

disrupt this line of authority. We presume that, where it is a reliance on expert advice that is truly at issue, see *Johnson*, 730 F.2d at 686-87 (discounting defendants' defense where reliance on expert advice was irrelevant to the real claims at issue), the same standard articulated in the above-cited and other authority would apply to the criminal provisions contained in this title.

Finally, the duty imposed by the Section 906 certification requirement is not intended to end once a financial statement and accompanying certification are submitted. Upon discovery that a statement contains an error, immediate correction and disclosure of the correction should be required.

Interplay With Section 302 of S. 2673: Scope of Certification Requirement. At the time I offered the Biden-Hatch Amendment to S. 2673, that bill already had a provision (now codified at Section 302), which is similar to Section 906, with three significant exceptions. First, the provision does not apply to the chairperson of a company's board of directors (my original legislation and subsequent amendment to S. 2673 applied the certification requirement to chief executive officers, chief financial officers, and board chairpersons). Second, it contains no criminal enforcement provisions. Third, the scope of corporate filing activity subject to the requirements of Section 302 is far narrower, as I explain below.

Section 302 provides that the SEC must require, for each company filing periodic reports under Section 13(a) or 15(d) of the Exchange Act, that the principal executive officer and the principal financial officer, or persons performing equivalent functions, make certain certifications in each annual or quarterly report filed with or submitted to the SEC. Section 302, by its terms, only applies to annual and quarterly reports and, accordingly, its scope is so cabined. Section 906, on the other hand and quite intentionally, includes no such limitation of its scope. It is intended to apply to any financial statement filed by a publicly-traded company, upon which the investing public will rely to gauge the financial health of the company. So, Section 906 applies to annual and quarterly reports (e.g., Forms 10-K, 20-F, 40-F, 10-Q) but, unlike Section 302 certifications, is also intended to apply to so-called "current" reports like Forms 8-K and 6-K (foreign issuer submissions), as well as submissions of Form 11-K by employee benefit plans. The above list is merely illustrative, not exhaustive, and Congress intends the SEC to issue guidance on any additional reports which are subject to Section 906.

We are aware of the SEC's historic position that the term "periodic reports" describes Forms 10-Q, 10-K, 10-QSB, 10-KSB, 40-F and 20-F, which are required to be filed at specified intervals in time, and not Forms 8-K and 6-K, which are only required to be filed upon the occurrence of specified events. We in no way intend to import the more expansive scope of Section 906 into broader securities regulation; the wider view of "periodic report" is for purposes of implementing this specific certification requirement only.

Note that Section 906 does not require certification that the financial statements are in accordance with generally accepted accounting principles (GAAP). That omission is intentional in that the certification is designed to ensure an overall accuracy and completeness that is broader than financial reporting requirements under generally accepted accounting principles. In so doing, for purposes of this section, Congress effectively establishes possible liability where statements may be GAAP-compliant but materially misleading. See *States v. Simon*, 425 F.2d 796, 808 (2d Cir. 1969) (finding that accountants can be criminally liable for preparing fi-

nancial statements that are GAAP-compliant but materially misleading).

Certification Form. We do not intend to prescribe the precise form or format of certification (e.g., whether the certification should appear on the signature page or among the exhibits or appendices to the report) or method of submission to the appropriate regulators. On these questions, Congress properly defers to the expert judgment of experienced officials at the SEC, who we trust will fully consider the liability implications of these administrative options. What is important is that the ultimate form reflect the substantive requirements of the Sarbanes-Oxley Act—including a recognition that, as the text of the statute and the foregoing explanation should make clear, certification under Section 302 applies to a subset of the certifications required by Section 906. Nevertheless, I have encouraged the SEC and the Justice Department to develop a single form which could be used for certifications under both Sections 302 and 906. Section 906 certification establishes a "floor" of minimum certification requirements, while Section 302 cites some additional factors. Accordingly, any company properly certifying under Section 302 will also satisfy the requirements of Section 906. Thus, it may be possible for the SEC to develop a unitary certification for the sake of administrative ease. However, for companies that need only certify under Section 906, a separate certification satisfying the somewhat lesser requirements of Section 906 may be appropriate.

Penalties for Failure to File Section 906 Certification. Some observers have asked whether failure to file a certification pursuant to 18 U.S.C. §1350(a)—as opposed to certifying a false financial report as accurate in violation of 18 U.S.C. §1350(c)—triggers criminal liability. It does. Pursuant to Section 3(b) of the Sarbanes-Oxley Act, "a violation by any person of this Act . . . shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 . . . and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules and regulations." As noted above, the criminal provisions of the Securities Exchange Act of 1934 (15 U.S.C. §78ff) include a 10-year felony for "willful" violations. Accordingly, willful failure to file a certification pursuant to Section 1350(a) of Title 18 triggers the criminal provisions of 15 U.S.C. §78ff. (As noted above, courts have interpreted "willful" violations of the 1934 Act to require only general intent to commit the crime.) Significantly, the U.S. Department of Justice concurs with this analysis. See Letter from Assistant Attorney General Daniel J. Bryant to the Honorable Joseph R. Biden, Jr., December 26, 2002 ("[A]s you have suggested, the Department may utilize Section 78ff's criminal penalties to prosecute executives who violate the Sarbanes-Oxley Act by willfully failing to file Section 906's required certification."). Of course, in addition to this penalty scheme, failure to file the required Section 1350(a) certification may also result in an economic penalty, since Wall Street analysts and investors would surely take note of the failure and punish offending companies by shifting their investment dollars to compliant companies. This potential economic penalty should in no way mitigate application of the criminal penalty.

ARMENIAN GENOCIDE

Mr. LEVIN. Madam President, I rise today in commemoration of the Armenian genocide. As the 88th anniversary of this horrific event approaches, I

would like to take a few moments to pay tribute to the men, women and children who were murdered or displaced in the 20th century's first systematic attempt to extinguish an entire people.

On April 24, 1915, the Turkish Ottoman government initiated a campaign to expel 1.75 million ethnic Armenians from its borders. Turkish authorities operated under the baseless claim that its Armenian community would be disloyal in a time of war since they were neither Turks nor Muslims. On April 24, government leaders rounded up 300 Armenian leaders, writers, thinkers and professionals in what was then Constantinople for their deportation or, for many, their deaths. In nearby areas, 5,000 of the poorest Armenians were killed in their homes or on the streets. Over the course of the subsequent 2 years, between 500,000 and 1 million Armenians were killed and 750,000 were forced to leave their homes.

Henry Morgenthau, who served as U.S. Ambassador to the Ottoman Empire remarked, "I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared to the sufferings of the Armenian race in 1915."

Records of eyewitness accounts allow us to gain an incomplete yet painful understanding of the atrocities the Armenian people faced. An American missionary wrote, ". . . All tell the same story and bear the same scars: their men were all killed on the first days [sic] march from their cities, after which the women and girls were constantly robbed of their money, bedding, clothing and beaten, criminally abused and abducted along the way."

Another account by an Armenian and corroborated by a German missionary said, "We all had to take refuge in the cellar for fear of our orphanage catching fire. It was heartrending to hear the cries of the people and children who were being burned to death in their houses. The soldiers took great delight in hearing them, and when people who were out in the street during the bombardment fell dead, the soldiers merely laughed at them. . . ."

I wish we could say that such events are in the past and that history will never again have not been learned and millions of other people and races have suffered at the hands of malicious leaders who have acted upon their messages of hate and intolerance.

Each year during my tenure in the Senate, I have spoken out about the Armenian genocide. I believe the highest tribute we can pay to the victims of any genocide is by acknowledging the horrors they faced and reaffirming our commitment to fight against such heinous acts in the future. It is important that we take the time to remember and honor the victims, and pay respect to the survivors, especially as that generation passes on.

I know my Senate colleagues join me in celebrating the continued vitality of the Armenian culture, and in honoring and remembering the victims of the Armenian genocide.

REGIME TARGETS INDEPENDENT MEDIA IN BELARUS

Mr. CAMPBELL. Madam President, recently I introduced S. 700, the Belarus Democracy Act, a bipartisan initiative aimed at supporting democratic forces in the Republic of Belarus. As co-chairman of the Commission on Security and Cooperation in Europe, I want to report to my colleagues on the pressures faced by independent media in that country. The Committee to Protect Journalists (CPJ) has just released their annual report documenting the dangers journalists face around the world, including Belarus.

In May of 2002, CPJ named Belarus one of the 10 worst places in the world to be a journalist due to the worsening repression under Europe's most authoritarian regime. Throughout the year the situation of the country's independent media deteriorated as Belarusian leader Aleksander Lukashenka mounted a comprehensive assault on all independent and opposition press.

While criminal libel laws had been on the books since 1999, they were not used by the Government until 2002. The law stipulates that public insults or libel against the President may be punished by up to 4 years in prison, 2 years in a labor camp, or by large fine. Articles in the criminal code which prohibit slaughtering and insulting the President or government officials are also used to stifle press freedom. The criminal code provides for a maximum penalty of 5 years' imprisonment for such offenses.

Journalists critical of the fall 2001 presidential elections were targeted. Mikola Markevich and Pavel Mazheyka of Pahonya and Viktor Ivashkevich of Rabochoy were sentenced to corrective labor for "libeling" the President in pre-election articles. On March 4, a district court in Belarus commuted Milola Markevich's sentence from time in a corrective labor facility to "corrective labor at home." On March 21, a district court released Pavel Mazheyka on parole. Under Belarus law, prisoners may be released on parole after serving half term their.

Other charges were leveled later in the year against a woman who distributed anti-Lukashenka flyers, an opposition politician for libeling the President in a published statement, and a Belarusskaya Delovaya Gazeta reporter for criticizing the Prosecutor General of Belarus. A former lawyer for the mother of disappeared cameraman Dmitry Zavadsky received a 1½ year prison sentence suspended for 2 years for libeling the Prosecutor General.

Last August the independent newspaper *Nasha Svaboda* was fined 100 mil-

lion Belarusian rubles for civil libel of the chairman of the State Control Committee. The paper closed when it could not pay the fine. There are other forms of pressure and harassment as well.

The CPJ report notes the financial discrimination faced by nonstate media, including pressure from government officials on potential advertisers not to buy space in publications that criticize Lukashenka and his regime. Government officials also regularly encourage companies to pull advertising and threaten them with audits should they fail to do so, according to CPJ.

When the Belarussian Government increased newspaper delivery rates, only nongovernmental papers had to pay. When the Minsk City Council of Deputies levied 5 percent tax on newspapers, government papers were again exempt. Such tactics caused such independents as the *Belaruskaya Maladzyozhnaya*, *Rabochoy*, *Den* and *Tydnovik Mahilyouski* to go under.

According to the State Department's recently released County Reports on Human Rights Practices "the regime continued to use its near-monopolies on newsprint production, newspaper printing and distribution, and national television and radio broadcasts to restrict dissemination of opposition viewpoints."

Mr. President, I urge my colleagues to support S. 700, the Belarus Democracy Act, in support of those brave individuals in Belarus, including representatives of independent media, who speak out in defense of human rights and democracy in a nation which enjoys neither.

THE SECURITY OF AMERICAN AGRICULTURE

Mr. AKAKA. Madam President, I rise today to discuss the threat of bioterrorist attacks on American agriculture.

Agroterrorism is a real and continuing concern. When Homeland Security Secretary Tom Ridge last month raised the threat advisory level to high, he launched Operation Liberty Shield to increase security and readiness in the United States. One part of Operation Liberty Shield involved taking additional steps to guarantee our food security. The government started to inspect imported food more carefully. The U.S. Department of Agriculture, USDA, alerted the food and agricultural community to give greater care in monitoring feedlots, stockyards, processing plants, import and storage areas.

An ongoing outbreak of avian influenza in the Netherlands is an example of the type of crisis we might face, and the coordination that may be needed, if a terrorist launched an attack on our agriculture. More than 9 million of the estimated 100 million chickens in the Netherlands were slaughtered to prevent the disease spreading since the outbreak began in late February. Some

800 farms in the eastern Netherlands were affected. Dutch exports of fowl and poultry products were stopped. The cost so far to farmers and the government is an estimated \$108 million.

The Dutch Government took a number of strong steps to contain the disease. The Dutch Army was called up to help. Some 100 troops joined more than 400 police and customs officers to enforce a quarantine around the epicenter of the outbreak and to keep the disease from spreading to nearby Germany and Belgium. A ban on movements of live chickens and eggs within the country was imposed in early April. This led to some inconvenience to consumers since the supply of eggs in grocery stores was limited.

A coordinated attack by terrorists on some of our leading chicken producing states, for example, Georgia, Arkansas, Alabama and North Carolina, with an impact equivalent to the natural outbreak in the Netherlands would have serious consequences.

Egg and chicken production in the United States is a \$20 billion plus a year industry. Another \$10 billion is spent on processing and getting the chicken and eggs to market. We export more than a billion dollars of chicken products a year. Some 30,000 farm families are involved in raising chickens. Three hundred thousand people work in processing and transporting chickens for market.

On any given day there are some 1.5 billion chickens sitting in chicken coops in the United States. Over a hundred million birds might have to be slaughtered. If there was a ban on shipment of chickens and eggs, not only would chicken producers suffer, so would related industries. The trucking industry, food processing industry, food retailers, and those involved in exporting chicken products abroad would all feel the impact. Billions of dollars in losses could result. The impact on farm families and employment could be substantial.

Of course, my concern about agroterrorism is not limited to the poultry industry. Agriculture and related industries, such as food processing, manufacturing, and transportation, account for approximately 13 percent of the U.S. gross domestic product and nearly 17 percent of domestic employment. The deliberate and coordinated spread of livestock or crop diseases could have a devastating effect on our nation.

USDA is the lead authority in responding to agricultural emergencies. It has taken several steps to improve our ability to counter a terrorist attack upon our nation's agriculture. USDA has created a homeland defense council and increased border inspection and research activities. USDA's overall activities, and actions in support of Operation Liberty, are commendable. But we need to do more to prepare ourselves.

Responding to an agroterrorist attack will require coordinated efforts by