers Michael Milken and Ivan Boesky. Hurwitz had an $80 million Texas savings and loan that cost taxpayers $1.6 billion. Today his personal portfolio is worth an estimated $180 million.

After snagging sleepy Pacific Lumber for $800 million during the takeover craze of the 1980s, Hurwitz ordered the cut doubled to meet the company’s cash flow needs, and pay up to $70 million in interest payments on about $350 million in junk bonds he used to finance the takeover. Hurwitz later was to use early profits from Pacific Lumber’s accelerated cutting. In a takeover of another venerable Northern California industrial giant, Kaiser Aluminum.

As his empire grew, Hurwitz was attacked as a ruthless raider whose targets, including Pacific Lumber, were asset-rich companies. His dealings involving Pacific Lumber came under scrutiny by the Securities and Exchange Commission, the U.S. Labor Department and a congressional oversight committee, none of which took any action. A probe by the Federal Deposit Insurance Corp., into Pacific Lumber and Simplicity Patterns loan resulted in a $250 million claim against them will find that out, and the head of the ancient redwoods in private ownership is unfair.

I get all these letters every day from high school and junior high kids saying, ‘Please don’t cut down the Headwaters,’” said Hurwitz.

“I write them back and give them our version of this thing, and then I tell them they should write their senators, write the Congress, and write the president if they want to save the Headwaters,” he said.

Hurwitz rejected environmentalists’ clamor for a so-called “debt-for-nature” swap involving a $250 million claim a federal agency has filed against the Houston investor for his alleged role in the collapse of United Savings and Loan Association of Texas.

Hurwitz contended the Federal Deposit Insurance Corporation claims are in the form of a personal lawsuit against him, and cannot be linked to Maxxam or Pacific Lumber operations.

LAND SWAP

The possibility of swapping Headwaters for surplus government property dominated Hurwitz’s thoughts during the interview.

Hurwitz called former Rep. Doug Bosco, D-California, who was a failed Texas Savings and loan and was eager to step in and solve this issue,“I warned Hurwitz early on that his takeover of Pacific Lumber would become the aberration of a kind of people, contrary to a lot of those kind of people, as legislative leaders. They asked Hurwitz to agree to a voluntary logging moratorium on Headwaters.

Hurwitz said he no longer has any ties to Pacific, or Pacific Lumber. But he said he agrees with Hurwitz that most of the blame for the Headwaters statement is with the political process.

“It should have been resolved in the public arena, but it wasn’t,” said Bosco.

Hurwitz said the bad rap he and Pacific Lumber received was unjust and that more timber per acre than anywhere else in California, and perhaps Oregon and Washington. They said the company will be able to sustain 10 years in its current independent state, no ties to Maxxam, an independent state, and nothing ever did.

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“You have people tell me they went to Scotia and fueling speculation he in-

Hurwitz dismissed his critics.

“They are still here, and we are still growing,” he said.

Hurwitz said his rogue image is a carryover from the 1980s. “When everybody who did takeovers was cast in a bad light. But contrary to a lot of those kind of people, we’re builders. We’re happy with our investments. Still his reputation persists.

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Hurwitz said his rogue image is a carryover from the 1980s. “When everybody who did takeovers was cast in a bad light. But contrary to a lot of those kind of people, we’re builders. We’re happy with our investments. Still his reputation persists. More accurately, it is looking to the North Coast, and around the globe to expand its timber operations.

“We’ve been to South America, Africa and even Russia,” he said.

“We’re builders. We don’t buy and sell,” said Hurwitz about Maxxam’s investment strategies.

Hurwitz said he likes the timber business. “Just last week, we had discussions about a potential acquisition within the industry,” he said. “We’re very much in the growth mode,” said Hurwitz.

Hurwitz said he’s offended that Pacific Lumber has been cast as an environmentally insensitive company under his stewardship.

“What both of us and more than anything else is that people think we’re hurting the environment. It’s simply not the case. We’ve hired the best foresters, the best biologists to chart the course into the next century,” said Hurwitz.

Hurwitz and Campbell said Pacific Lumber’s timberlands, even after a decade of accelerated cutting, have the most timber volume per acre than anywhere else in California, and perhaps Oregon and Washington. They said the company will be able to sustain 10 years in its independent state, no ties to Maxxam, an independent state, and nothing ever did.

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investment companies and trusts, approximately 60.4 percent of the voting stock interests of Maxxam. Through this majority stock ownership, Hurwitz controls the election of the majority of the directors of Maxxam and other Maxxam subsidiaries, and has served as President, Chief Executive Officer, and Chairman, and holds these positions since he acquired Maxxam.

2. Controlling Director and Officer: Hurwitz is Maxxam’s Chairman of the Board, President, and Chief Executive Officer, and has held these positions since he acquired Maxxam.

b. Maxxam’s Control of Pacific Lumber. Maxxam is engaged in forest products operations through its wholly owned subsidiary, Maxxam Group, Inc. (“MGI”), and MGI’s wholly owned subsidiary, Pacific Lumber Company, which Hurwitz acquired in a hostile tender offer in October 1985. Pacific Lumber owns, either in its own name or through subsidiaries, approximately 189,000 acres of commercial timberlands in Humboldt County in northern California.

1. 179,000 acres of Pacific Lumber’s timberlands, including approximately 6,000 acres of virgin old growth redwood and border areas adjacent to the universities’ lands in Humboldt County.

2. Title in the Headwaters Forest was in turn transferred to Salmon Creek Corporation, a wholly owned subsidiary of Scotia Pacific Holdings Company, which Hurwitz acquired in a hostile tender offer in October 1985. Pacific Lumber have been transferred to Scotia Pacific Holding Company, a wholly owned subsidiary of Pacific Lumber.

3. a. In early 1994, Robert Martel, a private citizen, supported and funded by numerous environmental organizations, filed a lawsuit against Hurwitz, Maxxam, and other persons and entities that alleges that Hurwitz illegally used USAT funds for the benefit of himself and Maxxam, and that such transactions diverted money from USAT and resulted in the false certification by USAT’s independent auditors that “no fiduciary duty had been breached.”

b. Moreover, the FDIC’s suit alleges that Hurwitz breached his fiduciary duty to USAT by placing his and Maxxam’s financial interests above the interests of USAT and its depositors by choosing to refuse to cause Maxxam to infuse new capital into USAT, as was agreed in the memorandum agreement with the Federal Home Loan Bank Board, that would have replenished USAT’s depleted capital.

c. Hurwitz’s Ability to Transfer Pacific Lumber’s Assets: Hurwitz has demonstrated his ability to control the actions of the board of directors of Maxxam, Pacific Lumber, and other subsidiaries, and to use the financial and business decisions of Pacific Lumber and its subsidiaries to advance his own financial interests.

d. Maxxam has sufficient assets to pay a substantial liability, including indemnifying Hurwitz for the amount of a judgment or settlement. Maxxam is a publicly traded company with market capitalization of $233 million and total assets of $3.7 billion. See, Maxxam, Inc. 10-Q, June 30, 1995.

e. Related Litigation Which Could Be Settled in a Global Settlement With Hurwitz:

In addition to the FDIC’s lawsuit, there are at least three other lawsuits which have value and could be exchanged in a global settlement involving the Headwaters Forest.

a. In early 1994, Robert Martel, a private citizen, supported and funded by numerous environmental organizations, filed a lawsuit against Hurwitz, Maxxam, and other persons and entities that alleges that Hurwitz illegally used USAT funds for the benefit of himself and Maxxam, and that such transactions diverted money from USAT and resulted in the false certification by USAT’s independent auditors that “no fiduciary duty had been breached.”

b. The Office of Thrift Supervision, a department of the Treasury, has been investigating the conduct of Hurwitz, other Hurwitz-related directors and officers, Maxxam, and other USAT holding companies. On November 1, 1995, OTS notified Hurwitz, Maxxam and other potential respondents of the inquiry, stating that the investigation could lead to a formal proceeding.

c. Pacific Lumber has been unable to reduce the substantial debt Hurwitz burdened it with as a result of his successful takeover effort. The company is in need of cash to service its operations. As harvestable timberland, the virgin old growth redwoods that comprise the Headwaters Forest are among Pacific Lumber’s most valuable assets. To date, however, Pacific Lumber has been unable to log these trees, and has suffered financially as a result. In addition to the environmental organizations that allegedly have failed to pay the logging fees, Pacific Lumber has also been unable to pay the logging fees that were agreed to by Hurwitz in 1985.

2. Maxxam May Well Ultimately Be Obligated to Indemnify Hurwitz for FDIC Lawsuit.

a. Maxxam’s indemnification provisions are contained in the amended Bylaws dated August 1, 1988, and provide indemnification to “each person who is or was a director or officer [of Maxxam] . . . at any time on or after August 1, 1988 . . . by reason of the fact that he or she is or was a director, officer, employee or agent . . . or is or was at any time serving at the request of [Maxxam], any other corporation, partnership, intent, in any capacity, against all expenses, liability and loss . . .” Maxxam refers to these indemnification obligations in connection with a defense and indemnification agreement against Hurwitz in its most recent SEC filing, stating that Hurwitz has not yet made a formal claim for indemnification from Maxxam. See, Maxxam, Inc. 10-K, December 20, 2001.

b. Although Hurwitz was not an elected director of United Savings Association of Texas (“USAT”) nor Maxxam—nor did he participate in the FDIC’s lawsuit, the suit alleges that Hurwitz was a “de facto” director of the thrust through his assertion of actual control over its operations and decisions. As a result, Hurwitz was required by a capital maintenance statute, and which logically (as well as statutorily) would be for the FDIC to transfer Headwaters out of the FRF to Treasury, utilizing unique authority existing under the FRF enabling statute, and for Treasury thereafter to transfer the forest to the Department of the Interior or other federal agency pursuant to other, more general statutory authority concerning inter-agency transfers of property.

With regard to transfer out of the FRF, it should be noted that section 11A(f) of the FDI Act, 12 U.S.C. §1821a(f), provides that the FRF “shall be paid into the Treasury.” Treasure is the cost of the property. Accordingly, the residual beneficiary of the FRF—a fund which is supported by appropriated monies from Treasury (see section 11A(c) of the FDI Act, 12 U.S.C. §1821a(c)), and which logically and functionally transfers the property to the Department of the Interior or other federal agency pursuant to other, more general statutory authority concerning inter-agency transfers of property—should therefore go back into Treasury. To date approximately $46 million has been appropriated to support the FRF and it is only logical (as well as statutorily) that any excess funds should therefore go back into Treasury. Furthermore, although section 11A(f) by its terms speaks of FRF funds going to Treasury only upon FRF dissolution, the entire statutory framework of the FRF has previously been interpreted to allow the return of FRF funds to Treasury under appropriate circumstances prior to such dissolution. In particular, section 11A(f) is stated in the following context:

"It may be asserted generally that Congress could not have intended for excess funds to remain indefinitely with the FRF when the event that the FDIC as manager were to determine in later years that the amount of such funds exceeded the FRF’s needs estimated as of the date of appointment of the liquidation trustees by the FDIC. Such excess funds would be paid back to Treasury in the same manner as the proceeds of the sale of the property of the FRF are paid back to Treasury when the property is sold. Hence, it is clear that the statutory language merely indicates that the FRF shall be paid into the Treasury after the璋 funds have been paid back to Treasury. The language of section 11A(f) is therefore properly interpreted to allow the return of FRF funds to Treasury by the FRF upon appointment of the liquidation trustees and prior to such dissolution."
satisfied by subsequent appropriations for which an authorization of appropriations is provided in §11a(c) of the FDIC Act.”

FDIC Memorandum, dated October 5, 1995, from Deputy to the Chairman & Chief Financial Officer.

Thus, if the FDIC as manager of the FRF were to conclude at any time that the amount the FRF expects to receive from the FDIC’s then estimate of FRF liabilities, the amount of such excess or any portion thereof could be turned over to Treasury prior to dissolution. We stress, however, that any such early transfer out of the FRF would be within the FDIC’s sole discretion.) Furthermore, the statute speaks in terms of the FDIC transferring (i.e., assuming the value) and the previous opinion concerned FRF funds, we do not perceive a legal bar to the FDIC’s making an early transfer of FRF as- sets in kind (such as Headwaters, if it were obtained by the FRF in settlement with (Hurwitz), provided the other conditions for an early transfer were satisfied.

This approach would have the decided ad- vantage, from the FDIC’s viewpoint, of avoiding the necessity for the FDIC to li- quidate the Headwaters Forest at its fair mar- ket value. So long as the FDIC had obtained fair value from Hurwitz and related companies in return for settlement of its profes- sional responsibilities (i.e., assuming the esti- mated value of the Headwaters Forest would exceed the FDIC’s settlement value of the case), then the FDIC could hand the property over to Treasury without hesitation as to whether the FDIC had fulfilled its fiduciary duty of maximizing (Headwaters) value to the FRF, Treasury as “residual ben- efitary.” Thus, the FDIC could maximize this transfer, applying its own policy and other judgments to the matter—presumably by effecting a further transfer to the Department of the Inter- nterior or another federal agency for wilder- ness preservation purposes to the ultimate benefit of the United States.

In short, the FDIC could legally transfer title to the Headwaters Forest out of the FRF to Treasury, if the FDIC determined that the state of the FRF at the time of transfer were such that the value of the Headwaters Forest was retained in the FRF for discharge of FRF liabilities. We believe that a plausible case for such a determina- tion may be made (i.e., assuming a foreseeable future, given that the FRF cur- rently has assets and appropriated funds in excess of its liabilities. However, there can be no assurance that the FDIC Board of Di- rectors would be willing to make the re- quisite determination given uncertainties as to contingent liabilities of the FRF. We note, too, that Treasury would have to be willing to receive the Headwaters Forest (if only as part of an instantaneous transfer on to the Department of the Interior or another federal agency for wilderness purposes or violations of the FRF liability or control of a Federal agency). The Department of the Interior is specifi- cally authorized to acquire property by purchase or agreement between the United States and any other person for the purpose of preserving it for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes or to acquire such property for Federal purposes and in the event it is no longer used for such purposes or in the event it is needed for national defense purposes title thereto shall revert to the United States (May 19, 1949, c. 310, §120, 63 Stat. 381; Sept. 26, 1972, Pub.L. 92–432, 86 Stat. 723.)

Historical Note


Transfer of Functions. The functions, records, property, etc., of the War Assets Ad- ministration were transferred to the General Services Administration, the functions of the War Assets Administrator were transferred to the Administrator of General Serv- ices, and the War Assets Administration, and the War Assets Administration Office were abolished by section 105 of the Act June 30, 1949.
Consequently, application submitted by entities...

DATES: This document is effective October 26, 1994.

AGENCY: Department of Defense, DoD.

ACTION: Interim final rule: amendments.

SUMMARY: The interim final rule amendment promulgates guidance required by Section 2005 of the National Defense Authorization Act for Fiscal Year 1994. This guidance clarifies the application process and the criteria for determining whether an application for property under this section should be made.

DATES: This document is effective October 26, 1994. Any pending written request for economic adjustment is determined by whether an application for property under this section will be made.

How much property should be included in an Economic Development Conveyance application? The EDC should be used by LRAs to obtain large parcels of the base and community. The application should explain why an LRA is requesting an Economic Development Conveyance and the extent of proposed infrastructure investment.

The following criteria and factors will be used, as appropriate, to determine whether an LRA is eligible for an EDC and to evaluate the proposed terms and conditions of the proposed conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

1. Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department. The Military Department can be flexible about the terms and conditions of the conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

2. Adverse economic impact of closure on the community and each base mean that the amount and type of consideration may vary from base to base. The Military Department can be flexible about the terms and conditions of the conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

3. Economic benefit to the Federal Government, including protection and maintenance savings and anticipated consideration from the transfer.

4. Compliance with applicable Federal, State, and local laws and regulations.

What are the guidelines for determining the terms and conditions of consideration? The individual circumstances of each community and each base mean that the amount and type of consideration may vary from base to base. The Military Department can be flexible about the terms and conditions of the conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

The individual circumstances of each community and each base mean that the amount and type of consideration may vary from base to base. The Military Department can be flexible about the terms and conditions of the conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

The following criteria and factors will be used, as appropriate, to determine whether a community is eligible for an EDC and to evaluate the proposed terms and conditions of the proposed conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

The following criteria and factors will be used, as appropriate, to determine whether a community is eligible for an EDC and to evaluate the proposed terms and conditions of the proposed conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

The following criteria and factors will be used, as appropriate, to determine whether a community is eligible for an EDC and to evaluate the proposed terms and conditions of the proposed conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.

The following criteria and factors will be used, as appropriate, to determine whether a community is eligible for an EDC and to evaluate the proposed terms and conditions of the proposed conveyance, including the amount and type of consideration, the level of risk incurred, and the extent of short- and long-term job generation.
could include: participation in the gross or net cash flow, deferred payments, mortgages or other financing arrangements.

2. Consideration below the estimated range of fair market value, where proper justification is provided: If a discount is found by the Secretary of the Military Department to be necessary to foster local economic redevelopment and job creation, and may be made at less than fair market value, with property justification.

PART 91—REVITALIZING BASE CLOSURE COMMUNITIES—BASE CLOSURE COM-
MUNITY ASSISTANCE

4. The authority citation for part 91 continues to read as follows:

§91.4 Policy.

It is DoD policy to convey property to a Local Redevelopment Authority (LRA) to help foster economic development and job creation when other federal property disposal options cannot achieve such objectives. Conveyances to the LRA will be made under terms and conditions designed to facilitate local economic redevelopment and job creation, and may be made at less than fair market value, with property justification. This regulation does not create any rights and remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies that are not otherwise than those provided by Pub. L. 103-160.

(1) Consideration within the estimated range of fair market value, as determined by the Secretary of the Military Department. Payments must be made to ensure the economic recovery of the relatively small number of communities that will be affected by the closure of nearby military installations.

F. Paperwork Reduction Act

The Rule amendment is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the amendment will not have a significant economic impact on a substantial number of small entities. The primary effect of this amendment will be to reduce the burden on local communities of the Government’s property disposal process at closing military installations and to accelerate the economic recovery of the relatively small number of communities that will be affected by the closure of nearby military installations.

Paperwork Reduction Act

2. Authorization for State housing fin-
ance agencies and nonprofit entities to purchase mortgage-related assets

(a) Authorization.

Notwithstanding any other provision of Federal or State law, a State housing finance authority or nonprofit entity may purchase mortgage-related assets from the Resolution Trust Corporation or from financial institutions with respect to which the Federal Deposit Insurance Corporation is acting as a conservator or receiver (including assets associated with any trust business), and any contract for such purchase shall be effective in accordance with its terms without any further approval, assign-
mint, or consent with respect to that contract.

(b) Investment requirement.

The authority or nonprofit entity which purchases mortgage-related assets pursuant to subsection (a) of...
this section shall invest any net income attributable to the ownership of those assets in financing, refinancing, or rehabilitating low-and moderate-income housing within the jurisdiction of the corporation or to housing finance authority or within the geographical area served by the nonprofit entity.


HISTORICAL AND STATUTORY NOTES
Revision Notes and Legislative Reports

Codifications
Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and not as part of the Federal Home Loan Bank Act, which comprises this chapter.

Definitions
For definitions of terms used in this section see section 1441–1 of this title.

LIBRARY REFERENCES
American Digest System
States cases: 360k [add key number].

§ 1441a–5. RTC and FDIC properties
(a) Reports
(1) Submission
The Resolution Trust Corporation and the Federal Deposit Insurance Corporation shall each submit to the Congress for each year a report identifying and describing any property to which the corporation concerned as of September 30 of such year. The report shall be submitted on or before March 30 of the following year.

(2) Consultation
In preparing the reports required under this subsection, each corporation concerned may consult with the Secretary of the Interior for purposes of identifying the properties described in paragraph (1).

(b) Limitation on Transfer
(1) Notice
The Resolution Trust Corporation and the Federal Deposit Insurance Corporation may not sell or otherwise transfer any covered property unless the corporation concerned causes to be published in the Federal Register a written notice of the availability of the property for purchase or other transfer that identifies the property and describes the location, characteristics, and size of the property.

(2) Expression of serious interest
During the 90-day period beginning on the date that notice under paragraph (1) concerning a covered property is first published, any governmental agency or qualified organization may submit to the corporation concerned a written notice of serious interest for the purchase or other transfer of a particular covered property for which notice has been published. The notice of serious interest shall be in such form and include such information as the corporation concerned may prescribe.

(3) Prohibition of transfer
During the period under paragraph (2), a corporation concerned may not sell or otherwise transfer any covered property for which notice has been published under paragraph (1). Upon the expiration of such period, the corporation concerned may sell or otherwise transfer any covered property for which notice under paragraph (1) has been published if a notice of serious interest under paragraph (2) concerning the property has not been timely submitted.

(4) Offers and permitted transfer
If a notice of serious interest in a covered property is timely submitted pursuant to paragraph (2), the corporation concerned may not sell or otherwise transfer such covered property during the 90-day period beginning upon the expiration of the period under paragraph (2) to a governmental agency or qualified organization for use primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes, unless all notices of serious interest under paragraph (2) have been withdrawn.

(c) Definitions
For purposes of this section:
(1) Corporation concerned
The term “corporation concerned” means—
(A) the Federal Deposit Insurance Corporation, with respect to matters relating to the Federal Deposit Insurance Corporation; and
(B) the Resolution Trust Corporation, with respect to matters relating to the Resolution Trust Corporation.

(2) Covered property
The term “covered property” means any property—
(A) to which—
(i) the Resolution Trust Corporation has acquired title in its corporate or receivership capacity; or
(ii) the Federal Deposit Insurance Corporation has acquired corporate capacity or which use acquired ****

(B) that—
(i) is located within the Coastal Barrier Resources System; or
(ii) is undeveloped, greater than 50 acres in size, and contiguous with any lands managed by a governmental agency primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

(3) Governmental agency
The term “governmental agency” means any agency or entity of the Federal Government or a State or local government.

(4) Undeveloped
The term “undeveloped” means any property that is covered property of the corporation and—
(A) containing few manmade structures and having geomorphic and ecological processes that are not significantly impeded by any such structures or human activity; and
(B) having natural, cultural, recreational, or scientific value of special significance.

PUBLICATIONS

Codifications
Section was enacted as part of the Federal Home Loan Bank Act, which comprises this chapter.

§ 1441b. Resolution Funding Corporation established
(a) Purpose
The purpose of the Resolution Funding Corporation is to provide funds to the Resolution Trust Corporation or to the Resolution Trust Corporation to carry out the provisions of this chapter.

(b) Establishment
There is established a corporation to be known as the Resolution Funding Corporation.

(c) Management of Funding Corporation
(1) Directorate
The Funding Corporation shall be under the management of a Directorate composed of 3 members as follows:
(A) The director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor office).
(B) 2 members selected by the Thrift Depositor Protection Oversight Board from among the presidents of the Federal Home Loan Banks.

(2) Terms
Of the 2 members appointed under paragraph (1), 1 shall be appointed for an initial term of 2 years and 1 shall be appointed for an initial term of 3 years. Thereafter, such members shall be appointed for a term of 3 years.

(3) Vacancy
If any member leaves the office in which such member was serving when

(B) the successor to the office of such member shall serve the remainder of such member’s term.

(4) Equal representation of banks
No president of a Federal Home Loan Bank may be appointed to serve an additional term on the Directorate until such time as the presidents of each of the other Federal Home Loan Banks have served as many terms as the president of such bank.

(5) Chairperson
The Thrift Depositor Protection Oversight Board shall select the chairperson of the Directorate from among the 3 members of the Directorate.

(6) Staff
(A) No paid employees
The Funding Corporation shall have no paid employees.

(B) Powers
The Directorate may, with the approval of the Federal Housing Finance Board authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Funding Corporation in such manner as may be necessary to carry out the functions of the Funding Corporation.

(7) Administrative expenses
(A) In general
All administrative expenses of the Funding Corporation, including custodian fees, shall be paid by the Federal Home Loan Banks.

(B) Pro rata distribution
The amount each Federal Home Loan Bank shall pay under subparagraph (A) shall be determined by the Thrift Depositor Protection Oversight Board by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—
(i) the aggregate amount the Thrift Depositor Protection Oversight Board required such bank to invest in the Funding Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (e) of this section (computed without regard to paragraphs (3) or (6) of such subsection); by
(ii) the aggregate amount the Thrift Depositor Protection Oversight Board required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

(8) Regulation by Thrift Depositor Protection Oversight Board
The Directorate of the Funding Corporation shall be subject to such regulations, orders, and directions as the Thrift Depositor Protection Oversight Board may prescribe.

(9) No compensation from Funding Corporation
Members of the Directorate of the Funding Corporation shall receive no pay, allowance, or benefit from the Funding Corporation for serving on the Directorate.

(10) Powers of the Funding Corporation
The Funding Corporation shall have only the powers described in paragraphs (1) through (9), subject to the other provisions of this section and such regulations, orders, ***

ISSUE 4: WHAT WOULD BE THE POSSIBLE BUDGETARY IMPACT FROM AN ACQUISITION OF THE HEADWATERS FOREST THROUGH THE FDIC?
SHORT ANSWER: ANY BUDGETARY IMPACT, INCLUDING ISSUES OF “SCORING,” IS DEPENDENT ON THE PARTICULAR STRUCTURE OF THE TRANSACTION AND WHETHER LEGISLATION WAS NECESSARY TO FACILITATE THE ACQUISITION OR TRANSFER OF THE HEADWATERS FOREST.

DISCUSSION ANSWER:

The interagency group has discussed several potential mechanisms for accomplishing the proposed “gift for nature” swap. The following discussion addresses the budgetary impact of several possible ways of acquiring the Headwaters Forest, putting aside the question of what authority there is for FDIC, Treasury, or Interior/USDA to execute any of these transactions under existing law.

First, we have discussed a possible transaction in which the FSLIC Resolution Fund (FRF) would gain title to the land and transfer it to Treasury, possibly considering the value of the land as an advance payment on funds that will eventually be returned to Treasury when the FRF dissolves. Treasury would then transfer the land to the appropriate agency. If it is determined that the authority to execute this transaction exists under current law, then the transaction cannot be scored under the Budget Enforcement Act (only legislation may be scored). However, there would be a budget impact. If FRF gained title to the land and did not recover funds for it, FRF would have foregone receipts. In more technical terms, the failure of FRF to gain title to the land would be a budget impact. If legislation is required, then the transaction would be considered to be a budget impact. If legislation is needed, then the proposed transaction or transfer of the Headwaters Forest would also be scored as foregone receipts under the PAYGO rules.

On or about 11/30/95, Jill R. ** * refer to J. Williams ** *

On or about 12/27/95,

12:30 closed. Alan McReynolds ** * Jill R. ** * Maxxan motion to dismiss—** it from Ct—not from us—H manuf. consp. issues.

On or about 2/13/96,

How FDIC has properties list of high value prop, Calif/Texas.

10/19/95,

Gore’s Chief of Staff—Ann.
Chairperson CEO, Katie McGinty.
Elizabeth Blaug ** * Red Emerson own.
Sierra Lumber—buffer zone, Earth firsters chaining themselves to ** *.
Why was the appraisal done? How much area did it cover? When was it done? Did it include the 1,000 acres buffer zone? Katie Anderton ** * New G.C. Save The Redwoods League, Appraisal Valuation Jan. 1, 1995.

10/02 Bush received ** * as an appraisal ** * for headwaters.

Interior subcommittee

said do appraisal Rep. Stark ** * Calif/Pacific Lumber did forest cruise (est. Boardfeet), Neither state nor Pacific Lumber paid—so they don’t have appraisal. Basis of cruise challengeable.

1) Get Forest Service to share cruise and appraisal; (2) independent review by forester credible with both environment and industry. Save the Redwoods League Hammon Jensen Wallen & Associates out of Oak—were familiar with work for Pacific Lumber.

A lot. Appraisal assumed cutting 96 to 97% of all trees on property. Estimate only to 3 to 4% set aside to meet California Regulations. Basis of environmentalists attacked in hearings. 4,488 acres for bottom line—headwaters grove.

Old growth grove 3,000. Buffer to W, S, lit-tle E 1,500 (owned by Pacific Lumber) to N buffer is owned by Sierra Lumber.

Department of Energy—oil leases on public lands BLM.

Defense Lands—DOO

Make it part of 6 Rivers National Forest managed by Agriculture. Options BLM manages, Fish & Wildlife manages as a refuge. $499 million appraisal—3000 acres headwaters, 1,500 acres buffer ** *

10/11/95,

Continued to talk to environmentalists, surrounding landowners.

Katie McGinty head of Council.
V.P. met with environmentalist when he was out there.

10/12—Dave Feit. Monty Tuesday.

10/20/95

May. At OMB re Hurwitz/Redwoods. Assume it would go to Forest Service—only $30 m in our land acquisition fund—we have a particular interest—very small area to manage/very remote—would be a management problem.

May make more sense to give it to BLM, Park Service might want it. How much money from the state—$70 m in timber.

Exchanges—a gigantic exchange of land would alienate citizens of neighboring states. DOD—forestry says consider military base. If there then cash, we have higher priorities. Minority shareholders—suit against Hurwitz. Can H settle a suit by trading MAXXAM’s assets?

Can FDIC do it, what would Treasury have to do. Further—states interest—whether there are DOD possibilities. Don’t plan on cutting trees—Forest Service said that’s why it may be better to send it to Park Service. Reconvn in about 2 wks. Budget scorekeeping problem.

Coastal Barrier Improvement Act.

10/31—Alan McReynolds, DOD—Steve Base Closure Cmtee.

Revenue from closed bank goes into Bank Closure Act—Revenues for other closures and improvements. Revenues from other closure actions including environmental cleanups. A host of other public interest conveyances—hospitals, FAA airport, etc. 100% public benefit discount. Homeless, port conveyance—Charlestown, Fish & Wildlife, BLM—Dept. of Interior had a notion they could claim land and swap it for protected land. Admin. opposes that kind of deal. Community revitalization—in the past just sold em—didn’t get proper value—no zoning, no community support interest—very small area. Base Realignment and Closure, acct didn’t get much money. Better to work with community now. Community based programs Sept. 28, 95 Base closure improves by Brooks, testimonies—Denver. Hurwitz would be able to work with Reevh. Author.—88, 91, 93, 95 Communities want control of the property. Can’t bypass the process of Reevh. Author.

If VP wanted to do it, we could structure a way to make it happen. But DOD would lose receipts. Calif. would have to look at outraged by local community. If we need spec. legis, we’ll figure that out. Not aware of any harvestable timber land.

Wanted to get help to Alan McReynolds. Can’t trade whole Mendocino forest.

Possible—Naval OC Station 36 acres. Anything less than 300 civilians may not be part of BLM process—may be easier.

Calif. deleg. believes S.F. Bay area Harbor. Rep. Brown, Stark, Feinstein. GSA controls mainly of Bldgs. Gordon has asked his staff to list poss in Bay area. Ellington AFB in Texas not a BRAC prop. Naval Station, Ground Prairie B/W Dallas and Fort Worth. Interior might be part of screening process with GSA.

Economic Development conveyance—DOD gets receipts back over time. 2nd round postings

USAT—RIO conf on environment included a contelm to reduce Greenath gases by yr. 2000.
I. Background

1. United Savings Association of Texas, Houston, Texas, (“USAT”) was acquired in 1983 by Charles E. Hurwitz. Hurwitz leveraged USAT’s institution through speculative and uncontrolled investment and trading in large mortgage-backed securities portfolios, with the proceeds being invested in other real estate projects and corporate publicly held assets. Investments in USAT and USAT’s declared insolvent and placed into FSLIC receivership on December 30, 1988. Loss to the FSLIC Resolution Fund is $1.6 billion.

2. While Hurwitz was a controlling shareholder and de facto director of USAT he acquired, through a hostile takeover and with the strategic and financial assistance of Drexel Burnham Lambert, Inc., Pacific Lumber Company, a logging business based in northern California. As a result, Hurwitz came to control the old growth, virgin redwoods that are the principal focus of the Headwaters Forest.

II. FDIC Litigation

1. On August 2, 1996, FDIC as Manager of the FSLIC Resolution Fund filed a lawsuit against Mr. Hurwitz seeking damages in excess of $250 million.

a. Complaint contains three claims:

   Count 1 alleges breach of fiduciary duty by Hurwitz as de facto director and controlling shareholder of USAT and breach of fiduciary duty and implied covenant of good faith and fair dealing with a Net Worth Maintenance Agreement to maintain the capital of USAT;

   Count 2 and 3 allege gross negligence and aiding and abetting a violation in establishing, controlling and monitoring two large mortgage-backed securities portfolios. The FDIC has authorized suit against three other former directors of USAT that we have not yet sued; a tolling agreement with these potential defendants expires on December 31, 1999. The court may order FDIC to decide to add them as defendants prior to that date.

b. Status of FDIC Litigation: Pursuant to the Federal Rules of Civil Procedure, the parties—to through counsel—have met and exchanged disclosure statements that list all relevant persons and documents that support our respective positions. Moreover, the parties have agreed to a scheduling order that reflects a quick pre-trial period. All discovery is to be concluded by July 1, 1998. The court has set a scheduling conference to discuss all unresolved scheduling issues for October 24, 1995; and a follow-up conference on November 28, 1995.

III. Settlement Discussions

1. FDIC has had several meetings and discussions with Hurwitz’ counsel prior to the filing of the lawsuit. Hurwitz has never, however, indicated directly to FDIC a desire to negotiate a settlement of the FDIC’s claims.

2. As a result of substantial attention to Pacific Lumber’s harvesting of the redwoods by the environmental community, media inquiries, Congressional correspondence, and the state of California, Pacific Lumber has issued various press releases stating it would consider various means of preserving the redwoods.

IV. OTS Investigation

1. Since July 1994, the Office of Thrift Supervision has been investigating the failure of United Savings Association of Texas, initiating an administrative enforcement action against Hurwitz, five other former directors and officers, and three Hurwitz-controlled holding companies. The OTS has conducted an investigation of the Net Worth Maintenance Agreement and unsafe and unsound conduct relating to the two MBS portfolios and USAT’s real estate lending practices. If OTS files an administrative lawsuit, if many allege damages that total more that $250 million.

2. OTS has met with Hurwitz’ counsel; no interest in settlement has been expressed to OTS.
3. OTS is likely to formally file the charges within 45 days.

4. Appears to FDIC inappropriate to include OTS representatives in the meeting to discuss possible settlement of its claims against Hurwitz since OTS has not yet approved any suit against Hurwitz or his holding company. Moreover, no OTS’ participation at such meeting may be perceived by others as an effort by the Executive Branch to influence OTS’s independent evaluation of its investigation.

V. FSLIC Resolution Fund (“FRF”) Issues

1. The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”) (enacted Aug. 9, 1989), accord special treatment to certain savings & loan associations that failed prior to its enactment. The FRF obtains its funds from the Treasury and all recoveries from the assets or liabilities of all FRF institutions are required to be conveyed to Treasury upon the conclusion of all FRF activities. The statute does not establish a date for the termination of the FRF. FRF fund always is in the red due to huge cost of these thrift failures.

2. To date, FRF owes the Treasury approximately $46 billion.

3. FDIC has decided that if Hurwitz offered the redwoods to settle the FDIC claims, we would be willing to accept that proposal. Because any assets recovered from FRF institutions are required to eventually be turned over to Treasury, the trees (i.e., the land conveyed) conceivably could conceivably be transferred to Treasury.

4. May need legislation to assist in transfer of land and other details of such a conveyance. We have discussed such a transfer not as a focus of FDIC’s current efforts which are to persuade Hurwitz of liability and to seriously consider settlement.

VI. Impediments to FDIC Direct Action Against Hurwitz

1. FDIC has no direct claim against Pacific Lumber through which it could successfully obtain or seize the trees or to preserve the Headwaters Forest. Neither Maxxam, Inc. (which owns Pacific Lumber and is controlled by Hurwitz) nor Pacific Lumber are defendants in FDIC’s suit. There is no direct relationship between Hurwitz actions involving the insolvency of USAT and the Headwaters Forest owned by Pacific Lumber. Pacific Lumber was acquired by Maxxam but does not appear to have any interest in USAT or United Financial Group, USAT’s first-tier holding company. Moreover, neither USAT nor UFG ever owned an interest in Pacific Lumber.

2. FDIC’s claims alone are not likely to be sufficient to cause Hurwitz to offer the Headwaters Forest, because of their size relative to recent Forest Service appraisal of the value of the Headwaters Forest ($600 million); because of very substantial litigation risks including statute of limitations, Texas negligence, and other negligence business judgment law, and Hurwitz’s role as a de facto director; and the indirect connection noted above, including the risk of Hurwitz facing suit for violation of federal timber sales security holdings if its assets were disposed of without Pacific Lumber being compensated by either outsiders or Hurwitz or entities he controls.

To: Jack D. Smith@LEGAL OGC
From: Jeffrey Williams@LEGAL

Subject: Hurwitz
Date: Wednesday, October 25, 1995 11:51:51 EDT

Certified: N

Jack: I’m talking with my DOD contacts in the Base Closures Committee, particularly a guy named Joe Sikes. They are interested in talking with us to educate themselves and us (and other appropriate folks/ agencies) on the possibilities and difficulties of including some kind of a military facility in a transaction with Hurwitz.

He is discussing it with his folks and I think they would be a asset to tomorrow’s meeting. The statute on more than one clear that it will take more than FDIC’s claims to get trees and that FDIC remains an important player in exploring creative solutions to the issue. Let me know if they should be invited to the meeting.

MOSEL THOMPSON
Department Assistant Treasury, 612-202-3221

RECORD 35
CONFIDENTIAL/PRIVILEGED COMMUNICATION
ISSUES FOR 10/26 MEETING
I. FDIC Transfer of Assets Obtained in Settlement to Treasury

a. FDIC lawsuit against Hurwitz filed on behalf of the FSLIC resolution Fund (“FRF”), which was created by Financial Institution Reform, Recovery and Enforcement Act of 1989 as the Federal Savings & Loan Insurance Fund. The FRF is to be managed by the FDIC and separately maintained and not commingled with any other FDIC properties under 12 U.S.C. sec. 1821(a). b. Assets and liabilities of the FRF are not the assets and liabilities of the FDIC and are not to be consolidated with the assets and liabilities of the Bank Insurance Fund or the Savings Association Insurance Fund for accounting, reporting or for any other purpose. Id. at 1821a(3).

c. The FRF is to be dissolved upon satisfaction of all debts and liabilities. Upon dissolution, any remaining funds shall be paid to Treasury. Id. at 1821a(6).

d. There are over 70,000 members of United Savings Association of Texas, including uninsured depositors, that have a priority over Treasury in any assets recovered by FRF. Currently, FRF owes Treasury about $46 billion.

e. Coastal Barrier Improvement Act of 1990 (Pub.L. 101-501) imposes certain restrictions and procedures on the FDIC’s ownership and ability to transfer property that is within the statute. 12 U.S.C. sec. 1441a-3. May enhance FDIC’s ability to transfer to other Federal agencies.

1. Unclear whether Headwaters Forest is within the scope of the Act.

2. Moreover, for the Act to apply to FDIC’s title to trees, a claim must be held by FDIC in its corporate capacity. FDIC must determine whether and, if so, how, FRF can transfer title of assets to FDIC corporate. If FRF can transfer title to Headwaters Forest to FDIC for purposes of the Act (is within scope of the Act, the Act provides mechanism for FDIC to transfer title of assets directly to Interior.

II. Factors that Impede Settlement

a. FDIC has no direct claim against Pacific Lumber through which it could successfully obtain or seize the Headwaters Forest. Neither Maxxam, Inc. nor Pacific Lumber are defendants in FDIC’s suit. As advantageous to Pacific Lumber and Hurwitz. Tax losses may be viewed by Hurwitz as advantageous to Pacific Lumber and may indirectly result in minority shareholders acquiescence to transaction.

3. Evaluation of effect of tax losses to Pacific Lumber and Maxxam for transfer of Headwaters Forest at less than fair market value. Tax losses may be viewed by Hurwitz as advantageous to Pacific Lumber and Hurwitz, and may indirectly result in minority shareholders acquiescence to transaction.

4. California congressional delegation has shown significant interest in Headwaters Forest and have been receptive to efforts to conclude a “debt for nature” transaction. Delegation may act as liaison between involved parties and may be interested in proposing any legislation needed to facilitate suit by Interior.

5. No direct discussions have yet occurred between Hurwitz and any involved agency over the Headwaters Forest transaction. His recent interview suggests his interest in such discussions with such representatives.

To: Jack D. Smith@LEGAL OGC
From: John V. Thomas@LEGAL

Subject: re: FDIC Transfer of Assets Obtained in Settlement to Treasury

Date: Friday, January 5, 1996 17:21:07 EST

Certify: N

To: [for the top 10 list as well, I hope).

4. United Savings. OTS has filed their notice of charges. The statute has been allowed to run by us on everyone other than Hurwitz. We have moved to stay our case in Houston, and are awaiting a ruling. Two people, Munitz and Gross (I think), have moved to intervene. And there is the question of whether a broad deal can be made with Pacific Lumber.
was not for her to decide. I concluded from her manner that she did not intend to express an opinion and didn’t want to talk about it any more, so we parted without further discussion. I advised Elizabeth Blaug about this yesterday afternoon, I said that if Hurwitz wanted to have global settlements with OTS and FDIC involved he would have to ask them just as happened with EY and Deloitte.

---

**Record 37**

**NOV/DEC 1995**

Jeff Wms.—11:40 Thur 60648

Nov 14 11:09

722 Jackson Place, CEQ Conf Rm.

Rick Sterns: Re Judge Hughes, 906-7666.

Rose Delston: Parker Jane, Jack Shetman, 362-2360.

Pat Bak: 60664.

M. Palen: 60683.

Ann Shopek: 212-973-3215.

Judge Hughes—use of overlapping auth

Harness

Thur. order

Carolyn talked to Ken Thur.

---

**Record 38**

11/28/95—Headwaters mtg CEQ go GSA route to transfer from Trees to Interior “Cystall Barriers mgt Act”—“12 U.S.C. 1441a–3”—RTC, FDIC property—KM—extremely accurate reports came back from environmentalists—keep confidentiality physical assets may not count as money for “scoring.”

Treasury cannot give FRF credit for the trees.

If policymakers make decision to accept trees—increases Fed. deficit—Insumountable issue—there is a hole here if you take trees.

Interior disagrees with FDIC analysis of Coastal Barriers and they think it does work.

Eliz.—our group will meet again to sift thru remaining questions. No formal contacts until OTS files.

John G.—we are leaning toward FDIC opening discussions

Lots—scoring problems were the biggest difficulties.

60042 D.G.

John G.—after admin suit is filed it is time for opening any discussions—prior to that we get back to Trees, to see if there’s any reason not to go forward with negotiations.

---

**Record 39**

**ATTORNEY-CLIENT/WORK PRODUCT**

**CONFIDENTIAL COMMUNICATION**

**DRAFT OUTLINE OF HURTWITZ/REDWOODS**

**BRIEFING**

I. Introduction

Significant development involving multi-Agency initiative led by Office of the Vice President to obtain title to last privately owned old growth virgin redwoods and place under protection of Department of Interior’s National Park Service. FDIC plays prominent role in this Government initiative.

II. Background—United Savings Association of Texas, Houston, TX

a. USAT failure—December 30, 1988—cost to FSLIC $1.6 billion

b. FDIC as Receiver for USAT

1. Investigation.

2. Litigation

(i) Status of litigation.

(c) OTS—separate statutory enforcement authority.

1. “Arrangement” with FDIC.

2. Investigation.

3. Administrative enforcement action.

(i) Status of ALJ proceeding.

III. Pacific Lumber Company

a. Maxxam

1. Hurwitz as 60% owner, controlling shareholder of public company.

b. Hurwitz has control over assets (Kaiser Aluminum; Sam Houston Race Track; Real estate subsidiaries; Pacific Lumber).

b. Hurwitz acquisition of Pacific Lumber

1. During Hurwitz’s USAT involvement.

2. Relationship with Drexel Burnham Lambert and Michael Milkin.

3. Ownership of Headwaters Forest

(a) Northern Spotted Owl and Marbled Murrelet.

(b) Hurwitz management and logging policies of Pacific Lumber

IV. Headwaters Forest

— a. Description—Northern California, near Eureka; 3,300 acres of Pacific Lumber’s 195,000 acres; unlogged, inaccessible, no roads; endangered species; Pacific Lumber’s only remaining valuable asset.

b. Previous legislative initiatives—since 1983.

(c) Hurwitz’s relationship with environmental community—always tense.

1. Numerous picketing; spiking of trees; Earth First! and others.

2. Department of Interior’s prior efforts to save Headwaters.

3. CEQ negotiators

V. FDIC and Headwaters Forest

a. Pacific Lumber not a direct asset of USAT’s.

b. Environmental community focused attention on existence of FDIC’s ongoing investigation of USAT’s failure.

(c) Chairman Helfer indicated in letter to The Rose Foundation that FDIC would consider a proposal that includes the Headwaters Forest in a settlement of claims against Hurwitz if Headwaters was offered.

VI. Status of Headwaters Forest Initiative

a. FDIC working with CEQ, Interior, other agencies in exploring viability of “debt for nature” settlement. Dated US Dept. of Agriculture, Forest Service appraisal valued Headwaters Forest at $499 million.

b. FDIC made clear to all involved Government principals that settlement value of FDIC (and OTS) lawsuits insufficient to obtain Headwaters Forest, and US will have to find additional assets to provide Maxxam.

(c) Under auspices of CEQ and Interior, numerous meetings with Hurwitz exploring the concept that swaps of other Government-owned properties held by GAO as excess or surplus land, and approved for sale by other Government principals that settlement value of Headwaters Forest at $499 million.

(c) Hurwitz also expressed interest in existing concept that includes a swap of other government-owned properties held by GAO as excess or surplus land.

VII. Recent Developments

1. Hurwitz, on behalf of Pacific Lumber and its subsidiaries, filed “taking” cases against the U.S. and State of California alleging that the designation of Headwaters Forest and its properties as “critical habitat” for the endangered species Marbled Murrelet prevented Pacific Lumber from logging and resulted in substantial lost revenue. The complaint seeks more than $460 million in losses resulting from prohibition on logging on 50,000 acres of Pacific Lumber land.

2. Department of Interior with access to conduct new, confidential appraisal of Headwaters Forest.

3. Previous efforts to land exchange negotiations

4. CEQ negotiators not discussing FDIC and OTS lawsuits as part of Headwaters Forest transaction; Hurwitz representatives from Patton Boggs law firm indicated their expectation that “all Government lawsuits” will be resolved as part of transaction.

4. Hurwitz’s counsel in FDIC litigation not raise settlement, but have tangibly slowed pace of suit.

5. Interior projects transactions can close in September 1996.

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**Record 40**

**CEQ**

722 Jackson Place, NW, Washington, DC 20540.

To: Jack Smith

FAX Number: 895-5750

Phone Number: 202-895-5750

Date 8/8/96

Phone: (202) 356-5750

FAX TRANSMISSION

Subject of Material: Questions on Headwaters.

To: Jack Smith

Date 8/8/96

Q1. Why is the Administration willing to swap land with Charles Hurwitz when his very actions in acquiring Pacific Lumber Company led to lawsuits filed against him by the FDIC and Office of Thrift Supervision? Why doesn’t the Administration forget the land exchanges and get Hurwitz to settle his debts in exchange for the trees? A1. would be inappropriate because of independent status of regulators, pending litigation/administrative proceeding. . . .

Q2. In light of question 1, why didn’t FDIC or OTS bring up a debt-for-nature settlement with Charles Hurwitz? A2. Q3. Charles Hurwitz’s purchase of Pacific Lumber led to a $1.6 billion collapse of a Texas Savings & Loan; that amount is likely more than enough to cover the acquisition of the old growth redwoods on Palco property. Why then is the Administration looking for excess property to exchange? A3. Q4. If the regulations are not actually seeking $1.6 billion, what monetary damages are they seeking against Hurwitz? A4. Q5. There is no direct relationship between the Headwaters Forest and the actions of Mr.
Harwitz with respect to the insolvency of United Savings Association of Texas ("USAT"). Moreover, Pacific Lumber Company is not a defendant in either lawsuit. Although Pacific Lumber was acquired by Maxxam, it does not appear that Pacific Lumber owned any interest in USAT or United Financial Group, Inc. ("UFG"), USAT's then-trading company.

The Administration cannot dictate a debt for nature settlement with Mr. Hurwitz because F.D.I.C. and OTS are independent regulatory agencies with separate and distinct statutory and fiduciary responsibilities. The Administration is prohibited by law from directing the outcome of a transaction commenced by F.D.I.C. or OTS in the performance of either agency's official duties.

2. The framework for action commenced by F.D.I.C. and OTS requires the agencies to seek recovery for losses incurred to the insurance funds and appropriate civil money penalties. The agencies are chartered to recover money, not to establish national parks. They often initiate settlement discussions to recover money or assets which can be converted to money. For example, the OTS has already settled some issues related to the USAT failure for a $9.4 million payment from USAT. Nevertheless, the F.D.I.C. is open to appropriate settlement of its claims including a debt for nature swap should Mr. Hurwitz make such a proposal.

3. Notwithstanding the fact that the OTS and Mr. Hurwitz are discussing Mr. Hurwitz for $1.6 billion. Although the agencies believe that Mr. Hurwitz' conduct resulted in significant losses to USAT, both suits seek damages and restitution for mismanagement and gross negligence that are directly attributed to specific acts and transactions within the applicable statute of limitation.

4. The F.D.I.C. suit against Mr. Hurwitz seeks damages in excess of $520 million. The OTS administrative enforcement proceeding seeks reimbursement for losses to the insurance funds in an unspecified amount to be proven at trial.

To: John V. Thomas@LEGAL PLS@Washington
From: Jack D. Smith@LEGAL OGC Hdgq@Washington

Subject: Update on Headwaters Forest

Date: Friday, September 6, 1996 9:05:59 EDT

Certify: N

Forwarded by: I am advised that the draft settlement proposal we received from Patton Boggs has been discarded by Interior so we need not re-visit it. As to the Q & A case, my understanding is that it will not be part of this deal, and may proceed even if there is a government objection. It is the position of both agencies that it will not be part of this deal, and may proceed even if there is a government objection.


3. H.R. 2712—Acquisition of Headwaters Forest. Congressmen Frank Riggs of Eureka in northern California requesting assistance in the acquisition of a 44,000 acre parcel of timbered lands owned by Maxxam Corporation of Texas (see attached). You may remember that Humboldt and Boxer attempted to appropriate funds in the 1995 Session (H.R. 2966 attached). Maxxam, owned by Charles Hurwitz of Houston, conducted a leveraged buyout of Pacific Lumber in the late 1980’s to acquire 184,000 acres of timber for $900,000,000. You will recognize that these tracts are a part of the habitat for the marbled murrelet (see attached article).

To repay the bonds secured for the purchase, Mr. Hurwitz has stepped up the cutting schedule worked out with P.L.’s former owners. On September 15, 1995, the moratorium on logging the forestation of Maxxam’s un-logged tracts will expire. Thus, the Congressional delegation and the environmental community are inquiring if Interior deems some form of compensation strategy. They also wrote to the Forest Service, but the Forest Service had no suggestions on how to acquire the property.

In response to the delegation’s request, several staff from Interior began to review the possibilities that exist for acquiring the 40,000 acre tract through creative land exchange. A summary of the steps taken is as follows:

1. Governor’s Headwaters Task Force

Governor Wilson created a Headwaters Task Force several months ago to look at strategies for acquiring these acres. Representing Interior are Ed Hasty, BLM State Director, and Phil Detrick, FWS. The Governor’s Office has decided to seek State legislation to trade approximately $70,000,000 in lands owned by The California State Lands Commission for Headwaters Forest. The Governor’s Office would like for Interior to put lands up for trade to match their strategy. Terry Gorton, the Governor’s negotiator, has met with Hurwitz and thinks the acreage could be had for a sum less than the Forest Service’s appraisal of $500,000,000.
The California Desert Protection Act and the Natural Communities Conservation Program (NCCP) have consumed all of BLM’s lands which were available for disposal in California. Thus, BLM, nor FWS for that matter, has any trading stock within California which is available for such a transaction.

C. Military Base Closure Land Exchanges

The American Lands Conservancy (ALC), also a member of the Governor’s Task Force, has reviewed with the Governor’s Office the potential of acquiring small acreages at closing military bases in northern California. Hamilton Air Field, located in the Bay Area, recently sold a tract for $10,000,000 to a local developer. The Governor would like to capture these funds and others as bases are sold and the Office of Thrift Supervision has operation. It is anticipated that ALC will provide a report to the delegation regarding the opportunities at Bay Area military bases closing.

III. Debt for Nature Swap

The Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) have claims against Charles Hurwitz and United Savings of Texas which they are preparing to seek. FDIC and OTS’ claims are considerable and would have to be resolved. The OTS claims result from mortgage-backed securities what the Department is seeking to protect. Thus, there has been some support for a debt-for-nature swap for FDIC and OTS’s claims for the 40,000 acres. FDIC and OTS are amenable to this strategy if the Administration supports it.

Attached is a copy of the Complaint and Jury Demand on behalf of the FDIC. The Board of the FDIC approved this action last week. The OTS is expected to take similar action no later than mid-October.

III. Next Steps

Those of us working on this (Jay Ziegler, Tom Tuckman, Geoff Webb, and me) are seeking guidance from you on how to proceed. The possible next steps are as follows:

1. Request a group meeting (Interior, FDIC, OTS) with the Department of Justice to learn their view on a Debt-for-Nature Swap concept for FDIC and OTS’s claims.

2. Annoint a DOI Team to represent the Department in the negotiations with Hurwitz (FDIC and OTS wish to have us at the table).

Determine which Interior agency would be the most appropriate for the long-term ownership and stewardship of the acreage. (BLM has suggested that they are in the best position to do so. A similar argument can be made for the Park Service. The Forest Service may have notions that they are most appropriate.) Your recommendation early will reduce conflict about expectations.

Determine what Interior’s involvement may mean for the Department from a policy perspective.

Thank you for your attention to this project. It appears to represent an opportunity for the Department to resolve long-standing problems on the Headwaters Forest.

Attachments

—March 24, 1995 Letter to Secretary Babbitt Headwaters Forest Act, H.R. 2866
—Briefing Paper on the History of the Act
—FDIC Action
—Wall Street Journal Clipping
—The Oregonian Clipping
—BLM Statement on Old Growth Reserve System

cc: Jay Ziegler, Geoff Webb, Tom Tuckman, Larry Mellinger

Following is a list of individuals with whom I have worked in the recent past on projects for the Secretary’s Office who I consider very trustworthy. I cannot say that they have a specific background in base conversion sites, but they are certainly well schooled in commercial real estate development, hotel development, and residential development in California.

Bruce Karatz, President, Chairman & CEO, Kaufman and Broad, 10877 Wilshire Boulevard, 12th Floor, Los Angeles, CA 90024, 310-443-8000, 310-443-8009 (fax)
Richard M. Ortwein, President, Koll Real Estate Group, 408 Van Kirk Avenue, Newport Beach, CA 92660, 714-933-3030, ext. 249, 714-747-1084 (fax)
William (Bill) D. Sanders, Chairman, Security Capital Group, Inc., 128 Lincoln Avenue, 3rd Floor, Santa Fe, New Mexico 87501, 505-620-8214

Table 27: Timber Forest Land and Harvested by State—Fiscal Year 1996

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<thead>
<tr>
<th>State or Commonwealth</th>
<th>Timber sold</th>
<th>Timber harvested</th>
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<td>Sales</td>
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1 Includes nonconvertible products such as Christmas trees, cones, burrs etc.
2 States not shown had no timber sold or harvested in fiscal year 1996.

3 Includes reforestation and stand improvement costs and timber salvage. Does not include value of roads or brush disposal.

4 MBF = thousand board feet.

5 Includes reforestation and stand improvement costs and timber salvage. Does not include value of roads or brush disposal.

6 Fiscal Year 1996

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E2502 CONGRESSIONAL RECORD — Extensions of Remarks December 20, 2001

Conservation Leaders - sustainability, health, diversity, and productivity of all forest lands

Dun & Bradstreet LLP
Attorneys at Law
Eureka, CA

Hor. J. Michael Brown,
Judge of the Superior Court, Humboldt County
Superior Court
Eureka, CA

Re: Epic v. California Department of Forestry, Humboldt County Superior Court

Dear Judge Brown:

We just received a copy of your minute order dated July 15, 1996. We have been advised by the Clerk of the Appellate Court that Petitioner, through his attorneys, has requested a temporary stay of your judgment in this case against the Appellate Court. The Appellate Court, according to the Clerk, has denied any and all injunctive relief on this Plan.

I would therefore seem that there is no need for the Superior Court to issue a temporary stay because there will be no stay forthcoming from the Appellate Court.

Workers have been on site since Monday, July 15, 1996. Please advise immediately as to whether we must now suspend operations until July 22, 1996.

Very truly yours,
David H. Dun.

---

Document DOI-C

United States Department of the Interior, Office of the Secretary

MEMORANDUM

To: Jay Ziegler, Geoff Webb, Tom Tuckman
From: Allot, Mellinger, Special Assistant—Land Exchanges
Subject: Update on California Headwaters Forest Project

A couple of new developments have emerged in the past several days. The following is an update on these issues:

1. Red Emerson Acreage.

I believe that I shared a letter with you that I received on August 4 from EPIC regarding logging in Headwaters Grove. The letter requests assistance in resolving the conflict of the current logging of S.P.I.'s holdings in the area, which is permissible under Timber Harvest Plan 1-90-066, and preservation of the watershed protection along the Little South Fork of the Elk River.

I left for vacation before looking into the issue so I was unprepared with a response when Perry deLuca of Congressman Stark's office called on Monday requesting assistance. Mr. Emmerson of Sierra Pacific Industries and question him about any possible opportunity to acquire this land.

In brief, Mr. Emerson and his children are the sole owners of Sierra Pacific Industries. S.P.I. owns over 1,200,000 acres of timber lands in California and 19 sawmills ranging from the Todd mill, on the north, which is predominantly softwood, to Little South Fork (about which EPIC is concerned), there are 9,600 acres under ownership personal of Mr. Emerson, not S.P.I. He has a 56% ownership; his partner owns the other 44%. He is going to be killed by second and third growth. The acreage is timed by second and third growth. He would be willing to either sell or exchange the acreage if we wish to do so. However, he did state that the objection to the timbering is the low resource value because it does not contain any old growth attributes.

I shared this information with Mr. deLuca. The Congressman intends to call Mr. Emerson to follow up and explore options. Also, the staff will investigate if Mr. Emerson's holdings were in fact included in the Headwaters legislation. I will call Ed Hasty and attempt to learn more about BLM's relationship with Mr. Emerson and whether we have a resource evaluation of these holdings.

2. Telephone Conference Call With OTS and FDIC.

Yesterday afternoon we held a telephone conference call with the Federal Deposit Insurance Corporation and Office of Thrift Supervision to share information. Participating in the call were Richard Sterns of FDIC and David Renaldi of OTS, Jack Smith of FDIC, Larry Mellinger and me of DOI. Also invited but not joining in were Tom Jensen of CEQ, Jay and Geoff.

The OTS staff were reluctant to share their work on a claim against Hurwitz/Maxxam. They indicated that Interior might be approaching a point on this topic where Interior might be attempting to influence policy at OTS. We applauded them for that foresight and did not press for information. They did state that there is a claim yet; however, if they decide to file, it will be soon. As soon as that decision is made, they offered to notify DOI and FDIC. I requested that they continue to seek information from us should it be useful.

The FDIC reminded all of us of their claim against Maxxam is "owned" by FSLIC's Resolution Account. This account has $46B already on deposit from claims. Therefore, it is unlikely to reasonably expect any contribution from Congress for Treasury to accept reforested forest property in lieu of cash payment and, then, redirect the title of the acreage to DOI.

The OTS staff would not comment on such a strategy for their claim against Maxxam.

There was some interest in the notion that the delegation would request acreage at northern California military base closings to offer as land swaps to Hurwitz. No matter how much caution I expressed on this topic, the FDIC and OTS staff encouraged support. I explained that the American Lands Conservancy would probably present a proposal to the delegation soon, but that DOI would not be a party to it.

I shared the conversation that I had recently with Terry Gorton of Governor Wilson's office. FDIC and OTS are wondering why DOI is not more aggressive with Hurwitz and is permitting Wilson's Task Force to take the lease. Based on this, perhaps we should revisit DOI's position and our participation in the negotiations. Because Patton/Boggs attorneys are reaching out to DOI for a meeting, DOI could meet with them for exploratory purposes.

3. Meeting with Justice.

You will recall that Tom Epstein encouraged DOI staff to meet with Justice officials to insure no potential conflict on DOI's side of this issue. Larry Mellinger visited with Jack Smith and had a lengthy discussion about this. He learned that FDIC does not intend for Justice to represent them on this case. Most likely, OTS will also keep their claim interests. Smith wonders if DOI really needs to be concerned about this. Larry has offered to confer with Bob Baum and John Leslie and relate their sense of whether these matters can be resolved.

For your attention. Please call me if you want further elaboration on any of these points.

cc: Larry Mellinger, Solicitor's Office

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TALKING POINTS OF HEADWATERS FOREST

Headwaters Forest is a 3,000 acre stand of old growth redwood forest, near Humboldt, California. Pacific Lumber Company owns headwaters, which is owned by MAXXAM, Inc., owns Headwaters, and the additional 195,000 acres of timberland which surround Headwaters. Headwaters was appraised several years ago at $499 million. Many believe the figure is inflated, due to other circumstances, including injunctions in connection with marbled murrelet habitat, which environmentalists have called on the Administration to acquire Headwaters.

Charles Hurwitz is a major owner in MAXXAM; the FDIC and Office of Thrift Supervision both filed lawsuits (now pending) in the hundreds of millions of dollars against Hurwitz and MAXXAM, alleging, among other things, a connection between the failure of United Savings Association of Texas, a MAXXAM subsidiary, and the purchase of Pacific Lumber.

Headwaters is of great importance to Californians (particularly northern California), including Governor Wilson. Over the last 6-8 months or so, the Democratic congressional delegations, individually and environmentally, have called on the Administration to acquire Headwaters.
In February Katie McGinty and John Garamendi met with Hurwitz and his Washington representative, Tommy Boggs. Several ideas for Headwaters acquisitions or conservation were discussed, including a land swap, which could potentially incorporate a “debt-for-nature” piece in which pending litigation against Hurwitz could be settled.

In a confidentiality agreement was signed between the Department of Justice and Hurwitz’s representatives; subsequently representatives from CEQ, FDIC, Department of Justice and Interior, and White House Counsel held a meeting with Hurwitz and his representatives to identify potential government surplus properties which could be part of the deal. Hurwitz has expressed particular interest in Treasure Island, and several military bases in California and Texas. California tentatively offered to throw into the “pot” the timber rights to LaTour state forest, in the Sierra Range north of Redding.

In recent weeks several key decision have occurred: (1) 9th Circuit ruled timber salvage can now take place on Headwaters; logging can proceed on September 15, the last day of the marbled murrelet mating season; (2) Hurwitz, likely in concert with the Endangered Species Act moratorium means the marbled murrelet will be listed in the next couple weeks. Hurwitz must prepare a timber harvest plan and a Habitat Conservation Plan before logging starts.

Last week Hurwitz filed a takings claim against the U.S. Fish and Wildlife Service, arguing the ESA is reducing the value of his property. The lawsuit inexplicably values Headwaters at only $17.5 million. And not until now be acquired by Department of Justice, which was previously being initiated by the Bureau of Land Management and California.

Katie McGinty and John Garamendi convened an interagency meeting yesterday to discuss strategies in light of the lawsuit. Discussions between Hurwitz and Administration representatives have ceased pending a hard look at key issues, including a Department of Justice review of the litigation aspects, and a meeting between Hurwitz and Garamendi is scheduled, in order to ascertain Hurwitz’s intent.

NOTE TO GEOFF, JAY, AND TOM: I visited briefly with George yesterday as he was running out of town to go on vacation about Headwaters. He said that he had quickly looked over my memo and had a few thoughts about it. First, he was comfortable that we would continue to look for options to purchase the property, including the FDIC and OFS lawsuits. He does not have a problem with us attending meetings to pursue the Debt-for-Nature Swap concept as long as we do not attempt to take the lead on such a proposal, the success of which the Debt-for-Nature Swap has so a low likelihood of success that he would encourage us to not invest a great deal of time on it. Having said that, he hopes that the situation would not have moved much while he was on vacation.

Attached is a copy of the letter that I received from EPI yesterday. I know little about our relationship with Sierra Pacific Industry and its subsidiary Elk River Timber. What suggestions do you all have about our response?

Allen.

From: Allen McReynolds, Adm, Special Assistant—Land Exchanges
Subject: Update on Headwaters Forest Project

The following is a brief update on the activities of the local environmental groups and Congressional delegation to bring attention to the Headwaters Forest Project.

A. Congressional Delegation

1. Letter to Panetta. Five members of the delegation forwarded a letter (see attached) to Leon Panetta yesterday requesting the Administration’s support for a Debt-for-Nature Swap for Pacific Lumber Company’s holdings at Headwaters Forest.

2. Support of Vice President. Jill Ratner, President of the Victory Fund of San Francisco, met with the Vice President last week in California to request his support for a Debt-for-Nature Swap.

3. F.D.I.C. and O.T.S. As you know, we have engaged in bi-weekly telephone conference calls with staff handling the cases at the F.D.I.C. and the Office of Thrift Supervision. FDIC’s case was filed in August; OTS has not specified when they would file their claims.

4. Policy Support. The delegation continues to call me almost every day to inquire what we have done to move this along within the previous 24 hours. They continue to press Interior to take a more proactive approach to jurisdiction of the issues, i.e., a call for using Headwaters Forest as a negotiable asset for F.D.I.C. claims against Maxxam.

5. Federal Assets. We are reviewing the list of possible Federal assets that can be made available to purchase lands from Pacific Lumber.

B. State Legislation

1. State Legislation. The Headwaters Bill sponsored by Scher was killed in the Senate by Governor Wilson’s staff last week. The Governor had requested authorization to exclude $700M in Federal Assets to purchase Headwaters Forest. The bill was a State Legislation.

2. Letter to Pacific Lumber. As a followup to the Bill’s demise, Doug Wheeler wrote a letter to Pacific Lumber’s Chairman requesting a meeting to review creative strategies for acquisition of Federal Assets. They did not spell out specific sources and authorization amounts, it has been said that the Governor was embarrassed by the legislation, and, therefore, directed that it be killed.

3. E.P.I.C. Lawsuit. The San Francisco Chronicle editorial, attached, I think we need to consider whether the Administration can and should take coordinated action to evaluate and possibly consider such an approach.

I propose that one of you convene interested Federal parties including the U.S. Forest Service, FDIC, Office of Thrift Supervision (OTS), OMB, CEQ, DOJ and OMB to analyze options that might be available to us. Given the crescendo of public attention that is ahead of us, I suggest we try to do this ASAP albeit consistent with your incredibly busy schedules.

George T. Frampton, Jr.

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George T. Frampton, Jr.
Elk River Timber Company. The Elk River holdings total 9,600 acres of land adjacent to Pacific Lumber and Sierra Pacific’s holdings. The property owners are Red Emmerson and Jim Lohr, local investors. E.F.I.C. has requested our support to acquire these acres as they are a critical linkage and habitat sources. Mr. Emmerson has expressed interest by telephone to me in conducting a land exchange with Interior/FS, but I need direction to proceed. BLM does not own any land that we want to dispose of in this regard. It is my impression that the property does have lands which could be appropriate.

Thank you for your attention. I look forward to the opportunity to visit with you about the topics for which we have been analyzing for interior’s role in this project.

cc: Jay Ziegler, Tom Tuchmann, Geoff Webb

DOCUMENT DOI–H
EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL ON ENVIRONMENTAL QUALITY

To: Dave Sherman, Forest Service, 205–1604;

From: Elisabeth Blaug, Associate General Counsel

Subj: Headwaters Forest Meeting October 26

Most of you attended a meeting this past Friday at CEQ Chair Katie McGinty’s office, at which we initiated discussions on a potential debt-for-nature swap. As you will recall, the FDIC recently filed a $250 million suit against Charles Hurwitz in exchange for release of its claims. Mr. Hurwitz is a major stock owner in Maxxam, which acquired Pacific Lumber Company, which owns and logs the Headwaters Forest. Because this forest contains approximately 3,000 acres of virgin redwoods, there is great interest to preserve it. Among a number of options to consider for ensuring this happens is a potential debt-for-nature swap, by which FDIC would transfer the Headwaters from Mr. Hurwitz in exchange for release of its claims.

At our meeting last Friday, a number of concerns were raised concerning this proposed swap, which relate in some part to your agency. Essentially, we need to examine if and how there may be a chain of ownership from FDIC to Treasury to a land management agency. Hence, there is a follow-up meeting tomorrow (Thursday) at 10:00 a.m. at FDIC, 550 17th Street, room 309E. We will attempt to identify the legal issues that need to be addressed to determine whether a debt-for-nature swap is feasible. I look forward to seeing you or your designate(s) tomorrow. Please contact me at 385–7430 if you have any questions. The FDIC contact is Jack Smith, Deputy General Counsel, at 896–3706.

DOCUMENT DOI–I
UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY

MEMORANDUM

To: Bob Baum
From: Larry Mollering

Subject: Headwaters—Alternative Methods for DOI Management

In addition to the methods in which the Headwaters Forest could possibly be transferred from the Treasury Department to Interior, which were outlined in the FDIC memorandum to Kathleen McGinty, dated November 6, 1995, there are two other practical statutory means by which Interior could administer the Headwaters Forest, should either FDIC or Treasury acquire the property as part of a debt-for-nature transaction.

The Refuge Administration Act

The Refuge Administration Act contemplates this has within the National Wildlife Refuge System which are established pursuant to a cooperative agreement with any state of local government, any Federal Department or agency, or any other governmental entity (16 U.S.C. §6684a(a)(3)(B)). Further, provisions of this subsection allow the specific terms of such a cooperative agreement to direct the course of any future disposition of the property subject to the agreement, notwithstanding other restrictions governing the transfer of lands.

Presumably such a cooperative agreement for the management of Headwaters could be entered into between DOI and the Treasury.

The Antiquities Act of 1906

The Antiquities Act of 1906 (16 U.S.C. §431) provides: “The President . . . is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof of parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”

President Jimmy Carter declared two such National Monuments by Presidential Proclamation December 1, 1978. The Yukon–Charley National Monument encompassed 1,720,000 acres, while the Yukon Flats Monument encompassed 10,600,000 acres. Within the Department of the Interior, the BLM has the discretion to set forth responsibility for management of the National Monument. Thus, presumably, regardless of whether Headwaters was better retained in the Treasury or the Interior, the FDIC or the Treasury Department, the President could declare it a National Monument, under the administration of the Secretary of the Interior. Such Presidential proclamations are not subject to the provisions of the Federal Land Policy and Management Act, 43 U.S.C. §1701, nor are they subject to NEPA, since NEPA does not apply to Presidential action.

DOCUMENT DOI–J
UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY
Washington, DC, March 26, 1996.

MEMORANDUM

To: John Garamendi, Deputy Secretary
Allen McReynolds, Special Assistant to the Secretary

Subject: Exchange Issues on Headwaters Project

You recently stated that you have reason to believe that Charles Hurwitz and Maxxam Corporation likely want a global settlement through the negotiation process for Headwaters Forest. By that, you were referring to the inclusion of a settlement for both the FDIC and Office of Thrift Supervision (OTS) lawsuits in the negotiation for the land acquired.

The process raises many legal and financial questions regarding the ability of the Administration to include settlement of these two lawsuits within the current negotiations. In the past several months, the issues relating to the FDIC lawsuit were analyzed by the headwaters multi-agency working group and a formal response was prepared (see attached). The OTS was not willing to participate in open discussions with the working group so none of the issues regarding the OTS lawsuit were known at this time. Restated briefly, the answers are as follows:

Question 1. Is it feasible for Hurwitz to transfer the Headwaters Forest to the FDIC in exchange for a settlement of the FDIC’s lawsuit and/or other assets? Yes, Hurwitz, through his control over Maxxam’s and its subsidiaries’ boards of directors, has previously influenced the transfer of Pacific Lumber assets to resolve other liabilities. The FDIC’s Chairman has stated that in the event the Headwaters Forest is offered to the FDIC as part of a settlement of the FDIC’s claims against Hurwitz, the FDIC Board of Directors would consider such assets to resolve the claims against Hurwitz. (Page 3, Issue 1)

Question 2. Can the F.D.I.C. transfer Headwaters Forest to Interior under existing authorities, without legislation? Yes. The F.D.I.C. could legally transfer title to the Headwaters Forest from the FSLIC Resolution Fund (FRF) to the F.D.I.C. determined that the state of the FRF at the time of transfer were such that the value of Headwaters was not better retained in the FRF for discharge of FRF liabilities. A case could be made in favor of such a determination at present, although the FDIC Board of Directors might prefer to sell FRF assets in view of contingent liabilities. Absent such a determination, an alternative might be for the FDIC to hold the Headwaters Forest for the time being, under management by the Interior Department of the Interior. (Page 8, Issue 2)

Question 3. What legislative mechanisms exist that may facilitate a transfer of the Headwaters Forest to the U.S. Department of the Interior with minimal financial outlay? Three (3) legislative authorizations provide a mechanism for an inter-agency transfer of title to the Headwaters Forest to the Interior Department. The three original authorities now considered appropriate are the Transfer of Real Property Act (16 U.S.C. 667b); Federal Property and Administrative Services Act (40 U.S.C. 481) and the Surplus Property Act of 1944 (50 U.S.C. App. 1622g). (Page 10, Issue 3)

Question 4. Can Interior accept Pacific Lumber assets from Treasury/F.D.I.C. without triggering a “scoring” claim? Any budgetary impact, including “scoring,” is dependent on the particular structure of the transaction and whether particular legislation is necessary to facilitate the acquisition or transfer of the Headwaters Forest. (Page 14, Issue 4)

Attached for your consideration is the full response drafted by F.D.I.C. and full citations involved in respective legislative, and financial obstacles involved.

Enclosure.

DOCUMENT DOI–K
LAW OFFICES OF THOMAS N. LIPPE,
San Francisco, CA, June 5, 1996.

To: Robert Baum, Deputy Interior
Subject: Weekend Discussions with Hurwitz

Mr. Hurwitz confirmed my suspicions as related above. We went on and on about the properties not having real value because entitlements were not assured. He dismissed Yerba Buena and Treasure Island as worthless. The same was said about all other properties that he had heard about. He demanded to have the appraisal and the list before deciding what to do about the demands.

I finally told them that if they did not believe that we were serious, then Charles Hurwitz should phone me immediately so we can arrange for the return of the original documents to us.

Other: Fax does not include map; Original with enclosed map to follow in the mail.

Date: June 5, 1996.

Case: HD–AQY.
Do order an appraisal of the Emerson property. I want that piece in place as soon as possible.

Good luck to us all.

DOCKET DOI-M

QUESTIONS REGARDING HEADWATERS GROVE,

JULY 19, 1996

1. Please provide an area map showing the property’s location. Describe the Headwaters Grove property and its physical surroundings so that other parties can be made aware of any other hazards surrounding it that involve Pacific Lumber?

2. What is the significance of the marbled murrelet as an endangered species for the property? What ESA or other potential development limitations from Federal or State law affect the Grove and surrounding area? What current limitations affect the property?

3. Explain the takings lawsuit that Maxxam has filed. What are the grounds for the lawsuit? What is the status of the suit? Is the claim credible?

4. Provide a history/chronology of the negotiations to exchange the Grove from Maxxam and its predecessors. When and how did Maxxam become involved? What volume of timber (green or salvage) has been cut from the Grove and surrounding area owned by Pacific Lumber thus far?

5. What are all the elements of the DOI proposed exchange? Does the exchange involve the FDCIC/IRB/Forest Service? Other agencies? Any tax incentives or FIDC/OTS claims involved?

6. Have formal appraisals on the property involved in the exchange been done? What is the basis for the Maxxam estimates? DOIs?

7. Does DOI contemplate needed legislation for this deal to occur, or do necessary authorities exist? If so, list these authorities and how they appear.

8. What is the timetable for a transaction? What is the significance of September 15th? What legal options are involved for the Federal Government in terms of protecting the property (specifically with regards to the ESA)? Does Maxxam believe it has leverage in this transaction and if so, what are the circumstances that lead it to believe that?

9. What have been the public positions on a Headwaters exchange by Maxxam, DOI, State of California, and other national and local groups?

10. Have the FIDC/DOI/IRB/RSF been involved in DOI’s discussions with Maxxam? Have these agencies been involved in separate discussions with Maxxam?

DOCKET DOI-N

SERRA CLUB CALIFORNIA,

PHILIP, CA. AUGUST 21, 1996.

RE: HEADWATERS FOREST

Assistant Secretary JON GARAMENDI,

U.S. Department of the Interior,

WASHINGTON, DC

Dear Assistant Secretary Garamendi: I am writing you on behalf of the Headwaters Forest Coordinating Committee. We thank you for your willingness to continue the negotiations which will lead to protection for Headwaters Forest. We appreciate that the issue is complex and the potential price tag is large.

To assist you in defining areas which we believe to be priorities for protection, the Headwaters Forest Coordinating Committee met last week. We all agree that acquisition or permanent protection at that time of the following areas would constitute a significant step toward protection for Headwaters Forest, the sixty thousand acre area which is our primary concern. In listing these priorities we do not intend to imply that these steps would constitute full and complete protection for the Headwaters ecosystem. Rather we are attempting to make suggestions for a feasible starting point. Our priorities for protection are:

1. All the virgin core groves within the USFWS-designated murrelet critical habitat area and their adjacent residual old-growth groves. Within the critical habitat area, the residual old-growth groves which are “occupied.” A buffer on the north of the main grove consisting of USFWS-designated murrelet critical habitat within the Elk River Timber property.

A minimum 300 foot buffer around every occupied grove.

Watercourse protection within the 60,000 acre Headwaters Forest and the remainder of the Elk River Timber Company (approximately 5400 acres) similar to the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, published jointly by Interior and other departments in April 1994.

No limitation on the application of the Endangered Species Act or other modification of current law applicable to the Headwaters area.

We are in the process of producing another map which outlines these areas. Until it is complete we hope the following information will be useful.

ACREAGE OF OCCUPIED MURRELET NESTING GROVES

All the virgin core groves within the USFWS-designated murrelet critical habitat area, adjacent residual old-growth groves, and other residual old-growth groves which are “occupied” by murreleets. Although we would like to clearly identify these habitat categories, the acreages which Pacific Lumber has provided in its draft HCP appear to be unrealistically low. Producing acreages of the timber types which Pacific Lumber has provided here on one of the timber types for which the Draft HCP has been approved.

The draft HCP also claims that there are 1550 acres of occupied nesting habitat outside the designated critical habitat area. In the enclosures with EPIC’s federal exemption litigation, Pacific Lumber has provided a map which shows timber types and stand densities on its property. This map shows that there are significant areas of residual timber adjacent to the virgin nesting groves. Murrelet surveys in this acreage have not been systematic, although the murrelet occupied behavior has been observed in residual stands.

Using PL’s timber type map, we estimate that is is important to keep in mind that they were designed to provide important habitat for a broad variety of species not limited to fish.

WATERCOURSE PROTECTION FOR FISH AND WILDLIFE

One of our top priorities is watercourse protection within the 60,000 acre Headwaters Forest and the residual portion of the Elk River Timber Company similar to the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, published jointly by Interior and other departments in April 1994. When reviewing the Standards and Guidelines it is important to keep in mind that those standards were designed to provide important habitat for a broad variety of species not limited to fish.

The Standards and Guidelines specifies a no cut zone on each side of a fish-bearing (Class I) watercourse measured along the ground (slope distance) equal to two site potential tree feet on all 300 feet. Without reviewing company information, site potential tree size can only be estimated. I have estimated 250 feet per tree, which would yield a potential of about 14,000 acres on the map distance. Greater precision will obviously be needed before finalizing any agreement.
Measuring by hand the watercourses within the 60,000 acre Headwaters Forest as indicated on U.S.G.S. topographical maps has yielded the estimate that there are 334,950 linear feet of Class I streams, blue-line watercourses. This is the equivalent of 63.44 miles. I applied the 600 foot standard to this figure, divided by the number of square feet in an acre (43,560) and determined that proposed Class I no-cut watercourse zones would total approximately 4612 acres: 600’ x 334,950’ = 200,970,000 sq.ft./43,560 = 4612 acres.

Although I believed that the distance of Class II (presence of water-dependent non-fish life) streams could equal as much as four times the distance of Class I streams (which I reported separately including Elk River Timber Company), additional time spent mapping has led me to conclude that twice the distance is a closer estimate, and still likely to be high.

The Standards and Guidelines for Class II are one site-potential tree or 190 feet no cut zone each side of the watercourse. Using the same logic as outlined above, I have used the 50 foot standard. Applying 50% of the Class I zone to twice the distance yields the same number. Therefore I believe protection for Class I streams would likely be no more than an additional 4612 acres.

Without close inspection it is impossible to feel confident about estimating the distance of Class II streams (other than the streams which I reported separately including Elk River Timber Company). However, I still believe that as a working assumption we can guesstimate that there are twice as many Class III (ephemeral) streams as Class II. The Standards and Guidelines for Class III are one site potential tree or 100 foot no-cut zone each side of watercourse. However, we have chosen to depart from the Standards and Guidelines in this instance and simply ask for a 50 foot equipment exclusion zone on each side of all Class III with retention of at least 50% overstory and understory canopy within the estimated 3076 miles of Class III, an equipment exclusion zone totaling 3076 acres should be applied. Class I=4612 ac Class II=4612 ac Totals=9224 ac no harvest watercourse protection zones Class III=3076 ac equipment exclusion with 50% canopy retention

PRE-EXISTING WATERCOURSE CONSTRAINTS MUST BE ANALYZED

Existing California Board of Forestry regulations require 50% of the stream canopy to be retained for Class I streams and a Watercourse Protection Zone (WPZ) of 50 feet on either side of the stream, ranging from 75-150 feet depending on side-slope. Class II zones are smaller. Equipment exclusion zones for Class III streams with or without canopy standards are often specified in current THPs. Protection measures are likely to increase when coho salmon are listed this year.

THP 96-659 Hum on the neighboring Elk River Timber property included mitigation measures beyond standard rule prescriptions including: retention of approximately 75% of the canopy in the WPZ and a 150 foot WLPZ. The value of purchasing a riparian corridor should take existing regulatory constraints and operational considerations.

Additionally, it will be necessary to conduct an evaluation of the existing harvestable timber volume in the proposed watercourses. A significant portion of the proposed no-cut zones will have very little immediately merchantable timber remaining.

CONCLUSION

We continue to believe that protection for the full 60,000 acre Headwaters Forest should be achieved as soon as possible. We hope that our effort to prioritize the need to protect specific habitat features within Headwaters Forest will be helpful in you negotiations with Pacific Lumber Company. We remain willing to provide information to support your efforts.

Sincerely,

KATHY BAILEY, State Forestry Chair, on behalf of the HPCC.
place in FDIC, or OTS investigations, proceedings, claims, court filings, or even internal communication—yet production of such material from your agency was massive.

The banking laws certainly do not authorize agents with redwood-for-sale, forest, or expansion of the Headwaters Forest. In fact, other Acts of Congress prohibit any expenditure whatsoever related to acquiring lands or interests in lands from Pacific Lumber's land base to enlarge the Headwaters Forest redwood grove. The letter also explains the authority to conduct this oversight project, and it explains the background of the matter. Indeed, it is a duty of Congressional committees to "review and study on a continuing basis the application, administration, and effectiveness of laws and any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation." * * * (House Rules).

This is precisely what the Task Force will do. The June 16, 2000, letter to Chairman Tanoue from Chairman Young makes this clear and cites the applicable provisions of law and the procedures specified by the House Rules. Your agency was informed six months ago about the thrust of the oversight project.

Merely because ongoing litigation "relates" to a matter under review by a Task Force is not legal justification that forecloses the authority to determine the truth by test facts by using records in a Congressional review or hearing. It will certainly be no excuse for failing to answer questions at our hearing. Often Congressional Committees hear that when records are embarrassing to a Federal agency for one reason or another, rather than when records are subject to the claim of privilege in a court process.

If litigation or potential litigation were a bar to Congressional oversight, Congress would rarely be able to conduct any oversight. You must also be aware that because records are compelled to be produced to a Committee, means that an otherwise legitimate privilege that shields them from discovery in a court of law is not automatically lost. Therefore, about the disclosure of "sensitive" or "confidential" records related to ongoing litigation is overstated, especially in light of the tangential nature of the primary subject of our oversight. The underlying facts of the case, the underlying documents, the facts and the Agency's standards for bringing suit, will be public. Therefore, the FDIC will not be able to answer specific questions about the conclusions and recommendations contained in the sealed document itself. However, we believe we can assist the Task Force to fulfill its oversight responsibilities and respond to any questions about the decision to bring the case without referring to the sealed document by discussing the unredacted portions of the Board's deliberations, the underlying facts, the case law and the Agency's standards for bringing suits.

Please do not hesitate to contact me if you have any further questions.

Sincerely,

William F. Kroener, III
General Counsel

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
Washington, DC, December 7, 2000

Carolyn J. BUCK
Chief Counsel, Office of Thrift Supervision, Department of the Treasury, Washington, DC

Dear Ms. Buck: Thank you for your December 6, 2000, letter requesting that you be substituted as a witness for Director Seidman at the hearing regarding debt-for-nature and Headwaters Forest scheduled for December 12, 2000.

I understand Ms. Seidman's role in the administrative proceeding (In the Matter of United Savings of Texas, OTS Order No. AP 95–90 (December 26, 1995)). I understand the sensitivity you expressed related to the Director's participation in our hearing regarding debt-for-nature and Headwaters Forest. I have spoken with Ms. Seidman about this matter (the FDIC has paid the OTS to pursue the claim), and the general policies concerning pursuance of claims like those against USAT. Indeed, a primary thrust of the inquiry (which examines debt-for-nature and Headwaters) should have nothing to do with the legitimate pursuit of the administrative proceeding against USAT. Therefore, it is inconceivable that the inquiry could adversely influence the proceedings of the respondent (USAT or any of its prior owners), the concern you expressed.

It was explained by Chairman Young in the letter to Chairman Tanoue that Director Seidman will be held in contempt of court for being compel to produce the documents that Mr. Hurwitz and his representatives are not entitled to review, even though the Director has identified the documents containing confidential information with a stamp bearing the designation "CONFIDENTIAL.

Among the documents provided to the Committee is the FDIC's Authority To Sue memorandum, which remains under a court seal, pursuant to two orders of the United States Court of Appeals for the Fifth Circuit. Because of these two court orders, the FDIC, as a party to the litigation, could be subject to contempt of court by discussing the specified documents to sue memos in a formal sense will be at the hearing that you have scheduled.

Therefore, Director Seidman's attendance is required at the hearing. You and appropriate staff should be available to assist her with answers to Task Force Questions that she may not have the detailed knowledge and background to answer. While the Director may not have been involved with the filing of the OTS charges because she came to the FDIC only in May, she may have the ultimate responsibility for OTS actions, so I expect your staff to be available to assist her in providing needed information to the Task Force. Thank you.

Sincerely,

JOHN T. DOOLITTLE
Chairman

OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY
Washington, DC, December 6, 2000

Hon. John T. Doolittle,
Chairman, Task Force on Headwaters Forest and Related Issues, Committee on Resources, House of Representatives, Washington, DC

Dear Chairman Doolittle: This responds to your December 5, 2000, letter to Director Ellen Seidman, which references your November 6, 2000, letter and the November 4, 2000, subpoena for her appearance and testimony before a meeting of the Task Force, acting on behalf of the Committee on Resources. As stated in my June 23, 2000, and August 24, 2000, letters to Chairman Young of the Committee on Resources (copies enclosed), the Office of Thrift Supervision (OTS) has substantial concerns that the Task Force's inquiry could compromise the pending adjudicatory proceeding brought by the agency, pursuant to 12 U.S.C. §1818, against Mr. Charles Hurwitz and Maxxam Corporation concerning their involvement with the former United Savings Association of Texas (USAT). This proceeding is now in the post-trial stage before an administrative law judge (ALJ), who will submit a recommended decision to Director Seidman. After a further opportunity for the parties to submit briefs, Director Seidman will issue the final decision in the case.

The subpoena to Director Seidman, which calls for her to testify concerning such matters as the reasons why the OTS brought the administrative action, and OTS's objectives in the litigation, has the real potential of interfering with her ability to decide the case. Subpoena for her testimony before the ALJ. In so doing, the actions of the Committee and the Task Force may be
To avoid compromising the Director’s role as adjudicator, OTS proposes to substitute your December 5, 2000, letter.

In order to fully prepare for this hearing, 25 copies of your testimony along with your disclosure should be submitted to Debbie Callis, Deputy Chief Clerk, Committee on Resources, Room 1328 Longworth House Office Building, no later than 48 hours prior to the date of the scheduled hearing. In addition, consistent with the Americans with Disabilities Act, if your staff requires any reasonable accommodations for a disability to facilitate your appearance, please contact the Clerk mentioned above. Should you or your staff have any questions or need further information regarding the substance of the hearing, please contact Duane Gibson, General Counsel, Oversight and Investigations on (202) 225-1064.

Sincerely,

Carolyn J. Buck, Chief Counsel, Enclosures.

DEAR MR. ISAAC:

Mr. Bill Isaac, Sarasota, FL.

DEAR MR. ISAAC:
The Committee on Resources, Task Force on Headwaters Forest and Related Issues, will hold an oversight hearing on the subjects listed in my November 6, 2000, letter to you. The time and date of the hearing will be announced later, so your appearance pursuant to the subpoena that was issued for your testimony on Monday, November 13, 2000, will be delayed until the time set for the re-scheduled hearing. So that you may properly prepare for that hearing, I offer you the following information.

Your testimony should not exceed five minutes and should summarize your written remarks. You may introduce into the record any written or documentary evidence you wish to present in accordance with the attached guidelines. You should bring appropriate staff with knowledge of the subject matter of the hearing who can assist you with answers required by the Task Force. I reserve the right to place any witness under oath. If D.C. is sworn in, you may be accompanied by counsel to advise on the witnesses’ rights under the Fifth Amendment to the Constitution. The information disclosed must be relevant to the subject matter of the hearing and the witness’s representational capacity at the hearing. Witnesses are not required to disclose federal entitlement payments such as social security, medicare, or other income support payments (such as crop or commodity support payments). In order to assist in meeting the requirement of the rule, we have attached a form which may complete to aid in complying with this rule. Should you wish to fulfill the disclosure requirement by submitting the information in some other form or format, you may do so.

Sincerely,

John T. Doolittle, Chairman, Task Force on Headwaters Forest and Related Issues.

DEAR MS. TANOUE:
The Committee on Resources, Task Force on Headwaters Forest and Related Issues, will hold an oversight hearing on the subjects listed in my November 6, 2000, letter to you. The time and date of the hearing will be announced later, so your appearance pursuant to the subpoena that was issued for your testimony on Monday, November 13, 2000, will be delayed until the time set for the re-scheduled hearing. So that you properly prepare for that hearing, I offer you the following information.

This hearing will focus on your agency’s role and involvement in the debt for nature campaign concerning the Headwaters Forest. Any comments you might have with respect to this subject would be appreciated, as would your written testimony. It is my understanding that your organization has experience with this subject matter and has information that would be most helpful to the Committee.

Your oral testimony should not exceed five minutes and should summarize your written remarks. You may introduce into the record any written or documentary evidence you wish to present in accordance with the attached guidelines. You should bring appropriate staff with knowledge of the subject matter of the hearing who can assist you with answers required by the Task Force. I reserve the right to place any witness under oath. If D.C. is sworn in, you may be accompanied by counsel to advise on the witnesses’ rights under the Fifth Amendment to the Constitution. The information disclosed must be relevant to the subject matter of the hearing and the witness’s representational capacity at the hearing. Witnesses are not required to disclose federal entitlement payments such as social security, medicare, or other income support payments (such as crop or commodity support payments). In order to assist in meeting the requirement of the rule, we have attached a form which may complete to aid in complying with this rule. Should you wish to fulfill the disclosure requirement by submitting the information in some other form or format, you may do so.

Sincerely,

John T. Doolittle, Chairman, Task Force on Headwaters Forest and Related Issues.

DEAR MS. SEIDMAN:
The Committee on Resources, Task Force on Headwaters Forest and Related Issues, will hold an oversight hearing on the subjects listed in my November 6, 2000, letter to you. The time and date of the hearing will be announced later, so your appearance pursuant to the subpoena that was issued for your testimony on Monday, November 13, 2000, will be delayed until the time set for the re-scheduled hearing. So that you may properly prepare for that hearing, I offer you the following information.

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Sincerely,

John T. Doolittle, Chairman, Task Force on Headwaters Forest and Related Issues.

DEAR MR. ISAC:

Mr. Bill Isaac, Sarasota, FL.

DEAR MR. ISAAC:

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This hearing will focus on your agency’s role and involvement in the debt for nature campaign concerning the Headwaters Forest. Any comments you might have with respect to this subject would be appreciated, as would your written testimony. It is my understanding that your organization has experience with this subject matter and has information that would be most helpful to the Committee.

Your oral testimony should not exceed five minutes and should summarize your written remarks. You may introduce into the record any written or documentary evidence you wish to present in accordance with the attached guidelines. You should bring appropriate staff with knowledge of the subject matter of the hearing who can assist you with answers required by the Task Force. I reserve the right to place any witness under oath. If D.C. is sworn in, you may be accompanied by counsel to advise on the witnesses’ rights under the Fifth Amendment to the Constitution. The information disclosed must be relevant to the subject matter of the hearing and the witness’s representational capacity at the hearing. Witnesses are not required to disclose federal entitlement payments such as social security, medicare, or other income support payments (such as crop or commodity support payments). In order to assist in meeting the requirement of the rule, we have attached a form which may complete to aid in complying with this rule. Should you wish to fulfill the disclosure requirement by submitting the information in some other form or format, you may do so.
matters of the hearing who can assist you with answers required by the Task Force. I reserve the right to place any witness under oath. If you are sworn in, you may be accompanied by your personal counsel. You must disclose the amount and source of Federal grand or contract received with the current or prior two fiscal years. If the witness represents an organization, he or she must provide the same information with regard to the organization.

The information disclosed must be relevant to the subject matter of the hearing and the witnesses representational capacity at the hearing. Witnesses are not required to disclose Federal entitlement payments such as social security, Medicare, or other income support (such as crop commodity support payments). In order to assist in meeting the requirement of the rule, we have attached a form which you may complete to aid in complying with this rule. Should you wish to fulfill the disclosure requirement by submitting the information in some other form or format, you may do so.

In order to fully prepare for this hearing, 25 copies of your testimony along with your disclosure should be submitted to Debbie Callis, Deputy Chief Clerk, Committee on Resources, Room 1328 Longworth House Office Building, no later than 48 hours prior to the date of the scheduled hearing. In addition, consistent with the Americans with Disabilities Act, if your staff requires any reasonable accommodations for a disability to facilitate your appearance, please contact Mr. George Gibson, General Counsel, Oversight and Investigations, at 202-225-1064.

Sincerely,

John T. Doolittle
Chairman, Task Force on Headwaters Forest and Related Issues.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,

Ms. Tanoue:

Dear Ms. Tanoue: The House Committee on Resources, acting through the Task Force on the Headwaters Forest and Related Issues, is pursuing an inquiry into matters related to the Headwaters Forest (which is managed by the Bureau of Land Management and was purchased pursuant to Title V of P.L. 105-83). These matters include (1) the Federal Deposit Insurance Corporation’s (FDIC) and the Office of Thrift Supervision’s (OTS) advancement of claims against private parties to ultimately obtain additional parcels of land near or adjacent to the Headwaters Forest owned by the Pacific Lumber Company; (2) the potential impact of advancement of such claims to expand the Headwaters Forest; and (3) the matters outlined in a June 16, 2000, letter initiating an oversight review concerning the Headwaters Forest. The subject matter of the inquiry falls under the jurisdiction of this Committee pursuant to Articles I and IV of the U.S. Constitution, Rules X and XI of the Rules of the House of Representatives, and Rule 6(a) of the Rules of the Committee on Resources. A copy of the rules is enclosed. Note Rule 4(f) regarding the swearing of witnesses, which is my policy for hearings. Therefore, you may bring a counsel to advise you of any constitutional rights if you desire.

Because of your agency’s role in the matter, you may possess information that will be helpful in the deliberations of the Task Force and the Committee. Therefore, you will be receiving a subpoena for your appearance and the testimony before a meeting of the Task Force. The subpoena schedules your appearance for November 13, at 10:00 AM. The nature of this subpoena is continuing, so the date and time may change after final schedules for the session of the House are known. Committee staff will inform you in advance should scheduling changes be necessary.

We very much appreciate your cooperation with this inquiry and the production of records to date. The matters under review are very important, and your assistance may prove to be indispensable. Should you have any questions about your appearance and testimony, please contact Mr. Duane Gibson, General Counsel, Oversight and Investigations, at 202-225-1064.

Sincerely,

John T. Doolittle
Chairman, Task Force on Headwaters Forest and Related Issues.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, November 6, 2000.

Hon. Ellen Seidman,
Director, Office of Thrift Supervision,
Washington, DC.

Dear Ms. Seidman: The House Committee on Resources, acting through the Task Force on the Headwaters Forest and Related Issues, is pursuing an inquiry into matters related to the Headwaters Forest (which is managed by the Bureau of Land Management and was purchased pursuant to Title V of P.L. 105-83). These matters include (1) the Federal Deposit Insurance Corporation’s (FDIC) and the Office of Thrift Supervision’s (OTS) advancement of claims against private parties to ultimately obtain additional parcels of land near or adjacent to the Headwaters Forest owned by the Pacific Lumber Company; (2) the potential impact of advancement of such claims to expand the Headwaters Forest; and (3) the matters outlined in a June 16, 2000, letter initiating an oversight review concerning the Headwaters Forest. The subject matter of the inquiry falls under the jurisdiction of this Committee pursuant to Articles I and IV of the U.S. Constitution, Rules X and XI of the Rules of the House of Representatives, and Rule 6(a) of the Rules of the Committee on Resources.

We very much appreciate your cooperation with this inquiry and the production of records to date. The matters under review are very important, and your assistance may prove to be indispensable. Should you have any questions about your appearance and testimony, please contact Mr. Duane Gibson, General Counsel, Oversight and Investigations, at 202-225-1064.

Sincerely,

John T. Doolittle
Chairman, Task Force on Headwaters Forest and Related Issues.

By authority of the House of Representatives of the Congress of the United States of America.

To the Honorable Ellen Seidman, Director, Office of Thrift Supervision.

You are hereby commanded to be and appear before the Committee on Resources, Task Force on the Headwaters Forest and Related Issues of the United States, of which the Honorable John Doolittle is chairman, in Room 1324 of the Longworth Office Building, in the city of Washington, on November 13, 2000, at the hour of 10:00 AM, then and there to produce the things identified on Schedule A and to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee. You are hereby commanded to be and appear before the Committee on Resources or the U.S. Marshals Service to serve and make return.

By authority of the House of Representatives of the United States, at the city of Washington, this 4th day of November, 2000.

Don Young, Chairman.

Attest: Jeff Trandah, Clerk.

SCHEDULE OF RECORDS

All records not priorly produced pursuant to the subpoena and Schedule of Records dated 30 June 2000 issued to you by Chairman Don Young.

All records created in response to this subpoena and the subpoena dated 30 June 2000 issued to you by Chairman Don Young.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, November 6, 2000.

Hon. Donna A. Tanoue,
Chairman, Federal Deposit Insurance Corporation,
Washington, DC.

Dear Ms. Tanoue: The House Committee on Resources, acting through the Task Force on the Headwaters Forest and Related Issues, is pursuing an inquiry into matters related to the Headwaters Forest (which is managed by the Bureau of Land Management and was purchased pursuant to Title V of P.L. 105-83). These matters include (1) the Federal Deposit Insurance Corporation’s (FDIC) and the Office of Thrift Supervision’s (OTS) advancement of claims against private parties to ultimately obtain additional parcels of land near or adjacent to the Headwaters Forest owned by the Pacific Lumber Company; (2) the potential impact of advancement of such claims to expand the Headwaters Forest; and (3) the matters outlined in a June 16, 2000, letter initiating an oversight review concerning the Headwaters Forest. The subject matter of the inquiry falls under the jurisdiction of this Committee pursuant to Articles I and IV of the U.S. Constitution, Rules X and XI of the Rules of the House of Representatives, and Rule 6(a) of the Rules of the Committee on Resources.
Resources. A copy of the rules is enclosed. Note Rule 4(f) regarding the swearing of wit- nesses, which is my policy for hearings. Therefore, you may bring a counsel to advise you of any constitutional rights if you de- sire.

Because of your agency’s role in the mat- ter, you may possess information that will be helpful for considerations of the Task Force and the Committee. Therefore, you will be receiving a subpoena for your appear- ance and testimony before a meeting of the Task Force. The subpoena schedules your ap- pearance for November 13, 2000, at 10:00 AM. The nature of this subpoena is continuing, so the date and time may change after final schedules for the post-election session of the House are known. Committee staff will in- form you in advance scheduling should change be necessary.

We very much appreciate your cooperation with this inquiry and the production of records to date. The matters under review are very important, and your assistance may prove to be indispensable. Should you have any questions about your appearance and testimony, please contact Mr. Duane Gibson, General Counsel, Oversight and Investiga- tions, at 202-225-6424.

Sincerely,

JOHN T. DOOLITTLE,
Chairman, Task Force on Headwaters Forest and Related Issues.

SUBPOENA DUCES TECUM (HEARING)
BY AUTHORITY OF THE HOUSE OF REPRESENTA- TIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To the Honorable Donna Tanoue, Chairman, FDIC

You are hereby commanded to be and ap- pear before the Committee on Resources, Task Force on the Headwaters Forest and Related Issues of the House of Representa- tives of the United States, of which the Hon. John Doolittle is chairman, in Room 1324 of the Longworth Building, in the city of Wash- ington, on November 13, 2000, at the hour of 10:00 AM, and then and there to produce the things identified on the attached schedule and to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Com- mittee.

To authorized staff of the Committee on Resources or the U.S. Marshals Service to serve and make return.

Witnes my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 4th day of No- vember 2000.

DON YOUNG, Chairman.
Attest: Jeff Trandahl, Clerk.

SCHEDULE OF RECORDS
All records not previously produced pursuant to the subpoena and Schedule of Records dated 30 June 2000 issued to you by Chairman Don Young.

And all records created in response to this sub- poena and the subpoena dated 30 June 2000 issued to you by Chairman Don Young.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
WASHINGTON, DC, NOVEMBER 6, 2000.

HON. DONNA A. TANOUÉ,
Chairman, Federal Deposit Insurance Corpora- tion, Washington, DC

Dear Ms. Tanoué: The House Committee on Resources, acting through the Task Force on the Headwaters Forest and Related Issues, is pursuing an inquiry into matters related to the Headwaters Forest (which is managed by the Bureau of Land Management and was purchased pursuant to Title V of P.L. 105-83). These matters include (1) the Federal Deposit Insurance Corporation’s (FDIC) and the Office of Thrift Supervision’s (OTS) advancement of claims against private parties to ultimately obtain additional par- cels of land near or adjacent to the Head- waters Forest owned by the Pacific Lumber Company; (2) the current impact of ad- vancement of such claims to expand the Headwaters Forest; and (3) the matters out- lined in a June 16, 2000, letter initiating an oversight review concerning the Head- waters Forest. The subject matter of the inquiry falls under the jurisdiction of this Com- mittee pursuant to Articles I and IV of the U.S. Constitution, Rules X and XI of the Rules of the House of Representatives, and Rule 6(a) of the Rules of the Committee on Resources. A copy of the rules is enclosed.

Note Rule 4(f) regarding the swearing of wit- nesses, which is my policy for hearings. Therefore, you may bring a counsel to advise you of any constitutional rights if you de- sire.

Because of your agency’s role in the mat- ter, you may possess information that will be helpful in the deliberations of the Task Force and the Committee. Therefore, you will be receiving a subpoena for your appear- ance and testimony before a meeting of the Task Force. The subpoena schedules your ap- pearance for November 13, 2000, at 10:00 AM. The nature of this subpoena is continuing, so the date and time may change after final schedules for the post-election session of the House are known. Committee staff will in- form you in advance scheduling should change be necessary.

We very much appreciate your cooperation with this inquiry and the production of records to date. The matters under review are very important, and your assistance may prove to be indispensable. Should you have any questions about your appearance and testimony, please contact Mr. Duane Gibson, General Counsel, Oversight and Investiga- tions, at 202-225-6424.

Sincerely,

JOHN T. DOOLITTLE,
Chairman, Task Force on Headwaters Forest and Related Issues.

SUBPOENA DUCES TECUM (HEARING)
BY AUTHORITY OF THE HOUSE OF REPRESENTA- TIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To The Hon Donna Tanoue, Chairman, FDIC

You are hereby commanded to be and ap- pear before the Committee on Resources, Task Force on the Headwaters Forest and Related Issues of the House of Representa- tives of the United States, of which the Hon. John Doolittle is chairman, in Room 1324 of the Longworth Building, in the city of Wash- ington, on November 13, 2000, at the hour of 10:00 AM, and then and there to produce the things identified on the attached schedule and to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Com- mittee.

To authorized staff of the Committee on Resources or the U.S. Marshals Service to serve and make return.

Witnes my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 4th day of No- vember 2000.

DON YOUNG, Chairman.
Attest: Jeff Trandahl, Clerk.

SCHEDULE OF RECORDS
All records not previously produced pursuant to the subpoena and Schedule of Records dated 30 June 2000 issued to you by Chairman Don Young.

And all records created in response to this sub- poena and the subpoena dated 30 June 2000 issued to you by Chairman Don Young.

OFFICE OF THRIFT SUPERVISION,
DEPARTMENT OF THE TREASURY,
WASHINGTON, DC, OCTOBER 6, 2000.

DUANE GIBSON,
General Counsel, Oversight and Investigation, Committee on Resources, House of Rep- resentatives, Washington, DC.

Dear Mr. Gibson:

Set forth below are the OTS responses to the subpoena contained in your letter to me dated October 3, 2000.

1. Question: “Did Mr. Hurwitz, Maxxam, Pacific Lumber Company or any representa- tive of this individual or these companies ever raise with OTS or any of its representa- tives the notion of a debt-for-nature swap re- lated to Headwaters Forest?”

OTS Response: Yes.

Question: “On what date did Mr. Hurwitz, Maxxam, Pacific Lumber Company or any representative of this individual or these enti- ties first raise the debt-for-nature [swap] related to Headwaters? When was the subject subsequently raised?”


September 24, 1996, OTS 00556-60 (hand- written notes taken by OTS Associate Chief Counsel Bruce Rinaldi of a meeting held on September 24, 1996, with Mr. Hurwitz subject was subsequently raised by representa- tives for Mr. Hurwitz and MAXXAM on the following day).

February 17, 1998, OTS Doc. 00899-904 (Let- ter from MAXXAM Senior Vice President and Chief Legal Officer Byron L. Wade to FDIC, OTS, dated with attached draft Memorandum of Agreement); and

October 27, 1998, OTS Doc. 00906-11 (type- written notes of settlement discussion be- tween OTS and counsel for Mr. Hurwitz and MAXXAM, prepared by Mr. Rinaldi, October 27, 1998).

Although the first time Mr. Hurwitz’s rep- resentatives raised a proposed debt-for-na- ture settlement of the OTS’s potential claims with the OTS was in August 1996, see above, the OTS was informed in July 1995 by the FDIC that Mr. Hurwitz, MAXXAM, and Pacific Lumber Company, and the United States Department of the Treasury for the sale of a portion of the Headwaters Forest to the federal government. See OTS Doc. 0029- 33 (handwritten notes of a meeting between OTS and FDIC representatives, July 26, 1995).

3. Question: “Who first raised the subject of [a] debt-for-nature [swap] related to Head- waters森林?”

OTS Response: The first time a representa- tive of Mr. Hurwitz’s represented a debt-for-nature swap with OTS was when Mr. Tommy Boggs, a Washington lobbyist appointed to rep- resent Mr. Hurwitz and MAXXAM, raised a debt-for-nature settlement of OTS’s poten- tial claims with Richard Stearns, OTS Depu- ty General Counsel for OTS, on August 27, 1997.

4. Question: “What was the context in which it was raised? In what medium was it
first raised (e.g., in writing, by phone, in person?)

FDIC Response: The context in which Mr. Boggs raised a debt-for-nature swap on August 13, 1996, was his proposal to include a settlement of OTS’s potential claims as part of the negotiations then underway between Mr. Hurwitz, MAXXAM, and Pacific Lumber Company. The FDIC raised it in a telephone call to Mr. Hurwitz, requesting a settlement meeting with the FDIC and OTS. Mr. Hurwitz appeared concerned about including a debt-for-nature settlement in any agreement. The FDIC raised this issue because it did not provide sufficient value to the FDIC.

On September 6, 1996, the FDIC received a letter from Mr. John Douglas of the law firm of Alson & Bird, also representing Mr. Hurwitz, requesting a settlement meeting with the FDIC and OTS to discuss a proposal that included a larger land transaction involving the Headwaters Forest for other government properties. The FDIC declined to participate in the discussions between the FDIC and Charles Hurwitz.

Hurwitz lawsuits and negotiations. After the FDIC suit was dismissed by the United States District Court for the District of Washington, the Department of Interior met with the FDIC in a telephone call to Allen McReynolds, on or about July 13, 1995. Mr. McReynolds subsequently raised the subject of a debt-for-nature settlement on behalf of Mr. Hurwitz and MAXXAM with the FDIC in a telephone call to Allen McReynolds, on or about July 13, 1995. This is confirmed by the depositions under oath of Mr. McReynolds and Mr. Robert DeLens, an attorney for the FDIC.

I hope this fully responds to the questions contained in your letter.

Sincerely yours,

CAROLYN J. BUCK
Chief Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION
Washington, DC
October 6, 2000

DUANE GIBSON
General Counsel, Oversight and Investigations,
House of Representatives, Committee on Resources, Washington, DC.

DEAR MR. GIBSON: This letter responds to your letter of October 3, 2000, requesting the Federal Deposit Insurance Corporation to respond to requests for information and preparation of documentation regarding the debt-for-nature discussions between the FDIC and Charles Hurwitz.

1. Did Mr. Kroener make the quote of Mr. Kroener cited in the August 17, 2000 American Banker article accurate?

FDIC Response: A story in the August 17, 2000 American Banker included a quotation from me that stated, “The so-called debt-for-nature swap was first offered by Mr. Hurwitz’s counsel, not the FDIC. While the FDIC has said it remained open to an appropriate settlement, including a debt-for-nature swap, it has also told Mr. Hurwitz’s lawyers that the FDIC’s preference is for a cash payment.” This quotation is an accurate statement.

2. When did Mr. Kroener receive a letter that added Representative George Tanoue, and Ms. Seidman, and assigned me to the oversight project. We are now reviewing the material that you provided, and will have follow-up questions for certain individuals soon. The Task Force for this oversight expanded. Enclosed you will find a letter that added Representative George Radnorovich as a member. I thought you would like to have a copy.

4. In commenting about the “debt-for-nature” as it relates to Headwaters and the FDIC and OTS matters, Mr. Kroener was quoted in the American Banker as follows: “The so-called debt-for-nature swap was first offered by Mr. Hurwitz’s counsel, not the FDIC.” In discussion with Mr. Kroener, I was told the same thing attributed to Mr. Kroener in American Banker.

This information and verification of it is important to the oversight review, so the Chairman requests prompt answers (by Friday, October 6, 2000) to the questions contained in this letter, along with all supporting documentation that verifies the answer from the perspective of the FDIC.

1) (FDIC only) Is the quote of Mr. Kroener cited above accurate? If not, what did Mr. Kroener mean?
Kroener say in his comments to the American Banker?

2) (OTS only) Did Mr. Hurwitz, Maxxam, Pacific Lumber Company or any representatives of these companies or its affiliate, Laidley, or the other companies ever raise with OTS or any of its representatives the notion of a debt-for-nature swap related to Headwaters?

3) (OTS only) Did Mr. Hurwitz, Maxxam, Pacific Lumber Company or any representatives of this individual or these entities first raise the debt-for-nature related to Headwaters when was the subject subsequently raised?

4) Who first raised the subject of debt-for-nature related to Headwaters on behalf of Mr. Hurwitz? To whom was the subject of debt-for-nature related to Headwaters raised?

5) What was the context in which it was raised? In what medium was it first raised (e.g. in writing, by phone, in person)?

Please provide all documentation supporting answers to these questions (for example, copies of meeting notes or an affidavit verifying the answers).

If you have any questions, please contact me at 225-1064. Thank you.

Sincerely,

DON YOUNG, Chairman.

cc: The Honorable George Miller.

Chairman, Committee on Resources, House of Representatives.


Hon. GEORGE RADANOVICH,

House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On August 15, 2000, the Task Force on Headwaters Forest and Related Issues of the Committee on Resources was established. At that time, I appointed Representatives Doolittle, Pombo, and Brady to serve on the Task Force, along with yet to be designated minority members.

I know that you have been to the Headwaters Forest and are interested serving on the Task Force as well. I expect that the bulk of review being undertaken by the Task Force to be accomplished during the last three months of this year, and it is likely to include at least one hearing at some juncture. Because of your interest in this subject, your experience serving on the Headwaters, your desire to serve on this special panel, and your willingness to participate in studying this matter at a future hearing, I hereby appoint you to be a Member of the Task Force.

Sincerely,

DON YOUNG, Chairman.

cc: The Honorable George Miller.
The Honorable John Doolittle.


Hon. WILLIAM F. KROENER, III,

General Counsel.

Office of Thrift Supervision.

WASHINGTON, DC, September 24, 2000.

Hon. DON YOUNG,

Chairman, Committee on Resources, House of Representatives.

WASHINGTON, DC.

RE: U.S. House of Representatives, Committee on Resources Task Force on the Headwaters Forest and Related Issues of the Committee (Task Force).

DEAR CHAIRMAN YOUNG AND CONGRESSMAN MILLER: The Office of Thrift Supervision (OTS) recently received a copy of the above-referenced Task Force charter that authorizes an investigation into the alleged “Office of Thrift Supervision's (OTS) ad-vancement of claims against private parties to ultimately obtain additional parcels of land near or adjacent to the Headwaters Forest owned by the Pacific Lumber Company.” These parties referred to the Administration proceeding initiated in 1995 by the OTS, in the Matter of United Savings Association of Texas, Inc. et al., OTS Order No. AP 85–016 (December 26, 1995), against Charles E. Hurwitz and others in connection with the 1988 failure of United Savings Association of Texas (USAT).

According to Chairman Young's memorandum, dated August 15, 2000, that accompanied the task force charter, several members of the Task Force requested that the Committee conduct oversight “on attempts to break the Headwaters Forest agreement by adding more acreage to the Headwaters through a debt for nature swap.” As detailed in the documentation provided by OTS pursuant to the Committee's June 30, 2000, subpoena, the OTS matter is an administra-tive proceeding brought by a federal banking regulatory agency to address violations of the banking laws. The proceeding was initiated nearly two years prior to the passage of the Public Law 106–138 (the “Headwaters Forest Legislation”) and, thus, its initiation could not “run contrary to the Headwaters Forest agreement.”

Additionally, the documentation that the OTS has already turned over to the Committee in response to its June 30, 2000, subpoena shows that the OTS case was brought to address violations of banking laws. The subject of a debt for nature swap was first injected into this matter when counsel for Charles Hurwitz proposed transferring timberland to the OTS as a means of settling the claims for restitution asserted by this agency. OTS has consistently responded to these proposals by stating that it prefers to ultimately obtain additional parcels of forest through a debt for nature swap.

As we stated in our prior correspondence, the FDIC would strongly object to the disclosure of confidential information regarding the OTS enforcement action against Charles E. Hurwitz and others in connection with the 1988 failure of United Savings Association of Texas (USAT).

According to Chairman Young’s memorandum, dated August 15, 2000, that accompanied the task force charter, several members of the Task Force requested that the Committee conduct oversight “on attempts to break the Headwaters Forest agreement by adding more acreage to the Headwaters through a debt for nature swap.” As detailed in the documentation provided by OTS pursuant to the Committee’s June 30, 2000, subpoena, the OTS matter is an administrative proceeding brought by a federal banking regulatory agency to address violations of the banking laws. The proceeding was initiated nearly two years prior to the passage of the Public Law 106–138 (the “Headwaters Forest Legislation”) and, thus, its initiation could not “run contrary to the Headwaters Forest agreement.”

Additionally, the documentation that the OTS has already turned over to the Committee in response to its June 30, 2000, subpoena shows that the OTS case was brought to address violations of banking laws. The subject of a debt for nature swap was first injected into this matter when counsel for Charles Hurwitz proposed transferring timberland to the OTS as a means of settling the claims for restitution asserted by this agency. OTS has consistently responded to these proposals by stating that it prefers to ultimately obtain additional parcels of forest through a debt for nature swap.
claims of unfairness or denial of due process, we urge the Committee to forbear from carrying out its proposed investigation at least until the Director has issued a final agency decision on the matter. This would allow the Committee a full opportunity to investigate, without risking an unintended interference with the ongoing OTS administrative proceeding.

Thank you for your consideration of this request.

Sincerely,

Carolyn J. BUCK
Chief Counsel.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,

Hon. Bruce Babbitt,
Secretary, Department of the Interior, Washington, DC.

Dear Mr. Secretary:
The legislative, oversight, and investigative responsibilities under Rule X and Rule XI of the Rules of the United States House of Representatives, Rule 6(b) of the Rules for the Committee on Resources (the Committee), 106th Congress, and Article I and Article IV of the United States Constitution, require that the Committee receive and review Department records, obligations, legislation, policies, and practices, and operation of the Department of the Interior (the Department), the public domain lands and resources, and any other entity that relates to or takes actions with the Department. We cooperatively worked with the Committee a full opportunity to investigate, and we are alarmed about the apparent deep involvement between members of your staff and the banking regulators in pursuing and continuing to pursue the above-referenced actions to leverage more Headwaters “nature” for a questionable and uncertain benefit.

We find disturbing that the Department of the Interior documents that are now available in the possession of the Committee, and that there is “support for a debt-for-nature swap for the FDIC and OTS claims . . .” and we are alarmed with what your Special Assistant, Mr. Allen McReynolds, reports about the interaction between the Department and the banking regulators. He unequivocally stated that, “FDIC and OTS are amendable to this strategy [the ‘acquisition strategy’] if the Administration supports it.” The admission of coordination with banking regulators and backdoor lobbying may be common practice for your Department. However, we are alarmed with what your Special Assistant, Mr. Allen McReynolds, appears to have influenced the judgement of banking regulators, who were “amenable” to acquiring a debt that could be swapped for nature.

Request for Records. As this oversight inquiry has evolved, the need for departmental records related to the subject of the oversight review has become increasingly apparent. The Committee and the Task Force require the production of all departmental records by the FDIC and OTS that relate to the matter under review as outlined above. In addition, the attached Schedule of Records specifies certain records or categories of records that are also requested and must be produced pursuant to the authority and under deadlines in this letter. The schedule also contains the definition that applies to the term “records.”

Interviews. In addition to the information listed above, please include a request to interview you and those in the employ of the Department who have knowledge of the matters under review.

Deadline. We request that you strictly comply with the deadlines for production which are as follows: response to this letter by August 22, 2000, and delivery of the records by 4:00 p.m., Friday, August 25, 2000, to the attention of Mr. Duane Gibson, 1324 Longworth House Office Building. We also request that you provide two sets of all records requested.

Lead Investigator. This review will be led at the staff level by Mr. Duane Gibson, the Committee’s General Counsel for Oversight, and investigations. We request that your staff contact him (202-225-1064) after your receipt and review of this letter. Mr. Gibson is responsible for coordinating with you for your cooperation with this review of matters under the jurisdiction of this Committee. Please be aware that the Committee has the authority to compel production of the records that are requested should they not be produced by the deadline listed above. We hope that we will not need to employ this authority. We anticipate your cooperation, just as we cooperated to write the statute and appropriated the funds to purchase the Headwaters Forest.

Sincerely,

DON YOUNG,
Chairman, Committee on Resources.

JOHN T. DOOLITTLE,
Chairman, Task Force on the Headwaters Forest and Related Issues.

MEMBERS, COMMITTEE ON RESOURCES

SCHEDULE OF RECORDS

HEADWATERS FOREST ADDITIONS AND DEBT FOR NATURE.

1. All records related to or referring to any contact between any employee of the Department of the Interior (including the Office of the Secretary and the Bureau of Land Management) and the FDIC or OTS (or any employee of the OTS or FDIC) that relates to or pertains to the Headwaters Forest or “debt for nature.”

2. All records that relate in any way to the FDIC or OTS advancement of claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention “debt for nature,” the Headwaters Forest, or the Pacific Lumber Company, including but not limited to records related to any additional parcels of land referred to as of the Headwaters Forest, which were or are owned by the Pacific Lumber Company.

3. All records that relate in any way to the FDIC or OTS advancement of claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention (or are to or from) the Rose Foundation, the Turner Foundation or any other grant-making organization and that in any way relate to strategies or legal theories for acquisitions or potential acquisitions of the Headwaters Forest or the concept of “debt for nature.”

4. All records that relate in any way to the FDIC or OTS advancement of claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention (or are to or from) Earth First! North Coast Earth First!, Bay Earth First! on Headwaters, Chico State Life Foundation, The Trees Foundation, The Humboldt Watershed Council, the National Audubon Society, and/or the Sierra Club.

5. All records to, from, or referring to Ms. Kathleen (Katie) McGinty that also relate to or refer to the Headwaters Forest, the FDIC or the OTS, or debt for nature.

6. All records to, from, or referring to Mr. Allen McReynolds that also relate to or refer to the Headwaters Forest, the FDIC or the OTS, or debt for nature.

7. All records to or from anyone in the Office of the Secretary that also relate to or refer to the Headwaters Forest or the FDIC or the OTS.

8. All records that relate to or refer to any contact or communication between any employee of the Department of the Interior and Mr. Bruce Rinaldi, Mr. Ken Guido, Mr. Robert DeHenzel, or Mr. Jeff Williams.

9. All records showing or related to any contact or communication between anyone employed by, assigned to, or associated with the Department of the Interior and anyone employed by, assigned to, or associated with the White House (including the Council on Environmental Quality), the Office of the Vice President that relate in any way to the FDIC or OTS claims against Mr. Charles Hurwitz or MAXXAM that also in any way mention, refer to, or relate to “debt for nature,” the Headwaters Forest, or the Pacific Lumber Company.

Definitions

For purposes of this inquiry, the term “record” or “records” includes, but is not limited to, copies of any item written, typed, printed, recorded, transcribed, filmed, graphically portrayed, or otherwise captured and stored in any fashion, including any and all computer entries, accounting materials, memos, minutes, diaries, telephone logs, telegrams, faxes, memos, slips, electronic messages (e-mails), tapes, notes, talking points, letters, journal entries, reports, studies, drawings,
hearings

subject to the rules of the house of representative and the rules of the committee on resources, the task force may hold hearings on matters within its jurisdiction. the chairman of the committee shall appoint all hearings prior to their announcement.

staff

the chairman of the committee shall designate professional and support staff to assist the task force in carrying out its duties and functions. consistent with the rules of the house of representatives, persons employed by personal office of members may not serve as staff to the task force and its subdivisions. the ranking minority member may also designate staff to assist the task force.

travel

all travel by members and staff of the task force shall be authorized pursuant to rule 12 of the committee and other applicable rules and guidelines and shall be limited to funds allocated by the chairman of the full committee for that purpose. committee funds may not be used to pay for travel by persons not employed by the committee and all travel shall comply with the rules and guidelines of the house of representatives and the committee.

rules

a task force is a subdivision of the committee and shall comply with all applicable rules and guidelines of the house of representatives, the committee on resources, and the committee on house oversight. the actions of the task force are subject to additional direction and supervision as the chairman of the committee may from time to time impose.

don young, chairman.

house of representatives,

committee on resources,


task force on the headwaters forest and related issues of the committee on resources

authority

pursuant to rule 7 of the committee on resources, the chairman of the committee is authorized, after consultation with the ranking minority member, to appoint task forces to carry out certain duties and functions of the committee. the chairman hereby appoints the members listed below to the task force on the headwaters forest and related issues to carry out the oversight and investigative duties and functions of the committee regarding the oversight review specified in the june 18, 2000, letter (attached hereto), subject to the terms and conditions listed below.

members

republicans—doolittle (chairman), pombo, thornberry, brady, and young (ex officio).

democrats—three members of the committee recommended by the ranking minority member and miller (ex officio).

duration

the task force will commence on august 16, 2000, and will terminate on december 31, 2000, or on an earlier date that the chairman of the committee may designate. with a duration of less than six months, the task force will not count against the subcommittee limit under rule x, clause 5(b)(2) of the rules of the house of representatives.

jurisdiction

the task force shall review and study the following matters related to the headwaters forest which were raised by the bureau of land management and was purchased pursuant to title v of p.l. 105-83: (1) the federal deposit insurance corporation's (fdic) and the office of thrift supervision's (ots) advancement of claims against private parties to ultimately obtain additional parcels of land near or adjacent to the headwaters forest owned by the pacific lumber company; (2) the potential impact of advancement of such claims to expand the headwaters forest; and (3) the matters outlined in the attached june 18, 2000, letter initiating an oversight review concerning the headwaters forest.

hearing

subject to the rules of the house of representative and the rules of the committee on resources, the task force may hold hearings on matters within its jurisdiction. the chairman of the committee shall appoint all hearings prior to their announcement.

staff

the chairman of the committee shall designate professional and support staff to assist the task force in carrying out its duties and functions. consistent with the rules of the house of representatives, persons employed by personal office of members may not serve as staff to the task force and its subdivisions. the ranking minority member may also designate staff to assist the task force.

travel

all travel by members and staff of the task force shall be authorized pursuant to rule 12 of the committee and other applicable rules and guidelines and shall be limited to funds allocated by the chairman of the full committee for that purpose. committee funds may not be used to pay for travel by persons not employed by the committee and all travel shall comply with the rules and guidelines of the house of representatives and the committee.

rules

a task force is a subdivision of the committee and shall comply with all applicable rules and guidelines of the house of representatives, the committee on resources, and the committee on house oversight. the actions of the task force are subject to additional direction and supervision as the chairman of the committee may from time to time impose.

don young, chairman.

house of representatives,

committee on resources,


to: members, committee on resources

from: don young, chairman

re: task force

several members have requested that the committee conduct oversight on attempts to break the headwaters forest agreement by adding more acreage to the forest through a debt for nature swap. i initiated an oversight review of this matter in june, and today i created a task force to further study the issues outlined in the oversight review. a copy of the task force charter is attached.

the task force will be chaired by john doolittle. republican members of the task force are listed in the charter, and i have reserved three slots for democrat members to be named by mr. miller. the task force will operate much like a subcommittee and may hold hearings as needed to examine the issues for the oversight review.

house of representatives,

committee on resources,


hon. george miller,

committee on resources, longworth hob, washington, dc.

dear george: on july 26, 2000, your staff was notified that i was considering establishing a task force to examine the issues and subjects raised in the june 18, 2000, letter that launched an oversight review about matters related to the headwaters forest. our staffs discussed the task force and oversight project prior to the august recess, and my staff requested that you name three members to the task force. to date i have not received your selection of minority members. i intend to proceed with this task force, and will leave three positions open for members that you select. should you have any questions, recommendations, or names of members who wish to serve on the task force, please ask them to bring them to me through mr. duane gibbon (5-1064). thank you.

sincerely,

don young, chairman.

office of thrift supervision,
department of the treasury,

washington, dc, august 1, 2000.

duane gibbon, esq.,

gen. counsel, oversight and investigations,

committee on resources, house of representatives.

dear mr. gibbon: set forth below are ots's responses to your questions, which were e-mailed to kevin petrasic on july 21, 2000.

1. what is the total budget of ots for the past five years?

<table>
<thead>
<tr>
<th>year</th>
<th>budget</th>
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<tbody>
<tr>
<td>1995</td>
<td>170,300,500</td>
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<tr>
<td>1996</td>
<td>148,758,100</td>
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<tr>
<td>1997</td>
<td>145,946,050</td>
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<tr>
<td>1998</td>
<td>147,223,450</td>
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<tr>
<td>1999</td>
<td>154,313,750</td>
</tr>
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</table>

2. what is ots's authorizing statute?

please send a copy.

3. how many cases are being pursued by the ots for the fdic in each of the last five years?

the ots does not pursue cases for the fdic. by way of background, the financial institutions reform, recovery, and enforcement act of 1989, pub. l. 101-73 (august 9, 1989), created the ots as the primary federal regulator of savings associations and authorized the ots to pursue administrative enforcement actions against individuals and entities to safeguard the thrift industry, its depositors and the federal deposit insurance funds. 12 u.s.c. 1464 and 1818. one of the remedies available to the ots and other banking regulators in these administrative enforcement proceedings is to obtain restitution for losses suffered by an insured depository institution. 12 u.s.c. 1818(b)(6). if the ots succeeds in recovering restitution, it is returned to the institution.

when a savings association fails, the ots must appoint the fdic as a receiver for the institution. 12 u.s.c. 1464(d)(2). as the appointed receiver, the fdic “steps into the shoes” of the failed institutions to manage its estate. 12 u.s.c. 1812. the ots would then pay any restitution recovered in its administrative enforcement action to the fdic as receiver.

whether an institution is open or being run by fdic as receiver, those running the institution may advise ots of possible violations of law that may warrant action by ots. as part of its investigation, ots will obtain information from the institution and then make an independent determination under ots's statutory authority whether to bring any enforcement action.

as receiver, fdic has separate legal authority to pursue private legal actions for recovery of damages on behalf of the institution, its creditors and shareholders. the ots’s statutory authority to pursue enforcement actions is separate from the fdic’s authority as receiver. the federal courts have consistently recognized this distinction between ots’s administrative enforcement authority and the fdic’s authority as receiver to bring suit in federal court. see, e.g., simpson v. ots, 29 fed. app. 1 (1994) (per curiam); cert. denied, 513 u.s. 1148 (1995); akin v. ots, 950 f.2d 1180, 1185 (5th cir. 1992). as in the

...
USAT matter, the courts have held that the two agencies may pursue separate, but concurrent, legal proceedings in furtherance of their separate legal responsibilities. See Resolution Trust Corp. v. Ryan, 801 F.Supp. 1545 (S.D.Miss. 1992).

With this as background, the OTS has issued fifteen orders in enforcement proceedings in the last five years (plus the first half of this year) that resulted in restitution obtained and paid to the FDIC as receiver, as follows:

Year | Amount
--- | ---
1995 | $529,452
1996 | 455,895
1997 | 455,897
1998 | 683,403
1999 | 857,182
2000 | 61,026

Total | 3,002,825

To date, the OTS has recovered $10,876,426.98 in restitution in the USAT administrative action, which has been paid to the FDIC, through settlements with United Financial Group, Inc., the holding company for USAT, and with five individual former officers and directors of USAT.

The FDIC is a party in the USAT administrative action brought by OTS. The FDIC has shared information and documents that the OTS has requested to prepare its case, and the two agencies have consulted on legal theories and other matters.

The respondents in the case have executed a joint defense agreement pursuant to which they shared information with each other, coordinated discovery and motions, presented joint briefs and memoranda of law and shared counsel. In addition, Maxxam Corporation has agreed to pay legal expenses on behalf of several of the respondents.

6. "How much has the FDIC reimbursed the OTS for that work broken down by year?"

FDIC has reimbursed the OTS for legal fees and out-of-pocket expenses in the USAT administrative action as follows:

Year | Amount
--- | ---
2000 | $3,169,115
1999 | 1,197,000
1998 | 650,000
1997 | 650,000
1996 | 29,050,000
1995 | 3,600,000

Total | 3,002,825

This is not the amount sought by OTS in the case. The $1.6 billion figure is the cost to the federal deposit insurance fund from paying of depositors due to the collapse of USAT.

Sincerely yours,
CAROLYN J. BUCK, Chief Counsel.


Hon. Don Young,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR CHAIRMAN YOUNG: As requested in your June 20, 2000 letter as the Chairman of the House Committee on Resources, and the June 20, 2000 subpoena by the Committee on Resources, we are providing the Committee with the enclosed material. It is my understanding that pursuant to conversations between Committee staff and staff of the Federal Deposit Insurance Corporation, the Committee has requested that two copies of the documents be produced to the majority, and one to the minority. We are enclosing two copies of responsive documents with this letter, and will provide an additional copy directly to Ranking Minority Member George Miller.

An index to the documents and privilege log is also enclosed. We are not withholding any responsive document, regardless of whether it is privileged. Where privileged documents are provided, they are so identified and marked, and the applicable privileges are identified in the accompanying index and log.

In delivering these records, it is our intention to preserve any and all privileges or exemptions from disclosure under the Freedom of Information Act or other laws, rules and regulations for those documents marked as privileged should they be requested by any person other than the Congress of the United States acting in its official capacity. We appreciate the efforts of the Committee and its staff to maintain the strict confidentiality of these documents.

Sincerely yours,
PATRICIA M. BLACK, Counsel to the Inspector General.

LOG OF PRIVILEGED DOCUMENTS PRODUCTION TO THE COMMITTEE ON RESOURCES, U.S. HOUSE OF REPRESENTATIVES, JULY 7, 2000

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<td>Deliberative Process.</td>
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<td>November 15, 1997</td>
<td>Hurwitz Memorandum in Response to Hurwitz's Motion for Sanctions and Dismissal</td>
<td>Deliberative Process.</td>
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<td>Memorandum—Motions in the Hurwitz litigation raising issues that the Office of Inspector General proposes to investigate</td>
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<td>March 2, 1999</td>
<td>Memo from Schulz to Krueger</td>
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<td>May 27, 1999</td>
<td>Hurwitz Case Summary</td>
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<td>Preliminary Comparison of Key Provisions in FDIC/PLS Guidelines With the July 27, 1995 Authority to Institute PLS Memo</td>
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<td>May 27, 1999</td>
<td>Prepared for the USAT Litigation.</td>
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<td>May 27, 1999</td>
<td>Deliberative Process.</td>
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<td>Evaluation Action Plan</td>
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<td>May 23, 1999</td>
<td>FY2000 FIDC Inspector General VA-HUD Appropriations Subcommittee The Honorable Tom Delay Questions for the Record</td>
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December 20, 2001
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<td>00454-00457</td>
<td>March 23, 1999</td>
<td>E-mail Additional Documents from Legal</td>
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Hon. DON YOUNG, Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to the subpoena duces tecum received by the Federal Deposit Insurance Corporation on July 6, 2000 seeking production of copies of documents regarding the Headwaters Forest, a possible “debt for nature swap” and pending litigation regarding the FDIC and Charles E. Hurwitz arising out of the failure of United Savings Association of Texas (USA).

This document production should satisfy our obligations under the subpoena. The enclosed documents include sensitive, highly confidential material that is covered by attorney-client and/or attorney work product privileges in the ongoing litigation against Mr. Hurwitz. In many cases, the production includes documents that Mr. Hurwitz and his representatives are not entitled to review through the court proceedings. The FDIC does not waive any privileges belonging to the FDIC or any other agency as a result of providing these documents to the Committee pursuant to the subpoena.

As we stated in our prior correspondence, the FDIC would strongly object to the dissemination of privileged and confidential documents to parties other than Committee Members and staff. We have identified the documents containing confidential information with a stamp bearing the designation “CONFIDENTIAL.” The failure of USAF cost the American taxpayer approximately $1.6 billion and the inappropriate release of these documents could significantly harm the FDIC’s ability to litigate this matter and reduce damages otherwise recoverable to reimburse taxpayers for the losses arising out of this failure.

We are producing two sets of documents to the Committee under the subpoena that are especially sensitive. These materials are segregated from the rest of the production. The first set includes documents that state the FDIC’s internal valuation of the case for settlement purposes. Because disclosure of this information would be extremely harmful to the FDIC’s litigation and settlement position, we are providing the full document for the Committee’s review, but have redacted the actual valuation. This will allow the Committee to review any material in the document regarding the stated subjects of the investigation while ensuring against an inadvertent release of this highly sensitive information. If the Committee has any concerns about the redactions, we will permit the Committee staff to inspect the unredacted versions in our office.

The second set of documents includes materials that have been placed under court seal in the litigation, or are naturally implicated by the Court’s order. These documents are placed in a separately marked box.

Finally, there are some oversized maps, an audio tape of music from an environmental group and two tapes of two voice mail messages left by Mr. Hurwitz’s counsel that we have been unable to duplicate within the timeframe of the subpoena because of their...
DEAR Mr. CHAIRMAN: This letter is in further response to your June 16, 2000 request for copies of documents regarding the Headwaters Forest, a possible “debt for nature swap” and pending litigation between the Federal Deposit Insurance Corporation and Mr. Charles E. Hurwitz arising out of the failure of United Savings Association of Texas (USAT).

Your staff has requested that we detail our efforts to identify responsive documents. Upon receipt of the Committee’s request, the Senior Deputy General Counsel sent a copy of the request by e-mail to all current employees who have participated in the litigation and might have responsive documents. Copies of the Committee’s request also were provided to the FDIC’s Executive Offices and to Division and Office Directors who were asked to forward the e-mail to any employees that have responsive documents in their possession. Employees were asked to respond to the e-mail within 24 hours and to provide copies of any responsive documents directly to the Legal Division within 48 hours and to provide copies of any responsive documents in their possession. The Legal Division has been reviewing the documents for responsiveness and identifying any issues regarding attorney-client and attorney work product privileges that might have an impact on the FDIC’s ongoing litigation.

On Friday, June 23, 2000, the FDIC made an initial production of responsive non-privileged documents to the Committee. The FDIC is continuing to search for material responsive to the Committee’s request and is today making a second production of responsive documents. As Chairwoman Tanoue stated in her June 23 letter to the Committee, the FDIC’s search has identified documents that are covered by attorney-client and/or attorney work product privileges in the current ongoing litigation with Mr. Hurwitz. Following our expression of concern that voluntarily responding to the Committee’s request could significantly harm our legal position in the ongoing litigation, Mr. Duane Gibson of your staff indicated that the Committee would provide us with a protocol concerning the release of these documents beyond Members of Congress and the staff.

The FDIC is deeply concerned that the dissemination of privileged and confidential documents to the Committee might compromise our pending adjudicatory process. For that reason we asked that a document handling protocol be put in place to maintain the confidentiality of these documents. The protocol includes limiting access to Members of Congress and their staff. Mr. Gibson advised that the Committee does not have a general document handling protocol but that all record requests from the Committee are for the official business of the Committee. For the record, we note our objection to any publication or release of the documents and that the FDIC is engaged in a search for the documents requested by the Committee.

The second category of documents involves communications concerning the bases for its investigation and claims that resulted in the adjudicatory proceeding. As we explained to Mr. Gibson, these are extremely sensitive internal communications and, for the time being, we are near agreement on another means of conveying any possibly relevant information that may be in those documents.

You had indicated in your letter that the Committee might wish to interview OTS employees. If that is necessary, we ask that you coordinate our Office of Inspector General’s interviews with the Committee to ensure the protocol concerning the release of these documents is adhered to.

DEAR Mr. CHAIRMAN: This letter is in further response to your June 16, 2000 request for copies of documents regarding the Headwaters Forest, a possible “debt for nature swap,” and pending litigation between the Federal Deposit Insurance Corporation and Mr. Charles E. Hurwitz arising out of the failure of United Savings Association of Texas.

As you are receiving the Committee’s request for documents, the FDIC has initiated an aggressive search for responsive documents. With this letter, I am transmitting the FDIC’s first submission of documents responsive to the Committee’s June 16, 2000, request. As we stated in our letter of June 20, we anticipate that additional documents will be identified during the week of June 26 when we have the opportunity to review the files of key individuals involved with this matter who have been deposed in response to the Committee’s request, including the General Counsel. We will promptly copy and transmit to the Committee responsive documents that are identified in this continuing search. In addition, we have identified documents that are covered by attorney-client and/or attorney work product privileges.

Because an enforcement proceeding is still pending before the Director concerning his final decision in the matter, if the Director decides to order an enforcement action against Mr. Hurwitz or OTS, he may have to file suit against Mr. Hurwitz and Maxxam in the federal courts as an appeal with the U.S. Court of Appeals. Because an enforcement proceeding is still pending before the Director concerning his final decision in the matter, if the Director decides to order an enforcement action against Mr. Hurwitz or OTS, he may have to file suit against Mr. Hurwitz and Maxxam in the federal courts as an appeal with the U.S. Court of Appeals.

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Chairman, Committee on Resources, House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your recent letter requesting certain documents regarding the Federal Deposit Insurance Corporation (FDIC). As you know, the FDIC's suit against Mr. Hurwitz arises out of the 1988 failure of United Savings Association of Texas (USAT), a savings and loan failure that cost the American taxpayer more than $1.6 billion.

Although the FDIC rejects the Committee's allegations that the basis for the suit against Mr. Hurwitz is an attempt to obtain additional parcels of the Headwaters Forest, the FDIC intends to cooperate with the Committee's investigation. The FDIC has already made a broad request for documents related to this matter and asked that they be produced by Friday, June 23, 2000. The FDIC is dedicating its available resources to respond to the Committee's request and we expect to be able to produce the bulk of the documents on that date. However, it is anticipated that some documents will not be identified by the deadline. For example, a few key staff involved with this matter have been on leave since the request was received and a search of their files cannot be completed until they return the week of June 26. With regard to any documents that are not produced by June 23, 2000, the FDIC will provide documents to the Committee as quickly as they can be identified and copied.

With regard to prospective interviews of FDIC employees, we request that you advise us when the interviews are to be held. The FDIC's Office of Legislative Affairs. If you or your staff have any questions regarding this matter, please contact Eric Spitzer of the FDIC's Office of Legislative Affairs (202) 898-3837.

Sincerely,

DONNA TANGOUR, Chairman.

To: Carolyn Buck
This may help you, Carolyn. Call if you have any questions.

Duane.

We are concerned that dissemination of certain documents outside the committee might compromise our pending adjudicatory process. For that reason we ask that you maintain the confidentiality of sensitive documents identified by limiting access to Members of the Committee and their staff. Mr. Gibson has advised us that the Committee does not have a general document protocol, but that all Second requests from the Committee are for the official business of the Committee. The information in documents is generally used for informing members of the Committee. The persons with general access to the sensitive documents are staff working on the Committee oversight project and Members of Committee.

Mr. Gibson also said that at some point the documents may become public if used, for example, in a memorandum to the Chairman. Mr. Gibson also indicated that if the Chairman receives any prior notification of why an agency views a document as sensitive, that the Chairman will give the Chairmen of the appropriate committees a copy in advance.

DEAR CHAIRMAN TANGOUR AND DIRECTOR SEIDMAN: The legislative, oversight, and investigatory responsibilities under Rule X and Article IV of the United States Constitution, require that the Committee on Resources oversee and review the laws, policies, practices, procedures, and internal policy guidelines governing the initiative of litigation. The FDIC ultimately decided to file suit.

I find particularly disturbing the fact that the FDIC's ATS memorandum acknowledges the company’s past president was hired by the institution in compliance with the capitalization requirements and not self gain or gross negligence, or patterns of self-dealing. The preliminary conclusion from the initial investigation as to officer's, director's and other professionals' liability was that there did not appear to be any intentional fraud, gross negligence, or patterns of self-dealing.

The Federal District Court Judge in the FDIC v. Hurwitz case required the FDIC to produce its authority to sue ("ATS") memorandum. In analyzing the probability of success, the ATS memorandum concluded that the suit against Mr. Hurwitz was unlikely to survive summary judgment and, even if it did, would have only a "marginal-at-best" chance of succeeding on its merits. As noted above, the FDIC's outside counsel agreed with this analysis and its conclusions. Nevertheless, in violation of the internal policy guidelines governing the initiation of litigation, the FDIC ultimately decided to file suit.

Environmental activists—predominantly Earth First!—also began an extensive campaign to use the FDIC and the Office of Thrift Supervision (OTS) to employ their litigation powers to create a threat of liability that would force MAXXAM to surrender its ownership of the Headwaters Forest. In exchange for the USAT claims, such a swap would apparently, in the eyes of environmental activists and their supporters, enable public acquisition of the Headwaters Forest and other surrounding lands without having to buy the market value from Pacific Lumber or MAXXAM. This concept came to be known as a "debt-for-nature" swap (even though the alleged "debtor" was merely "debt" the FDIC's ATS memo concluded was a marginal-at-best lawsuit.)

I understand that in a lobbying campaign, hundreds of letters were sent directly to the highest levels of the OTS. My staff has discouraging the agencies to file suit against MAXXAM to "create" a debt that could be "swapped" for the Headwaters Forest. In fact, the ATS memorandum advised FDIC staff that the Office of Thrift Supervision's administration was "seriously interested in" pursuing a "debt-for-nature" swap and warned that the agency would come under severe criticism from the environmental community if it did not proceed against Mr. Charles Hurwitz and MAXXAM.
I have very serious concerns over the notion that the FDIC somehow has the authority, let alone “the power and duty to protect forest assets * * * endangered and threatened species” as the extremist activists told your office. I am not aware of FDIC or OTS authority or jurisdiction in these areas. However, the Committee on Resources does have the constitutional and jurisdictional authority under the Rules of the House of Representatives involving the Headwaters Forest, management of the Headwaters Forest, federal additions to the Headwaters Forest, and threatened and endangered species.

In addition, as is evidenced in the following excerpt from a letter from an Earth First! activist to the Federal District Court Judge overseeing the FDIC’s case against MAXXAM, the environmental community publicly claimed credit for manipulating the FDIC and OTS into pursuing the “debt-for-nature” course related to Headwaters: “As the initiator of the so-called ‘Debt-for-Nature’ campaign, I have decided to write you prior to your making your final ruling around this case. The campaign to encourage the FDIC to sue Charles Hurwitz and/or MAXXAM Corporation was and is designed to stand up on its own, regardless of whether a debt for nature swap ensues . . . I have heard it argued that the FDIC only filed this suit to cave into pressure from citizens. Well may I ask, de facto, what is wrong with pressure from citizens?” (emphasis added) This is a strikingly candid admission and certainly supports the conclusion that the pressure exerted was successful in prompting the FDIC to file a suit that its internal policies would otherwise not have authorized.

Since the initiation of the litigation by the FDIC and the OTS, the Federal and State of California governments have purchased the Headwaters Forest. With the federal acquisition, the issue was laid to rest. The purchase was accomplished through legislation authored by Members of the Committee on Resources, and is a subject within the jurisdiction of the Committee. The management of the Headwaters Forest is also within the jurisdiction of the Committee. The legislation authorizes the Committee on Oversight and Investigations. I request that your staff contact him (202-225-1064) after your receipt and review of this letter. Mr. Gibson can assist with any questions. Thank you for your cooperation with this review of matters under the jurisdiction of this Committee. Please be aware that the Committee has the authority to compel production of the records that are requested above. Any production by you of the deadline listed above, I anticipate your cooperation so that I will not need to employ this authority.

Sincerely,

DON YOUNG, Chairman.

### SCHEDULE OF RECORDS—HEADWATERS FOREST

#### ADDITIONS AND DEBT FOR NATURE

1. All records that relate in any way to the FDIC or OTS advancement of claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention “debt for nature,” the Headwaters Forest, or the Pacific Lumber Company, including but not limited to any records relate to obtaining additional parcels of land referred to as of the Headwaters Forest, which were or are owned by the Pacific Lumber Company.

2. All records that relate in any way to the FDIC or OTS advancement of claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention “debt for nature,” the Headwaters Forest, or the Pacific Lumber Company, including but not limited to any records relate to obtaining additional parcels of land referred to as of the Headwaters Forest, which were or are owned by the Pacific Lumber Company.

3. All records that relate in any way to the FDIC or OTS advancement of claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention “debt for nature,” the Headwaters Forest, or the Pacific Lumber Company, including but not limited to any records relate to obtaining additional parcels of land referred to as of the Headwaters Forest, which were or are owned by the Pacific Lumber Company.

5. All records related to any contact between the FDIC or OTS (or any employee of the OTS or FDIC) and any group or individual or group that relates to or mentions the Headwaters Forest.

6. All records that relate in any way to the Federal Deposit Insurance Corporation’s (FDIC) Office of Thrift Supervision’s (OTS) advancement of claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention “debt for nature” or the Headwaters Forest and are to, from, or involve Mr. Bruce Rinaldi, Mr. Ken Guido, Mr. Robert DeHenzel, or Mr. Jeff Wilder.

7. All records showing or related to any contact or communication between anyone employed by, assigned to, or associated with the FDIC or the OTS and anyone employed by, assigned to, or associated with the White House (including the Council on Environmental Quality), The Office of the Vice President, The Department of the Interior, the Forest Service, or the Bureau of Land Management that relate in any way to the FDIC or OTS claims against Mr. Charles Hurwitz and/or MAXXAM that also in any way mention “debt for nature,” the Headwaters Forest, or the Pacific Lumber Company.

### DEFINITIONS

For the purposes of this inquiry, the term “record” or “records” includes, but is not limited to, copies of any item written, typed, printed, recorded, transcribed, filmed, photographed, graphically portrayed, video or audio taped, however produced, and includes, but is not limited to any writing, reproduction, transcription, photography, video, audio recording, produced or stored in any fashion, including any and all computer entries, accounting materials, memoranda, minutes, diaries, telephone logs, telephone message slips, electronic messages (e-mails), tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, disks, briefing materials and notes, cover sheets or routing cover sheets or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation and shall also include redacted and unredacted versions of the same record. The term includes records that are in the physical possession of the FDIC or the OTS (as the case may be) and records that were formally in the physical possession of the FDIC or the OTS (as the case may be), as well as records that are in storage. Furthermore, with respect to this request, the terms “refer,” “relate,” and “concerning,” means anything that constitutes, contains embodies, identifies, mentions, deals with, in any manner the matter under review.

“FDIC” means Federal Deposit Insurance Corporation.

“OTS” means Office of Thrift Supervision.

Daily Digest

HIGHLIGHTS

Senate and House passed H.J. Res. 79, Continuing Appropriations.

Senate and House passed H.J. Res. 80, Convening of the Second Session of the 107th Congress.


The House and Senate agreed to the conference report on H.R. 3338, DOD Appropriations.

The House and Senate agreed to H. Con. Res. 295, providing for the sine die adjournment of the first session of the One Hundred Seventh Congress.

Senate

Chamber Action

Routine Proceedings, pages S13773–S14084

Measures Introduced: Thirty-two bills and six resolutions were introduced, as follows: S. 1860–1891, S.J. Res. 30, and S. Res. 194–198. Pages S13943–44

Measures Reported:

S. 950, to amend the Clean Air Act to address problems concerning methyl tertiary butyl ether, with amendments. (S. Rept. No. 107–131) Pages S13942–43


Measures Passed:

Investor and Capital Markets Fee Relief Act: Senate passed H.R. 1088, to amend the Securities Exchange Act of 1934 to reduce fees collected by the Securities and Exchange Commission, clearing the measure for the President. Page S13830

Adjournment Resolution: By 56 yeas to 40 nays (Vote No. 379), Senate agreed to H. Con. Res. 295, providing for the sine die adjournment of the first session of the One Hundred Seventh Congress. Pages S13830–31

Port and Maritime Security Act: Senate passed S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, after agreeing to the following amendment proposed thereto: Pages S13871–84

Hollings/McCain/Graham Amendment No. 2690, in the nature of a substitute. Page S13884

Unemployment Assistance Extension: Senate passed S. 1622, to extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001. Page S13893

Televising Zacarias Moussaoui Trial: Committee on the Judiciary was discharged from further consideration of S. 1858, to permit the closed circuit televising of the criminal trial of Zacarias Moussaoui for the victims of September 11th, and the bill was then passed, after agreeing to the following amendment proposed thereto: Pages S13893–94

Reid (for Allen) Amendment No. 2691, to clarify the requirements of the trial court. Pages S13893–94

Bioterrorism Response Act: Senate passed H.R. 3448, to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and
other public health emergencies, after agreeing to the following amendment proposed thereto:

Reid (for Frist/Kennedy/Gregg) Amendment No. 2692, in the nature of a substitute.

Senate insisted on its amendment, requested a conference with the House thereon, and the Chair was authorized to appoint the following conferees on the part of the Senate: Senators Kennedy, Dodd, Harkin, Mikulski, Jeffords, Gregg, Frist, Enzi, and Hutchinson.

Continuing Appropriations: Senate passed H.J. Res. 79, making further continuing appropriations for the fiscal year 2002, clearing the measure for the President.

Convening of the Second Session: Senate passed H.J. Res. 80, appointing the day for the convening of the second session of the One Hundred Seventh Congress (January 23, 2002 at 12 noon), clearing the measure for the President.

United States Vice President Appreciations: Senate agreed to S. Res. 195, tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

United States President Appreciation: Senate agreed to S. Res. 196, tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

Senate Majority Leader Commendation: Senate agreed to S. Res. 197, a resolution to commend the exemplary leadership of the Majority Leader.

Senate Republican Leader Commendation: Senate agreed to S. Res. 198, to commend the exemplary leadership of the Republican Leader.

Basic Pilot Extension Act: Senate passed H.R. 3030, to extend the basic pilot program for employment eligibility verification, clearing the measure for the President.

Reuniting Korean Families: Senate agreed to S. Con. Res. 90, expressing the sense of the Congress regarding the efforts of people of the United States of Korean ancestry to reunite with their family members in North Korea.

International Emergency Management Assistance Understanding: Senate passed S.J. Res. 12, granting the consent of Congress to the International Emergency Management Assistance Memorandum of Understanding.


Bill Court Referral: Committee on the Judiciary was discharged from further consideration of S. Res. 83, referring S. 846 entitled “A bill for the relief of J.L. Simmons Company, Inc., of Champaign, Illinois” to the chief judge of the United States Court of Federal Claims for a report thereon, and the resolution was then agreed to.

Higher Education Reporting Requirement Simplification: Senate passed H.R. 3346, to amend the Internal Revenue Code of 1986 to simplify the reporting requirements relating to higher education tuition and related expenses, clearing the measure for the President.

Guadagno Visitors Center Designation: Senate passed H.R. 3334, to designate the Richard J. Guadagno Headquarters and Visitors Center at Humboldt Bay National Wildlife Refuge, California, clearing the measure for the President.

Todd Beamer Post Office Designation: Committee on Governmental Affairs was discharged from further consideration of H.R. 3248, to designate the facility of the United States Postal Service located at 65 North Main Street in Cranbury, New Jersey, as the “Todd Beamer Post Office Building”, and the bill was then passed, clearing the measure for the President.

Commending Daw Aung San Suu Kyi: Senate agreed to H. Con. Res. 211, commending Daw Aung San Suu Kyi on the 10th anniversary of her receiving the Nobel Peace Prize and expressing the sense of the Congress with respect to the Government of Burma, after agreeing to a committee amendment in the nature of a substitute.

Republic of Kazakhstan Congratulations: Committee on Foreign Relations was discharged from further consideration of S. Res. 194, congratulating the people and government of Kazakhstan on the tenth anniversary of the independence of the Republic of Kazakhstan, and the resolution was then agreed to, after agreeing to the following amendment proposed thereto:

Reid (for Brownback) Amendment No. 2693, to recognize Kazakhstan for their efforts in combating international terrorism.
American Wildlife Enhancement Act: Senate passed S. 990, to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Reid (for Smith (NH)) Amendment No. 2694, to make certain modifications to the bill.  

Pages S14054–59

National Foreign Affairs Training Center: Committee on Foreign Affairs was discharged from further consideration of H.R. 3348, to designate the National Foreign Affairs Training Center as the George P. Shultz National Foreign Affairs Training Center, and the bill was then passed, clearing the measure for the President.

Pages S14059–60

Security Assistance Act: Senate passed S. 1803, to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal years 2002 and 2003, after agreeing to the following amendment proposed thereto:

Reid (for Biden/Helms) Amendment No. 2695, to make certain managers’ amendments to the bill.

Pages S14060–61

Water and Wastewater Facilities: Senate passed S. 1608, to establish a program to provide grants to drinking water and wastewater facilities to meet immediate security needs, after agreeing to a committee amendment in the nature of a substitute.

Pages S14061–62

Authorizing Emergency Funds: Senate passed S. 1637, to waive certain limitations in the case of use of the emergency fund authorized by section 125 of title 23, United States Code, to pay the costs of projects in response to the attack on the World Trade Center in New York City that occurred on September 11, 2001, after agreeing to the following amendment proposed thereto:

Reid (for Clinton) Amendment No. 2696, to make certain modifications to the bill.  

Pages S14062

Federal Judiciary Protection Act: Senate passed S. 1099, to increase the criminal penalties for assaulting or threatening Federal judges, their family members, and other public servants.  

Pages S14062–63

Authorizing Nonimmigrant Spouses: Senate passed H.R. 2278, to provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States, clearing the measure for the President.  

Pages S14063

Treaty Traders/Investors: Senate passed H.R. 2277, to provide for work authorization for non-immigrant spouses of treaty traders and treaty investors, clearing the measure for the President.  

Pages S14063

Small Business Liability Relief and Brownfields Revitalization Act: Senate passed H.R. 2869, to provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, clearing the measure for the President.

Pages S14063–64

Family Sponsor Immigration Act: Senate passed H.R. 1892, to amend the Immigration and Nationality Act to provide for the acceptance of an affidavit of support from another eligible sponsor if the original sponsor has died and the Attorney General has determined for humanitarian reasons that the original sponsor’s classification petition should not be revoked, after agreeing to a committee amendment.

Pages S14064–65

Nurse Corps Recruitment: Senate passed S. 1864, to amend the Public Health Service Act to establish a Nurse Corps and recruitment and retention strategies to address the nursing shortage.

Pages S14065

Gen. Shelton Congressional Gold Medal Act: Senate passed H.R. 2751, to authorize the President to award a gold medal on behalf of the Congress to General Henry H. Shelton and to provide for the production of bronze duplicates of such medal for sale to the public, clearing the measure for the President.

Pages S14065

Department of Justice Authorization: Senate passed H.R. 2215, to authorize appropriations for the Department of Justice for fiscal year 2002, after agreeing to a committee amendment in the nature of a substitute, and the following amendment proposed thereto:

Reid (for Leahy/Hatch) Amendment No. 2697, to provide for the establishment of additional Boys and Girls Clubs of America.

Pages S14075

Senator insisted on its amendment, requested a conference with the House thereon, and the Chair was authorized to appoint the following conferees on the part of the Senate: Senators Leahy, Kennedy, and Hatch.

Pages S14075

Department of Veterans Affairs Health Care Programs Enhancement Act: Senate passed H.R. 3447, to amend title 38, United States Code, to enhance the authority of the Secretary of Veterans Affairs to recruit and retain qualified nurses for the
Veterans Health Administration, to provide an additional basis for establishing the inability of veterans to defray expenses of necessary medical care, to enhance certain health care programs of the Department of Veterans Affairs, clearing the measure for the President. Pages S14075–80

**Private Relief:** Committee on the Judiciary was discharged from further consideration of S. 1834, for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit, and the bill was then passed. Pages S14080–81

**Technical Correction:** Senate passed S. 1888, to amend title 18 of the United States Code to correct a technical error in the codification of title 36 of the United States Code. Page S14081

**Gerald B. H. Solomon Saratoga National Cemetery:** Committee on Veterans’ Affairs was discharged from further consideration of H.R. 3392, to name the national cemetery in Saratoga, New York, as the Gerald B.H. Solomon Saratoga National Cemetery, and the bill was then passed, clearing the measure for the President. Pages S14081

**Korean War Veterans Association Federal Charter:** Committee on the Judiciary was discharged from further consideration of S. 392, to grant a Federal Charter to Korean War Veterans Association, Incorporated, and the bill was then passed. Pages S14081–82

**Immigration Deadline Extension:** Committee on the Judiciary was discharged from further consideration of S. 1400, to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to extend the deadline for aliens to present a border crossing card that contains a biometric identifier matching the appropriate biometric characteristic of the alien, and the bill was then passed. Page S14082

**Year of the Rose:** Senate agreed to H. Con. Res. 292, supporting the goals of the Year of the Rose. Page S14082

**Measure Indefinitely Postponed:**

**Transportation Appropriations Act:** S. 1178, making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2002. Pages S14049–50

**Labor/HHS/Education Appropriations Conference Report:** By 90 yeas to 7 nays (Vote No. 378), Senate agreed to the conference report on H.R. 3061, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2002, clearing the measure for the President. Pages S13773–S13830

**Victims of Terrorism Relief Act:** Senate concurred in the amendment of the House to Senate amendment to H.R. 2884, to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States, with a further amendment as follows: Pages S13856–64

Daniel (to the amendment of the House to the amendment of the Senate to the text of the bill) Amendment No. 2689, in the nature of a substitute. Page S13864

**Department of Defense Appropriations Conference Report:** By 94 yeas to 2 nays (Vote No. 380), Senate agreed to the conference report on H.R. 3338, making appropriations for the Department of Defense for the fiscal year ending September 30, 2002, clearing the measure for the President. Pages S13832–56, S13864–65, S13865–68, S13869–71

**Foreign Operations Appropriations Conference Report:** Senate agreed to the conference report on H.R. 2506, making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2002, after consultation between the Majority and Republican Leaders, clearing the measure for the President. Pages S13894–S13902

**Nomination Referral—Agreement:** A unanimous-consent agreement was reached providing that the nomination of Joseph E. Schmitz to be Inspector General, Department of Defense, which was ordered reported by the Committee on Armed Services, be referred to the Committee on Governmental Affairs for not to exceed 20 calendar days, beginning on January 23, 2002, and that if the nomination is not reported after that 20-day period, the nomination be automatically discharged and placed on the Executive Calendar.

**Nominations—Agreement:** A unanimous-consent agreement was reached providing that all nominations received by the Senate during the 107th Congress, First Session, remain in status quo, notwithstanding the adjournment of the Senate, and the provisions of Rule XXXI, Paragraph 6, of the Standing Rules of the Senate, with the following exceptions: Otto Reich to be Assistant Secretary of State, and Col. David R. Leffarge to be Brigadier General. Page S14049

**Sine Die Adjournment Appointments:** A unanimous-consent agreement was reached providing that notwithstanding the sine die adjournment of the Senate, the President of the Senate, the President of the Senate pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by
concurrent action of the two Houses, or by order of the Senate.

**Nominations Confirmed:** Senate confirmed the following nominations:

Eduardo Aguirre, Jr., of Texas, to be First Vice President of the Export-Import Bank of the United States for a term expiring January 20, 2005.

J. Joseph Grandmaison, of New Hampshire, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2005.

Michael Hammond, of Texas, to be Chairperson of the National Endowment for the Arts for a term of four years. (Prior to this action, Committee on Health, Education, Labor and Pensions was discharged from further consideration.)

James E. Newsome, of Mississippi, to be a Commissioner of the Commodity Futures Trading Commission for the term expiring June 19, 2006. (Prior to this action, Committee on Agriculture, Nutrition, and Forestry was discharged from further consideration.)

Claude M. Bolton, Jr., of Florida, to be an Assistant Secretary of the Army.

Kathleen Burton Clarke, of Utah, to be Director of the Bureau of Land Management.

C. Ashley Royal, of Georgia, to be United States District Judge for the Middle District of Georgia.

Harry E. Cummins III, of Arkansas, to be United States Attorney for the Eastern District of Arkansas for the term of four years.

Christopher James Christie, of New Jersey, to be United States Attorney for the District of New Jersey for the term of four years.

Sean O’Keefe, of New York, to be Administrator of the National Aeronautics and Space Administration.

34 Army nominations in the rank of general.

Linda Morrison Combs, of North Carolina, to be Chief Financial Officer, Environmental Protection Agency.

Eve Slater, of New Jersey, to be an Assistant Secretary of Health and Human Services.

William Leidinger, of Virginia, to be Assistant Secretary for Management, Department of Education.

Dan Gregory Blair, of the District of Columbia, to be Deputy Director of the Office of Personnel Management.

Matthew D. Orwig, of Texas, to be United States Attorney for the Eastern District of Texas for the term of four years.

Jane J. Boyle, of Texas, to be United States Attorney for the Northern District of Texas for the term of four years.

James K. Vines, of Tennessee, to be United States Attorney for the Middle District of Tennessee for the term of four years.

Johnny Lewis Hughes, of Maryland, to be United States Marshal for the District of Maryland for the term of four years.

Randy Merlin Johnson, of Alaska, to be United States Marshal for the District of Alaska for the term of four years.

Larry Wade Wagster, of Mississippi, to be United States Marshal for the Northern District of Mississippi for the term of four years.

Routine lists in the Air Force, Foreign Service.

**Messages From the House:**

**Measures Referred:**

**Measures Placed on Calendar:**

**Measures Read First Time:**

**Enrolled Bills Presented:**

**Executive Communications:**

**Executive Reports of Committees:**

**Additional Cosponsors:**

Statements on Introduced Bills/Resolutions:

**Additional Statements:**

Amendments Submitted:

**Authority for Committees to Meet:**

**Privilege of the Floor:**

Record Votes: Three record votes were taken today. (Total—380)

Adjournment: Senate met at 9:30 a.m., and, in accordance with the provisions of H. Con. Res. 295, adjourned sine die at 10:06 p.m.
Committee Meetings

(Committees not listed did not meet)

NOMINATIONS

Committee on Armed Services: Committee ordered favorably reported the nomination of Joseph E. Schmitz, of Maryland, to be Inspector General, Department of Defense, and 34 military nominations in the Army Reserve.

NOMINATION

Committee on Commerce, Science, and Transportation: Committee concluded hearings on the nomination of John Magaw, of Maryland, to be Under Secretary of Transportation for Security, after the nominee, who was introduced by Secretary of Transportation Norman Mineta, testified and answered questions in their own behalf.

House of Representatives

Chamber Action


Reports Filed: No Reports were filed today.

Guest Chaplain: The prayer was offered by Rev. Msgr. Peter J. Vaghi, Pastor, St. Patrick’s Catholic Church of Washington, D.C.


Agreed to H. Res. 324, the rule that waived points of order against the conference report by voice vote.


Agreed to H. Res. 323, the rule that provided for consideration of the joint resolution by voice vote.

Suspensions: The House agreed to suspend the rules and pass the following measures that were debated on the legislative day of December 19. Earlier agreed to vacate the ordering of the yeas and nays on H.R. 3423, H.R. 2561, and H.R. 1432 to the end that the Chair put the question on each of those measures de novo.

Honoring Dr. James Harvey Early in the Williamsburg, Kentucky Post Office Building: S. 1714, to provide for the installation of a plaque to honor Dr. James Harvey Early in the Williamsburg, Kentucky Post Office Building—clearing the measure for the President;

Major Lyn McIntosh Post Office Building, Valdosta, Georgia: H.R. 1432, to designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the “Major Lyn McIntosh Post Office Building;”


Commending the Crew of the USS Enterprise Battle Group and Armed Forces Prosecuting the War: H. Con. Res. 279, recognizing the service of the crew members of the USS Enterprise Battle Group during its extended deployment for the war effort in Afghanistan. Agreed to amend the title so as to read: A concurrent resolution recognizing the excellent service of members of the Armed Forces

Sine Die Adjournment of the First Session of the One Hundred Seventh Congress: The House agreed to H. Con. Res. 295, providing for the sine die adjournment of the first session of the One Hundred Seventh Congress.

Convening of the Second Session of the One Hundred Seventh Congress: The House passed H.J. Res. 80, appointing the day for the convening of the second session of the One Hundred Seventh Congress.
who are prosecuting the war to end terrorism and protecting the security of the nation; Pages H10935–36

Coast Guard Authorization Act for FY 2002: H.R. 3507, to authorize appropriations for the Coast Guard for fiscal year 2002; Page H10936

Monitoring Iraqi Weapons Development: H.J. Res. 75, amended, regarding the monitoring of weapons development in Iraq, as required by United Nations Security Council Resolution 687 (April 3, 1991) (agreed to by a yea-and-nay vote of 392 yeas to 12 nays with 7 voting “present,” Roll No. 511). Agreed to amend the title so as to read: A joint resolution regarding inspection and monitoring to prevent the development of weapons of mass destruction in Iraq;

Redacting Financial Disclosure Statements: Agreeing to the Senate amendments to H.R. 2336, to make permanent the authority to redact financial disclosure statements of judicial employees and judicial officers (The Senate amended the title so as to read: An Act to extend for 4 years, through December 31, 2005, the authority to redact financial disclosure statements to judicial employees and judicial officers);

Eligibility of Reservists and their Dependents for Burial in Arlington National Cemetery: H.R. 3423, amended, to amend title 38, United States Code, to enact into law eligibility of certain veterans and their dependents for burial in Arlington National Cemetery; Agreed to amend the title so as to read: A bill to amend title 38, United States Code, to enact into law eligibility of certain Reservists and their dependents for burial in Arlington National Cemetery;

Living American Hero Appreciation Act: H.R. 2561, amended, to increase the rate of special pension for recipients of the medal of honor, to authorize those recipients to be furnished an additional medal for display purposes, and to increase the criminal penalties associated with misuse or fraud relating to the medal of honor. Agreed to amend the title so as to read: A bill to amend title 38, United States Code, to increase the rate of special pension for recipients of the medal of honor and to make that special pension effective from the date of the act for which the recipient is awarded the Medal of Honor and to amend title 18, United States Code, to increase the criminal penalties associated with misuse or fraud relating to the Medal of Honor;

Qualified Organ Procurement Organizations: H.R. 3504, to amend the Public Health Service Act with respect to qualified organ procurement organizations;

Nurse Reinvestment Act: H.R. 3487, to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing;

Year of the Rose: H. Con. Res. 292, supporting the goals of the Year of the Rose; and

Higher Education Relief Opportunities: S. 1793, to provide the Secretary of Education with specific waiver authority to respond to conditions in the national emergency declared by the President on September 14, 2001.

Suspension Failed—Higher Education Act Amendments: The House failed to suspend the rules and S. 1762, to amend the Higher Education Act of 1965 to establish fixed interest rates for student and parent borrowers, to extend current law with respect to special allowances for lenders by a recorded vote of 257 ayes to 148 noes (2/3 required to pass), Roll No. 512.

Committee to Notify the President: The House agreed to H. Res. 327, providing for a committee of two Members to be appointed by the House to inform the President that the two houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them. Subsequently the Speaker appointed Majority Leader Armey and Minority Leader Gephardt to the Committee.

Resignations—Appointments: Agreed that until the day the House convenes for the Second Session of the 107th Congress, and notwithstanding any adjournment of the House, the Speaker, Majority Leader and Minority Leader may accept resignations and make appointments authorized by law or by the House.

Permanent Select Committee on Intelligence Appointment: Agreed that until the day the House convenes for the Second Session of the 107th Congress the Speaker, pursuant to clause 11 of Rule 10 and clause 11 of rule 1, and notwithstanding the requirement of clause 11(a)(1) of Rule 10, may appoint a member to the Permanent Select Committee on Intelligence to fill the existing vacancy thereon.

Extension of Remarks: Agreed that Members may have until publication of the last edition of the Congressional Record authorized for the First Session by the Joint Committee on Printing to revise and extend their remarks and to include brief, related extraneous material on any matter occurring before the adjournment of the First Session Sine Die.
Resolutions Reported by the Committee on Rules: Agreed that the following resolutions be laid on the table: H. Res. 291, R. Res. 317, H. Res. 318, and H. Res. 321.

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Tom Davis of Virginia or if not available to perform this duty, Representative Wayne Gilchrest to act as Speaker pro tempore to sign enrolled bills and joint resolutions until the day the House convenes for the second session of the 107th Congress.

Recess: The House recessed at 2:19 p.m. and reconvened at 5:02 p.m.

Victims of Terrorism Relief Act: The House agreed to the Senate amendment to the House amendment to the Senate amendments to H.R. 2884, to amend the Internal Revenue Code of 1986 to provide tax relief for victims of the terrorist attacks against the United States on September 11, 2001—clearing the measure for the President.

Adjournment Sine Die Pending Receipt of Senate Message: Agreed that when the House adjourns today, it adjourn to meet at 4 p.m. on Friday, December 21, 2001, unless it sooner has received a message from the Senate transmitting its passage without amendment of House Joint Resolution 79, in which case the House shall stand adjourned sine die pursuant to H. Con. Res. 295.

Senate Messages: Messages received from the Senate appear on pages H10953.

Quorum Calls—Votes: Two yea-and-nay votes and one recorded vote developed during the proceedings of the House today and appear on pages H10933–34, H10936, and H10937–38. There were no quorum calls.

Adjournment: The House met at 10 a.m. and at 5:08 p.m. pursuant to the previous order of the House of today, the House stands adjourned until 4 p.m. on Friday, December 21, 2001, unless it sooner has received a message from the Senate transmitting its passage without amendment of H.J. Res. 79, in which case the House shall stand adjourned for the first session of the One Hundred Seventh Congress sine die pursuant to H. Con. Res. 295.

Committee Meetings

No Committee meetings were held

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST of December 17, 2001, p. D1263)

H.R. 717, to amend the Public Health Service Act to provide for research and services with respect to Duchenne muscular dystrophy. Signed on December 18, 2001. (Public Law 107–84)

H.R. 1766, to designate the facility of the United States Postal Service located at 4270 John Marr Drive in Annandale, Virginia, as the “Stan Parris Post Office Building”. Signed on December 18, 2001. (Public Law 107–85)

H.R. 2261, to designate the facility of the United States Postal Service located at 2853 Candler Road in Decatur, Georgia, as the “Earl T. Shinhoster Post Office”. Signed on December 18, 2001. (Public Law 107–86)


H.R. 2454, to redesignate the facility of the United States Postal Service located at 5472 Crenshaw Boulevard in Los Angeles, California, as the “Congressman Julian C. Dixon Post Office Building”. Signed on December 18, 2001. (Public Law 107–88)

Next Meeting of the SENATE
12 noon, Wednesday, January 23, 2002

Senate Chamber

Program for Wednesday: Senate will convene for the second session of the 107th Congress and conduct a live quorum.
(Senate will recess from 12:30 p.m. until 2:15 p.m., for their respective party conferences.)
(Senate photograph will occur at 2:30 p.m.)

Next Meeting of the HOUSE OF REPRESENTATIVES
12 noon, Wednesday, January 23, 2002

House Chamber

Program for Wednesday: To be announced.

Extensions of Remarks for today will be printed in Book II